



VIRIDIS
CLEAN ENERGY GROUP

FACSIMILE

| | | | |
|-----------|--------------------------------------|-----------|-----------------|
| TO | Australian Stock Exchange | DATE | 24 August 2009 |
| ATTENTION | Ms Kate Kidson | FACSIMILE | +61 3 9614 0303 |
| FROM | Duncan Jewell | | |
| SUBJECT | Notice of initial substantial holder | | |

Dear Ms Kidson,

Please find attached Form 603 - Notice of initial substantial holder for Oaktel Investments Pty Ltd for the Viridis Clean Energy Group (VIR).

Yours sincerely,

Duncan Jewell

Company Secretary

Viridis Investment Management Limited

P: +61 3 9677 8050

F: +61 3 9677 8080

Form 603
Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme **Viridis Clean Energy Group (VIR)** (comprising Viridis Clean Energy Trust I (ARSN 115 340 442) ("VCETI") and Viridis Clean Energy Trust II (ARSN 115 340 639) ("VCETII")

ACN/ARSN VCETI 38 149 957 083 VCETII 51 099 788 431

1. Details of substantial holder (1)

Name Oaktel Investments Pty Ltd, Walter Pahor and Lina Pahor

ACN/ARSN (if applicable) 050 400 390

The holder became a substantial holder on 20/08/2009

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

| Class of securities (4) | Number of securities | Person's votes (5) | Voting power (6) |
|-------------------------|----------------------|--------------------|------------------|
| Stapled Securities | 11,122,977 | 11,122,977 | 5.58% |
| | | | |

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

| Holder of relevant interest | Nature of relevant interest (7) | Class and number of securities |
|-----------------------------|---------------------------------|---------------------------------|
| Oaktel Investments Pty Ltd | Holder of securities | Stapled Securities : 11,122,977 |
| | | |

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

| Holder of relevant interest | Registered holder of securities | Person entitled to be registered as holder (8) | Class and number of securities |
|-----------------------------|---------------------------------|--|---------------------------------|
| Oaktel Investments Pty Ltd | Oaktel Investments Pty Ltd | Oaktel Investments Pty Ltd | Stapled Securities : 11,122,977 |
| | | | |

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

| Holder of relevant interest | Date of acquisition | Consideration (9) | Class and number of securities |
|-----------------------------|---------------------|-----------------------------|--------------------------------|
| Oaktel Investments Pty Ltd | 20/08/2009 | \$0.23 per Stapled Security | Stapled Securities : 7,945,200 |
| | | | |

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

| Name and ACN/ARSN (if applicable) | Nature of association |
|-----------------------------------|-----------------------|
| | |
| | |

7. Addresses

The addresses of persons named in this form are as follows:

| Name | Address |
|----------------------------|--------------------------------|
| Oaktel Investments Pty Ltd | PO Box 181 Port Melbourne 3207 |
| Walter Pahor | PO Box 181 Port Melbourne 3207 |
| Lina Pahor | PO Box 181 Port Melbourne 3207 |

Signature

print name WALTER PAHOR

capacity DIRECTOR

sign here

date

24/8/09

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.



**VIRIDIS
CLEAN ENERGY GROUP**

6 August 2009

Investec Bank (Australia) Limited
Level 31, 2 Chifley Square
SYDNEY NSW 2000
Attention: Mr Mark Schneider

Oaktel Investments Pty Ltd
PO Box 181
PORT MELBOURNE VIC 3207
Attention: Mr Walter Pahor

PEP Energy Pty Ltd
PO Box 5979
GOLD COAST QLD 9276
Attention: Mr David Scaysbrook

Hurstwood Road Pty Ltd
Level 16, 607 Bourke Street
Melbourne VIC 3000
Attention: Mr Edward Northam

Chetwyn Investments Pty Ltd
23 Chetwyn Court
MOUNT ELIZA VIC 3930
Attention: Mr Duncan Jewell

Viridis Energy Capital Pty Ltd
Level 1, 167 Flinders Lane
MELBOURNE VIC 3000
Attention: Company Secretary

Dear Ladies and Gentlemen

Variation of Internalisation Deed

Background

The independent directors of Viridis Investment Management Limited ("**Independent Directors**") refer to the internalisation proposal set out in the Explanatory Memorandum and accompanying Notice of Meeting dated 15 July 2009 ("**Meeting Materials**").

In the absence of a superior proposal, the Independent Directors continue to unanimously recommend that securityholders of Viridis Clean Energy Group ("**VCEG**") vote in favour of the Proposal contained in the Meeting Materials.

However, as result of investor feedback received by the Independent Directors and having regard to VIML's duties as responsible entity to act in the best interests of VCEG securityholders, the Independent Directors have decided to enhance the proposal and vary and/or waive certain provisions contained in the Internalisation Deed pursuant to clause 21.4 in the manner set out in the attached Annexure.

Unless defined otherwise, capitalised terms used in this letter (and attached Annexure) have the same meaning given to them in the Internalisation Deed and references to clauses are to clauses of the Internalisation Deed.

Consideration

In consideration for the incurrence of obligations and the giving of rights under this letter and other valuable consideration, VIML is giving this letter and each of the Owners and VEC acknowledges and agrees, by countersigning this letter, to the variations to the Internalisation Deed as documented by this letter.

Variation to the Internalisation Deed

We refer to the Internalisation Deed dated 28 May 2009 ("Internalisation Deed") entered into by:

- Viridis Investment Management Limited (as responsible entity of Viridis Clean Energy Trust I and Viridis Clean Energy Trust II) (ACN 099 788 431) ("VIML");
- Investec Bank (Australia) Limited (ACN 071 292 594), PEP Energy Pty Ltd (ACN 095 764 088), Chetwyn Investments Pty Ltd (ACN 098 552 704), Oaktel Investments Pty Ltd (ACN 050 400 390) and Hurstwood Road Pty Ltd (ACN 098 552 759) (together, the "Owners"); and
- Viridis Energy Capital Pty Limited (ACN 098 467 988) ("VEC").

VIML, and, by countersigning this letter, the Owners and VEC acknowledge and agree that the Purchase Price and the number of Stapled Securities to be issued to the Owners by VIML in application of the Purchase Price be reduced. This variation, and certain other necessary consequential amendments are contained in the attached Annexure.

Adjournment

We refer to:

- clause 4.1 and the convening of a Securityholder Meeting on 29 July 2009 or such later date agreed by the parties to consider and approval the Proposal and the Ancillary Resolutions; and
- the rights of adjournment held by the chairman in accordance with the VCET 1 Constitution and VCET II Constitution (together, the "Constitutions").

Notwithstanding VIML's discretion to adjourn the meeting in accordance with the Constitutions, the parties also acknowledge and agree that the Securityholder Meeting scheduled to take place on the Meeting Date on 7 August 2009 will be held and adjourned to a date on or around 19 August 2009.

Miscellaneous

The parties acknowledge that clauses 1.7, 15, 17 and 18 in relation to VIML's capacity, obligations of confidentiality, VIML's limitation of liability and certain other acknowledgments, representations and warranties given by Oaktel, Hurstwood and Chetwyn, respectively, apply to this letter as if they were set out in full.

Each party represents and warrants to the other that:

- it has full power and authority to enter into and perform its obligations under this letter, which constitute valid and binding obligations upon it, enforceable in accordance with its terms; and
- it has complied with its constitutional documents in all respects and the signing and performance of this letter does not violate any laws and

regulations applicable to it or any obligation (including statutory, contractual or fiduciary obligation), or constitute default under any agreement or undertaking, by which it is bound.

General

The parties agree that the waiver of rights and/or amendments set out in this letter will take effect on 6 August 2009 (the "Effective Date").

This letter may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together will be taken to constitute one and the same instrument.

Except as specifically amended and/or waived by this letter in accordance with clause 21.4, all terms and conditions of the Internalisation Deed remain in full force and effect.

With effect from the Effective Date, the Internalisation Deed as amended and/or waived by this letter is to be read as a single integrated document incorporating the amendments effected by this letter and if an inconsistency arises between the Internalisation Deed and this letter, the parties acknowledge that the contents of this letter will prevail to the extent of the inconsistency.

This letter shall be governed by, and construed in accordance with, the laws in force in Victoria.

Please confirm your acceptance to the terms of this letter by signing and dating the enclosed copy and returning it to us.

Yours faithfully

Andrew Berry
on behalf of Viridis Investment Management Limited

Annexure - Variations to Internalisation Deed

1. Number of Stapled Securities

The parties acknowledge and agree the following:

- (a) if Completion occurs, the Owners will apply the consideration received by them in subscription for 12 million Stapled Securities at an issue price of \$0.23 per Stapled Security and accordingly all references to the Purchase Price are to be read as references to "\$2,760,000";
- (b) the issue of 12 million Stapled Securities to the Owners will be taken to be full and good discharge of VIML's obligations under the Internalisation Deed notwithstanding any provision to the contrary in the Internalisation Deed or any other document (including, but not limited to, any subscription letter issued by an Owner in connection with their reinvestment of the Purchase Price) and VIML will be released from its obligations to issue 14 million Stapled Securities and held harmless for any claim or action for the difference between this amount and the original Purchase Price stated in the Internalisation Deed.

2. Executive Option Proposal

The parties further acknowledge that:

- (a) the Independent Directors of VIML intend to withdraw their recommendation in relation to the Ancillary Resolution in respect of the Executive Option Proposal ("**EOP Ancillary Resolution**") and this will not constitute a breach of clauses 4.5 or 4.6;
- (b) the EOP Ancillary Resolution will be withdrawn and lapse and not be put to Securityholders at the Securityholder Meeting or any adjourned meeting; and
- (c) in relation to the Executive Option Proposal:
 - (i) VIML's obligations under clause 4.9 are waived and in particular, the withdrawal of any recommendations in relation to the EOP Ancillary Resolution and the EOP Ancillary Resolution itself will not be taken to be a breach of VIML's obligations under that clause; and
 - (ii) each of Chetwyn and Hurstwood, on behalf of the relevant Executive, agree to procure that the relevant Executive does all things necessary or desirable to give effect to this variation.

3. Redeemable preference shares

- (a) VIML confirms that, notwithstanding clause 3.4(a), if any of the Redeemable Preference Shares are redeemed after the Meeting Date but before Completion, it will not seek to terminate the Internalisation Deed as a result of redemption taking place after the time specified in the Internalisation Deed.
- (b) For clarity, VIML also confirms that it does not consider the issue of further ordinary shares and redemption of Redeemable Preference Shares after the Meeting Date but prior to Completion will constitute a Prescribed Event or result in a breach of any term of the Internalisation Deed, including, but not limited to, a breach of an Owner's Warranty.

4. Subscription steps

On the basis of the amendments described above, the parties acknowledge that the subscription steps set out in clause 5.7 are amended as follows:

- (a) in clause 5.7(a), "2,415,420" is deleted and replaced with "2,070,360";
- (b) in clause 5.7(b), "2,114,840" is deleted and replaced with "1,812,720";

Viridis Investment Management Limited ABN 51 099 788 431

Level One 167 Flinders Lane

Melbourne 3000 Australia

www.viridisenergy.com

Telephone 613 9677 8000

Facsimile 613 9677 8080

enquiries@viridisenergy.com

- (c) in clause 5.7(c), "71,260" is deleted and replaced with "61,080";
- (d) in clause 5.7(d), "9,269,400" is deleted and replaced with "7,945,200"; and
- (e) in clause 5.7(e), "129,080" is deleted and replaced with "110,640".

5. General

- (a) As a consequence of these amendments, the Completion is scheduled to take place on Thursday, 20 August 2009 or on any other date agreed by the parties.
- (b) The parties acknowledge and agree that any reference to "Explanatory Memorandum" shall include a reference to any supplementary material despatched to Securityholders relation to the variations contained in the Internalisation Deed as set out in this letter.

Annexure A – Internalisation Deed

Details

| Parties | VIML, IBAL, PEP, Chetwyn, Oaktel, Hurstwood and VEC | |
|----------------|---|---|
| VIML | Name | Viridis Investment Management Limited |
| | ABN | 51 099 788 431 |
| | Capacity | As responsible entity of Viridis Clean Energy Trust I (ARSN 115 340 442) and Viridis Clean Energy Trust II (ARSN 115 340 639) |
| | Address | Level 1, 167 Flinders Lane, Melbourne VIC 3000 |
| | Fax | +61 3 9677 8080 |
| | Email | companysecretary@viridisenergy.com |
| | Attention | Company Secretary |
| IBAL | Name | Investec Bank (Australia) Limited |
| | ACN | 071 292 594 |
| | Address | Level 31, 2 Chifley Square, Sydney NSW 2000 |
| | Fax | +61 2 9293 2322 |
| | Email | mark.schneider@investec.com.au |
| | Attention | Mr Mark Schneider |
| PEP | Name | PEP Energy Pty Ltd |
| | ACN | 095 764 088 |
| | Address | PO Box 5979, Gold Coast QLD 9726 |
| | Email | david@gaiancapital.com |
| | Attention | David Scaysbrook |
| Chetwyn | Name | Chetwyn Investments Pty Ltd |
| | ACN | 098 552 704 |
| | Capacity | As trustee of the Jewell Family Trust |
| | Address | 23 Chetwyn Court, Mount Eliza VIC 3930 |

| | | |
|------------------|-----------|---|
| | Fax | +61 3 9677 8080 |
| | Email | duncan.jewell@viridisenergy.com |
| | Attention | Duncan Jewell |
| <hr/> | | |
| Oaktel | Name | Oaktel Investments Pty Ltd |
| | ACN | 050 400 390 |
| | Capacity | As trustee of Pahor Family Trust |
| | Address | PO Box 181, Port Melbourne, VIC 3207 |
| | Email | walter.pahor@gmail.com |
| | Attention | Walter Pahor |
| <hr/> | | |
| Hurstwood | Name | Hurstwood Road Pty Ltd |
| | ACN | 098 552 759 |
| | Capacity | As trustee of Hurstwood Road Trust No. 1 |
| | Address | Level 16, 607 Bourke Street, Melbourne VIC 3000 |
| | Fax | +61 3 9677 8080 |
| | Email | edward.northam@viridisenergy.com |
| | Attention | Edward Northam |
| <hr/> | | |
| VEC | Name | Viridis Energy Capital Pty Limited |
| | ABN | 94 098 467 988 |
| | Address | Level 1, 167 Flinders Lane, Melbourne VIC 3000 |
| | Fax | +61 3 9677 8080 |
| | Email | companysecretary@viridisenergy.com |
| | Attention | Company Secretary |
| <hr/> | | |
| Recitals | A | VIML is the responsible entity of VCET I and VCET II. VEC is the investment manager of VCET I and VCET II and is the holding company of VIML. |
| | B | The Owners are, together, the beneficial owners of all the shares in the capital of VEC (" Shares "). The details of the ownership of the Shares and the Relevant Proportions are set out in Schedule 1. |

- C** The parties have agreed, on the terms and subject to the conditions of this deed, to implement an internalisation proposal under which VIML (in its capacity as the responsible entity of VCET II) will acquire the Shares from the Owners, thus acquiring for internalisation purposes VEC, the investment manager, and VIML, the responsible entity of VCET I and VCET II.
- D** The purpose of this deed is to set out how the parties propose to implement the internalisation proposal and the terms and conditions that apply to it.

| | |
|----------------------|----------|
| Governing law | Victoria |
|----------------------|----------|

| | |
|---------------------|------------------|
| Date of deed | See Signing page |
|---------------------|------------------|

General terms

1 Definitions and interpretation

1.1 Definitions

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

2008 Financial Statements means each of the:

- (a) Audited balance sheet of VEC as at the Last Balance Date;
- (b) audited profit and loss statement of VEC for the year ended on the Last Balance Date; and
- (c) audited statement of cash flows of VEC for the year ended on the Last Balance Date,

prepared on a consolidated basis.

2009 Accounts means the audited accounts (including the financial statements, directors reports, auditors reports and notes attached to or intended to be read with the accounts) of VEC on a consolidated basis for the financial year ending on 30 June 2009.

Accounting Standards means:

- (a) accounting standards as that term is defined in the Corporations Act; and
- (b) to the extent not inconsistent with paragraph (a), generally accepted Australian accounting principles which are consistently applied.

Acquisition Steps means the steps set out in clause 5.3.

Adjusted EBITDA means earnings before interest, tax, depreciation and amortisation and before net unrealised foreign currency exchange gains/losses and derivative gains/losses (non-cash items), interest income on cash balances and non-recurring transactions, excluding abnormal items.

Adjustment Mechanism means each of the following:

- (a) prior to Completion, this deed will be amended such that the Purchase Price will be equal to the Cap and paid to the Owners in cash on completion of the relevant VCEG Control Transaction;
- (b) the Stapled Securities which were issued to that Owner under clause 5.7(g) are redeemed for the Subscription Price paid by that Owner and the amount by which that Owner's Respective Proportion of the Cap exceeds the Purchase Price received by that Owner is paid to that Owner in cash;
- (c) the Stapled Securities which were issued to that Owner under clause 5.7(g) are transferred to VCEG or a nominee in consideration for a cash payment of that Owner's Respective Proportion of the Cap to that Owner;

- (d) the redemption for no consideration of that number of Stapled Securities issued that Owner under clause 5.7(g) that exceeds the number that is calculated by dividing that Owner's Respective Proportion of the Cap by the Bid Price;
- (e) the appointment of VIML as each Owner's agent for the sale of the Stapled Securities issued to that Owner under clause 5.7(g) for a total price of no less than that Owner's Respective Proportion of the Cap on the basis that an amount of the sale proceeds equal to that Owner's Respective Proportion of the Cap be paid to that Owner in cash with the remainder of the sale proceeds being retained by VCEG;
- (f) the appointment of VIML as each Owner's agent for the sale of that number of Stapled Securities issued to that Owner under clause 5.7(g) that exceeds the number that is calculated by dividing that Owner's Respective Proportion of the Cap by the Bid Price on the basis that the sale proceeds will be retained by VCEG; and
- (g) on completion of the relevant VCEG Control Transaction, in respect of each Stapled Security that was issued to that Owner under clause 5.7(g), the purchaser pays to:
 - (i) that Owner \$0.40; and
 - (ii) VCEG the remainder of the Bid Price,
 in discharge of the purchaser's obligations under the VCEG Control Transaction to that Owner in respect of the Stapled Securities issued that Owner under clause 5.7(g).

AFSL means the Australian Financial Services Licence.

Amended Employment Agreement means the amendments to the senior executive employment agreement between VEC and each of the Executives as set out in a letter of variation from VEC to each of the Executives dated on or about the date of this deed.

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

Ancillary Resolutions means the resolutions to approve the Constitution Amendments and any other resolutions to be considered by Securityholders at the Securityholder Meeting which are ancillary to the implementation of the Proposal.

ASIC means the Australian Securities and Investments Commission.

ASTC means ASX Settlement and Transfer Corporation Pty Ltd (ACN 008 504 532).

ASTC Settlement Rules means the settlement rules of ASTC.

ASX means ASX Limited or the Australian Securities Exchange as appropriate.

Bid Price means, in respect of a VCEG Control Transaction, the amount per Stapled Security to be paid by the purchaser under that VCEG Control Transaction.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne or Sydney.

Buyer's Head Company means the Head Company of the Consolidated Group.

Cap means \$5.6 million.

Competing Proposal means:

- (a) a transaction which, if completed, would result in a person (other than VIML in its capacity as responsible entity of VCEG):
 - (i) acquiring a relevant interest in, or becoming the holder of, 20% or more of VEC or any of its Subsidiaries; or
 - (ii) acquiring control of VEC or any of its Subsidiaries (within the meaning of section 50AA of the Corporations Act); or
- (b) any merger or amalgamation (whether by way of takeover or other arrangement), acquisition or sale of substantial business or assets, issue of securities, reorganisation of capital or similar transaction involving VEC or any of its Subsidiaries, or any combination of them.

Completion means completion of the Completion Steps and **Complete** has a corresponding meaning.

Completion Date means the date specified in the Explanatory Memorandum as the date on which Completion is to take place, or such later date agreed by the parties.

Completion Steps means the Acquisition Steps and the Subscription Steps.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality Agreement means the confidentiality agreement between VIML and VEC dated 22 December 2008 in relation to the Proposal.

Consolidated Group means the "consolidated group" or "MEC group" (as those terms are defined in the Tax Act) of which a Group Member is a Subsidiary Member at or after Completion.

Constitution Amendments means the proposed amendments to each of the VCET I Constitution and the VCET II Constitution set out in the draft supplemental deeds to be entered into by VIML, which are attached to this deed as Schedule 3.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cwlth).

Court has the meaning it has in the Corporations Act.

Custodian means Trust Company Limited (ACN 004 027 749) as custodian of VCET I and/or VCET II.

Custody Deed means the custody deed dated on or about 25 May 2009 between the Custodian and VIML.

Deal means:

- (a) sell, assign, transfer or otherwise dispose of;
- (b) agree or offer to sell, assign, transfer or otherwise dispose of;
- (c) enter into any option which, if exercised (whether such exercise is subject to conditions or otherwise), enables or requires the Relevant Owner to sell, assign, transfer or otherwise dispose of; or
- (d) decrease or agree to decrease an economic interest.

Details means the section of this deed headed "Details".

Disclosure Letter means the letter from the Owners addressed to VIML and dated and delivered to it before the date of this deed in the form agreed between the Owners and VIML.

Due Diligence End Date means a date to be agreed by the parties for the purpose of clause 3.1(c), which must be no later than seven days prior to the Meeting Date.

Duty means any stamp, transaction or registration duty or similar charge which is imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount which is imposed in that regard.

Employee means any employee of VEC or its Subsidiaries at Completion.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

Excess Cash Amount means the amount of cash of VEC at Completion, but excluding:

- (a) any amount which is required to meet VEC's requirements under conditions 5(a) and 5(b) of the VEC Licence; and
- (b) any amount which is required to meet any liability of VEC or the Owners due at Completion, which has not been included in the amount referred to in paragraph (a) above and is not otherwise permitted under this deed.

Executive Bonus Plan means the executive bonus plan described in Schedule II of the senior executive employment agreement between VEC and each of the Executives.

Executive Bonus Pool means the bonus pool created by VEC for the purpose of satisfying its obligations under the Executive Bonus Plan.

Executives means each of Edward Northam and Duncan Jewell as executives of VEC.

Executive Option Proposal means the proposal to establish an executive option plan in respect of the Executives, and the grant of the options under that plan to the Executives, following Completion on the terms approved by the Board of Directors of VIML and agreed with the Executives prior to the date of the Explanatory Memorandum.

Expert means an audit partner of PricewaterhouseCoopers or, if they decline or are unable to act, a person nominated by the President for the time being of the Australian Institute of Chartered Accountants.

Explanatory Memorandum means the explanatory statement accompanying the Notice of Meeting.

Governmental Agency means any government, governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or other governmental entity.

Group Member means VEC, VIML (in its personal capacity) and VCE.

GST means a goods and services or similar tax imposed in Australia.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

GST exclusive market value has the meaning it has in the GST Act.

Guarantee means the deed to be entered into by:

- (a) in the case of Oaktel, Walter Pahor; and
- (b) in the case of PEP, David Scaysbrook,

in accordance with clause 14.5 and substantially in the form set out in Schedule 6.

Head Company has the meaning given to that expression in section 703-15 or section 719-25 of the Tax Act, as appropriate.

Independent Expert means Grant Samuel & Associates Pty Limited appointed by VIML to prepare the Independent Expert's report.

Input Tax Credit has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this deed); or

- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this deed reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Investment Management Agreement means the Investment Management Agreement between VIML and VEC dated 1 August 2005 in connection with the provision of investment management services to VCEG by VEC.

Insurance Policies means the insurance policies maintained by VEC immediately prior the date of this deed, and as set out in Schedule 7.

ITS means Integrated Trading System.

Key Personnel means:

- (a) in respect of IBAL – Stephen Chipkin, Mark Schneider, Richard Winter, Belinda Dorfman and Anthony Rubin;
- (b) in respect of PEP – David Scaysbrook;
- (c) in respect of Chetwyn – Duncan Jewell;
- (d) in respect of Oaktel – Walter Pahor; and
- (e) in respect of Hurstwood – Edward Northam.

Last Accounts means:

- (a) each of the 2008 Financial Statements;
- (b) applicable notes to each of the 2008 Financial Statements required by the Accounting Standards;
- (c) any other information necessary to give a true and fair view of the financial position and performance of VEC and its Subsidiaries as set out in the 2008 Financial Statements; and
- (d) a directors' declaration regarding the 2008 Financial Statements (taken together) containing the information and opinions required by the Corporations Act.

Last Balance Date means 30 June 2008.

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any Governmental Agency; and

- (b) any statute, regulation, proclamation, ordinance or by-law in:
 - (i) Australia; or
 - (ii) any other jurisdiction.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred, but excluding liability for any consequential or indirect losses, economic losses or loss of profits.

Listing Rules means the Listing Rules of ASX.

Loss means all damage, loss, cost and expense (including legal costs and expenses of whatsoever nature or description) but excluding any liability for consequential or indirect losses, economic losses or loss of profits.

Management Accounts means the management accounts of VEC and its controlled entities prepared by VEC for the month ended 30 April 2009.

Material Adverse Change means:

- (a) in respect of VEC and its Subsidiaries, any change, effect, event, occurrence, state of facts or development that could reasonably be expected to be materially adverse to the business, financial condition or results of operations of VEC and/or its Subsidiaries, but does not include any change occurring directly or indirectly as a result of:
 - (i) any matter, event or circumstance required by this deed, the Proposal or the transactions contemplated by them;
 - (ii) any action taken by VIML which is not in accordance with a recommendation or consent of VEC; or
 - (iii) any action taken by VEC in accordance with the Investment Management Agreement; and
- (b) in respect of VCEG, any change, effect, event, occurrence, state of facts or development that could reasonably be expected to adversely affect VCEG's Adjusted EBITDA by more than 20%, but does not include any change occurring directly or indirectly as a result of:
 - (i) sale of its interest in the German wind farms;
 - (ii) sale of its interest in the Ardrossan wind farm;
 - (iii) any action taken by VIML which is in accordance with a recommendation or consent of VEC; or
 - (iv) any matter, event or circumstance required by this deed, the Proposal or the transactions contemplated by them.

Material Contract means a contract:

- (a) requiring payments over the term of the contract in excess of \$50,000;
- (b) for a term of more than five years; or
- (c) affecting the Adjusted EBITDA of VEC or its Subsidiary by more than 5%.

Meeting Date means the date on which the Securityholder Meeting occurs (and if the Securityholder Meeting is adjourned to another day, means the first date on which the Securityholder Meeting is conducted).

Notice of Meeting means the notice of meeting to be sent to Securityholders in relation to the Securityholder Meeting.

Official Quotation means quotation on the Official List of ASX.

Owners means IBAL, PEP, Chetwyn, Oaktel and Hurstwood.

Owners' Indemnities means the indemnities and undertakings given by the Owners under clause 10.6 and the Tax Indemnity.

Owners' Warranties means the representations and warranties given by the Owners under clauses 10 and 18.2 and Schedule 2.

Permitted Encumbrances means the charges specified in Schedule 8.

Prescribed Event means, except to the extent contemplated by this deed, any of the following occurs in respect of VEC or any of its Subsidiaries (as the case may be):

- (a) **(conversion)** it converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of capital)** it resolves to reduce its capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its securities;
- (c) **(buyback)** it enters into a buyback agreement or resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** it makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) **(issuing shares, options or other instruments)** it issues shares or other instruments convertible into shares, grants an option over its shares, or agrees to make such an issue or grant such an option;
- (f) **(constitution)** it adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (g) **(disposals)** it disposes, or agrees to dispose of the whole or a substantial part of their business or property;
- (h) **(acquisitions, disposals or tenders)** it acquires or disposes of, agrees to acquire or dispose of, or offers, proposes, announces a bid or tenders for, any material business, assets, entity or undertaking, including, any acquisition of or agreement to acquire any Stapled Securities (or any legal or beneficial interest, including voting rights in them);
- (i) **(Encumbrances)** it creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property;
- (j) **(Material Contract)** it enters into, amends or terminates (or agrees to enter into, amend or terminate) a Material Contract;
- (k) **(Insolvency)** it becomes Insolvent;

- (l) **(employment contracts)** it enters into any employment contract, or renews or amends any existing employment contract (including with regard to superannuation benefits);
- (m) **(change of control)** a person exercises or purports to exercise, or states an intention to exercise, any rights under any Material Contract which results, or could result in:
 - (i) the interest of VEC or its Subsidiaries in any entity (or any arrangements relating to such interests) being transferred, terminated or modified; or
 - (ii) the business of VEC or its Subsidiaries being adversely affected;
- (n) **(amendments)** it takes any step to amend, vary, assign, novate or terminate any of the following:
 - (i) the VCET I Constitution;
 - (ii) the VCET II Constitution;
 - (iii) the Investment Management Agreement; and
 - (iv) the Custody Deed;
- (o) **(AFSL)** it fails to comply with the conditions of its AFSL or makes any application, or take any steps, to vary or cancel its AFSL; or
- (p) **(responsible entity)** it takes any steps to retire VIML as responsible entity of VCET I and/or VCET II,

provided that a Prescribed Event will not occur where VEC has first consulted with VIML in relation to the event and VIML has approved the proposed event, or where VEC has acted in accordance with the Investment Management Agreement.

Proper ASTC Transfer has the meaning given in regulation 1.0.02(1) of the Corporations Regulations.

Proposal means the transactions contemplated by this deed, but for the avoidance of doubt, excludes the Executive Option Proposal.

Purchase Price means the aggregate consideration to be paid to the Owners for the Shares, being \$3,220,000.

Redeemable Preference Shares means redeemable preference shares issued by VEC and held by Oaktel and PEP, as set out in Part 2 of Schedule 1.

Related Body Corporate has the meaning it has in the Corporations Act.

Respective Proportion means, in relation to each Owner, the proportions described opposite that Owner's name in Part 3 of Schedule 1.

Restricted Stapled Securities means, in respect of the relevant Owner:

- (a) any Stapled Securities issued to that Owner under clause 5.7(g);
- (b) any Stapled Securities issued to that Owner as distributions under clause 5.8(b); and

- (c) any Stapled Securities issued in respect of Stapled Securities referred to in paragraph (a) or (b) above (whether under a bonus issue, division of securities or otherwise).

Securityholder means each person who is registered in the register of securityholders of VCEG as the holder of Stapled Securities from time to time.

Securityholder Meeting means the meeting of Securityholders convened under the VCET I Constitution and the VCET II Constitution in connection with the Proposal.

Share means a fully paid ordinary share in the capital of VEC.

Shareholders Agreement means the shareholders agreement dated 1 April 2004 between the Owners, Robert McClenachan, Kakanui Investments Pty Ltd and VEC.

Share Purchase and Subscription Agreement means the share purchase and subscription agreement dated 1 April 2004 between the Owners, Robert McClenachan, Kakanui Investments Pty Ltd and VEC.

Standstill Deed Poll means the standstill deed poll given by the Owners in favour of VIML dated 8 April 2009 in connection with the Proposal.

Stapled Security means a fully paid stapled security in VCEG comprising one unit in VCET I and one unit in VCET II.

Subscription Letter means a letter to be executed by each of the Owners (or its nominee, as applicable) in connection with the acceptance of the offer in accordance with clause 2.2(b) and the subscription for Stapled Securities in accordance with clause 5.7, and substantially in the form set out in Schedule 5.

Subscription Price means \$0.23 per Stapled Security, being the VWAP (as calculated on the Business Day prior to the date of this deed, being the date on which an offer of Stapled Securities is made to the Owners as constituted by this deed) over the 15 Trading Days immediately prior to the date of calculation, being the date of this deed.

Subscription Steps means the steps set out in clause 5.7.

Subsidiary has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of another entity if it is controlled by that entity (where 'control' is as defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, and for that purpose a unit or other beneficial interest will be regarded as a share; and
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

Subsidiary Member has the meaning given to that expression in section 995-1 of the Tax Act.

Tax means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Taxation Authority and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.

Tax Act means the Income Tax Assessment Act 1936 (Cwlth), the Income Tax Assessment Act 1997 (Cwlth) or the Taxation Administration Act 1953 (Cwlth), as the context requires.

Taxation Authority means the Australian Taxation Office or any other federal, state or municipal body or authority responsible for the collection of Tax or Duty, wherever situated.

Tax Claim means an assessment notice or amended assessment, demand or other document issued or action taken by or on behalf of a Taxation Authority, whether before or after the date of this deed, to the extent to which it relates to a period prior to Completion or to an act or omission of, or occurrence affecting, a Group Member on or before Completion, as a result of which the Group Member is liable to make a payment of Tax or Duty or is deprived of any credit, rebate, refund, relief, allowance, deduction or loss carried forward.

Tax Claim Amount means:

- (a) the amount the Group Member or Buyer's Head Company is required to pay in Tax to an Authority as a result of the Tax Claim;
- (b) the amount of any credit, rebate or refund of Tax lost by the Group Member or Buyer's Head Company as a result of a Tax Claim;
- (c) an amount equal to the amount of any relief, allowance, deduction or loss carried forward of which the Group Member or Buyer's Head Company was deprived of a result of the Tax Claim calculated at the rate of Tax applicable to companies in the year in which the Tax Claim is made.

Tax Indemnity means the indemnities and undertakings given by the Owners under clause 11.

Tax Invoice has the meaning it has in the GST Act.

Tax Law means a Law with respect to or imposing any Tax or Duty.

Tax Warranty means the warranties given by the Owners in paragraph 14 of Schedule 2.

Third Party Claim means any claim, demand, legal proceedings or cause of action (whether actual or threatened) against VEC or its Subsidiary by any person other than VIML which may lead to a breach of an Owners' Warranty.

Trading Day means a Business Day on which buying and selling occurs through the ASX automated trading system.

Transaction Costs means costs and expenses in connection with the Proposal including:

- (a) investment banking advisory costs, legal costs, independent expert's costs, accounting and auditing costs, tax and other advisory costs and costs of management and directors' time; and
- (b) costs of convening and holding the Securityholder Meeting.

VCE means Viridis Clean Energy Pty Limited (ABN 35 101 690 546).

VCEG means the Viridis Clean Energy Group, comprising VCET I and VCET II.

VCEG Control Transaction means an acquisition of more than 50% of the interests in VCEG.

VCET I means the Viridis Clean Energy Trust I (ARSN 115 340 442) constituted by the VCET I Constitution.

VCET I Constitution means the constitution of VCET I, as amended from time to time.

VCET II means the Viridis Clean Energy Trust II (ARSN 115 340 639) constituted by the VCET II Constitution.

VCET II Constitution means the constitution of VCET II, as amended from time to time.

VEC Constitution means the constitution of VEC, as amended from time to time.

VEC Information means the information about VEC that VEC prepares and gives VIML for inclusion in the Explanatory Memorandum.

VEC Licence means AFSL number 222548 held by VEC.

VEC Prepared Information means the information about VCEG that VEC, acting in its capacity as the investment manager of VCEG, prepares and gives to VIML for inclusion in the Explanatory Memorandum.

VIML Independent Directors means independent directors of VIML, being Andrew Berry and Robert Webster (or their replacements from time to time).

VWAP means, for a Trading Day, the volume weighted average market price (rounded to the nearest cent) for all Stapled Securities sold through ASX on that day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Stapled Securities, any overnight crossings and any other sales which VIML reasonably considers may not be fairly reflective of natural supply and demand.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) **(variations or replacement)** a document (including this deed) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;

- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Governmental Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (j) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (k) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (l) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (n) **(meaning not limited)** the words "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (o) **(time of day)** time is a reference to Melbourne time.

1.3 Next day

If an act which is required under this deed to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

1.4 Next Business Day

If an event under this deed must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

1.6 Schedules

Schedules 3, 4 and 7 are attached to this deed for reference only and do not form a part of this deed.

1.7 VIML's capacity

- (a) VIML enters this deed only in its capacity as responsible entity of VCET I and VCET II and in no other capacity. References in this deed to VIML are to be construed accordingly, except:
 - (i) that where references are made to VIML as a Subsidiary of VEC or as a Group Member, those references are to be construed as being references to VIML in its personal capacity; and
 - (ii) to the extent otherwise expressly provided.
- (b) Unless otherwise expressly provided, where VIML performs, or is required to perform, any obligations under this deed, it performs those obligations only in its capacity as responsible entity of VCET I and VCET II, except that where VIML performs, or is required to perform, any obligations under this deed:
 - (i) as a Subsidiary of VEC or as a Group Member; or
 - (ii) at the direction of, or procurement by, VEC,VIML performs, or is required to perform, those obligations in its personal capacity.

2 Purpose and general obligation

2.1 Proposal

The Proposal comprises the following key steps:

- (a) the Acquisition Steps, under which VIML (in its capacity as responsible entity of VCET II) acquires all the Shares from the Owners;
- (b) the Subscription Steps, under which the Owners apply the consideration received by them as a result of the Acquisition Steps to subscribe for Stapled Securities; and
- (c) certain other steps, including giving effect to the Constitution Amendments and amendments to the Investment Management Agreement.

2.2 Purpose of this deed

- (a) The purpose of this deed is to set out how the parties propose to implement the steps of the Proposal and the terms and conditions that apply to those steps.
- (b) This deed represents an offer to issue Stapled Securities (on the terms and subject to the conditions of this deed) at an issue price calculated in accordance with article 7.3 of the VCET I Constitution and the VCET II Constitution. The Owners accept that offer of Stapled Securities, and agree to complete the Subscription Steps, on the terms and subject to the conditions of this deed.

2.3 General obligation

Each party agrees to take all necessary steps within its respective power and use its respective best endeavours to implement the Proposal on the terms and subject to the conditions of this deed.

2.4 VIML's obligations

VIML's obligations under this deed are subject to compliance with its obligations, functions and powers under this deed, the VCET I Constitution, the VCET II Constitution, the Corporations Act, the Listing Rules and at law. The provisions of this clause 2.4 apply notwithstanding any other provision of this deed.

2.5 Owners

- (a) References to "Owner" mean each of the persons listed in Part 1 of Schedule 1.
- (b) VIML is not obliged to Complete unless each Owner Completes simultaneously.
- (c) The liability of each Owner under this deed is individual, in the proportion to that Owner's Respective Proportion.
- (d) Each Owner is entitled to receive its Respective Proportion of each payment, unless otherwise agreed between them.

2.6 VIML's consent

VIML confirms that for the purposes of the Investment Management Agreement it consents to the transfer of the Shares by the Owners as contemplated by this deed.

2.7 Owners' consent, waiver and acknowledgment

Each Owner and VEC:

- (a) consents to the transfer of the Shares by each other Owner as contemplated by this deed and the implementation of the Proposal for all purposes;
- (b) waives in favour of the other parties any pre-emption or other similar rights which it has now or might otherwise have in respect of any of the Shares held by each other Owner;
- (c) waives in favour of the other parties any rights which it now or might otherwise have under the VEC Constitution, the Shareholders Agreement or the Share Purchase and Subscription Agreement, including but not limited to:
 - (i) any rights under clause 4 of the Shareholders Agreement; and
 - (ii) in the case of IBAL, any right under clause 4.2 of the Share Purchase and Subscription Agreement; and
- (d) acknowledges that, following the Subscription Steps, VIML (in its capacity as responsible entity of VCET II) or the Custodian at the direction of VIML will be registered as the holder of all of the Shares, and the Shareholders Agreement and the Share Purchase and Subscription Agreement will be terminated in respect of each Owner.

3 Conditions precedent

3.1 Conditions precedent

Completion is conditional on:

- (a) **(Securityholder approval)** the Securityholders approving the Proposal for all purposes including the Corporations Act and the Listing Rules by requisite majorities at a duly convened meeting of Securityholders;
- (b) **(Independent Expert)** the Independent Expert issuing a report to VIML which concludes that the Proposal is fair and reasonable to, and in the best interests of, Securityholders, and the Independent Expert not changing its conclusion or withdrawing its report prior to the Securityholder Meeting;
- (c) **(due diligence)** VIML completing a due diligence investigation of VEC and its Subsidiaries by the Due Diligence End Date and considering that (acting reasonably):
 - (i) the result of that investigation is satisfactory; and
 - (ii) the investigation does not reveal any information regarding VEC or any of its Subsidiaries which, had it been known by VIML previously, would have led to VIML not entering into this deed materially on the terms of this deed;
- (d) **(regulatory approval)** all regulatory approvals, waivers, exemptions, judicial review and no action letters which are necessary to implement the Proposal (and which may include any regulatory approvals the Owners consider are necessary to implement the Proposal) having been obtained on terms which are unconditional or conditional only on matters which are reasonably acceptable to VIML;
- (e) **(no regulatory action)** as at 9.00 am on the Completion Date:
 - (i) there being no preliminary or final decision, order or decree issued by a Governmental Agency; and
 - (ii) no application being made to any Governmental Agency, or action or investigation being announced, threatened or commenced by a Governmental Agency,

in consequence of or in connection with the Proposal which restrains or prohibits (or if granted or completed could reasonably be expected to restrain or prohibit or establish grounds for restraining or prohibiting), or otherwise materially adversely affects (or could reasonably be expected to materially adversely affect) the implementation of the Proposal;
- (f) **(legal restraints)** as at 9.00 am on the Completion Date, no court issuing a final and non-appealable order, decree or ruling or taking other action which permanently restrains or prohibits (or could reasonably be expected to restrain or prohibit) the Proposal, or any other material legal restraint or prohibition preventing the implementation of the Proposal;
- (g) **(third party consents)** all other approvals of a third party which the parties agree are reasonably necessary to implement the Proposal being obtained (including the consent from the financiers of VCEG and the consent from the lessor of VEC's office premises);
- (h) **(Constitution Amendments)** the Securityholders approving the Constitution Amendments by requisite majorities at a duly convened meeting of Securityholders, and the Constitution Amendments having been lodged with ASIC and lodged with and approved by ASX;
- (i) **(Permitted Encumbrances)** the Permitted Encumbrances being assigned as set out in Schedule 8 and all necessary forms and

documents being executed and, if required, lodged with ASIC to give effect to the assignment of the Permitted Encumbrances;

- (j) **(Redeemable Preference Shares)** all of the Redeemable Preference Shares being redeemed in accordance with their terms of issue and all applicable Law and, if any Shares are issued as a consequence of the redemption of the Redeemable Preference Shares:
 - (i) those Shares being issued in accordance with VEC Constitution and all applicable Law;
 - (ii) all regulatory filing being made in respect of those Shares; and
 - (iii) VIML being advised of the total number of Shares so issued;
- (k) **(Executive Bonus Plan)** all obligations of VEC and its Subsidiaries being satisfied under the Executive Bonus Pool or the Executive Bonus Plan (including any obligation to make payment or issue any shares or other securities); and
- (l) **(directors' remuneration)** all obligations of VEC and its Subsidiaries being satisfied in respect of remuneration of its respective directors (including any obligation to make payment or issue any shares or other securities).

3.2 Reasonable endeavours

Each party must (in the case of VIML, subject to clause 2.4) use its reasonable endeavours to obtain the satisfaction of the Conditions Precedent, including procuring performance by a third party. The parties must keep each other informed of any circumstances which may result in any Condition Precedent not being satisfied in accordance with its terms.

3.3 Waiver by VIML

- (a) The conditions in clauses 3.1(a), 3.1(e) and 3.1(f) may not be waived.
- (b) The conditions in clauses 3.1(b), 3.1(c), 3.1(d), 3.1(h), 3.1(i), 3.1(j), 3.1(k) and 3.1(l) are for the benefit of VIML and may only be waived by VIML by notice given to the Owners.
- (c) The condition in clause 3.1(g) is for the benefit of VIML and may only be waived by VIML following consultation with the Owners in good faith.

3.4 Last date

If:

- (a) any of the conditions in clauses 3.1(b), 3.1(c), 3.1(d), 3.1(g), 3.1(h) and 3.1(j) are not satisfied by the close of business on the Business Day before the Meeting Date or such later date agreed by the parties and have not been waived by VIML;
- (b) the condition in clause 3.1(a) is not satisfied by 30 September 2009 or such later date agreed by the parties;
- (c) any of the conditions in clauses 3.1(e) and 3.1(f) are not satisfied by 9.00am on the Completion Date;
- (d) any of the conditions in clauses 3.1(i), 3.1(k) and 3.1(l) are not satisfied prior to Completion; or

- (e) any consent or approval required under the conditions in clause 3.1 is not granted on terms acceptable to VIML (acting reasonably),

then provided the party who seeks to terminate this deed has complied with clause 3.2, this deed may be terminated at any time before Completion by notice given by VIML or the Owners to the other parties.

3.5 Termination

Clause 12.5 applies in relation to any termination of this deed under clause 3.4.

4 Approvals and recommendations

4.1 Convening of Securityholder Meeting

Subject to clauses 2.4 and 4.7(a), as soon as reasonably practicable VIML will convene the Securityholder Meeting to be held on 29 July 2009 or such later date agreed by the parties to consider and approve the Proposal and the Ancillary Resolutions.

4.2 Notice of Meeting

Subject to clauses 2.4 and 4.7(a), VIML must prepare the Notice of Meeting and the Explanatory Memorandum and ensure that:

- (a) it complies with all applicable laws; and
- (b) on satisfaction of the condition in clause 3.1(b), the Explanatory Memorandum includes the Independent Expert's report as to whether the Proposal is fair and reasonable to, and in the best interests of, Securityholders.

4.3 Preparation of Explanatory Memorandum

- (a) VEC undertakes to:
 - (i) assist VIML at the earliest possible time in preparing the Explanatory Memorandum and, in particular, to prepare and give to VIML in a timely manner the VEC Information and the VEC Prepared Information;
 - (ii) ensure that neither the VEC Information nor the VEC Prepared Information are misleading or deceptive (whether by omission or otherwise) and to conduct verification processes for the VEC Information and the VEC Prepared Information; and
 - (iii) provide VIML with any information of which may arise or VEC becomes aware between the date of the Explanatory Memorandum and the date of the Securityholder Meeting that may reasonably result in the Explanatory Memorandum being false, misleading or deceptive, or likely to mislead or deceive, in any material respect (including because of any material omission), and if required, assist VIML in preparing any supplementary or replacement document to the Explanatory Memorandum.
- (b) Subject to VEC being satisfied (acting reasonably) with the final version of the Explanatory Memorandum, VEC agrees:

- (i) to consent to the inclusion of the VEC Information and the VEC Prepared Information in the Explanatory Memorandum; and
- (ii) that the Explanatory Memorandum may state that VEC is responsible for the VEC Information and the VEC Prepared Information and has consented to the inclusion of the VEC Information and the VEC Prepared Information in the Explanatory Memorandum in the form and context in which they appear.

4.4 Provision of Information

- (a) Without limiting clause 15.4, VEC must:
 - (i) provide or procure the provision of all reasonable assistance and information required by VIML under this deed in a timely manner to enable preparation of the Explanatory Memorandum so that the Notice of Meeting and the Explanatory Memorandum can be sent to the Securityholders in sufficient time for the Securityholder Meeting to be held on the date referred to in clause 4.1;
 - (ii) provide or procure the provision of the information or other assistance as reasonably required by the Independent Expert or VIML in connection with the preparation of the Independent Expert's report; and
 - (iii) provide or procure the provision to VIML of full and free access to, and on request, copies of all materials and documents used or created in connection with the preparation of the Notice of Meeting and the Explanatory Memorandum for the purposes of verification of the Notice of Meeting and the Explanatory Memorandum.
- (b) The Owners agree:
 - (i) to take all reasonable steps to procure VEC to perform its obligations under clauses 4.3 and 4.4(a); and
 - (ii) not to do anything that would prevent VEC from satisfying its obligations under clauses 4.3 or 4.4(a).

4.5 Recommendation by VIML Independent Directors

Subject to clauses 2.4 and the VIML Independent Directors not taking any action under 4.7(a), VIML:

- (a) agrees to include in the Notice of Meeting a recommendation from the VIML Independent Directors that Securityholders vote in favour of all resolutions to be proposed at the Securityholder Meeting in relation to the Proposal and the Ancillary Resolutions; and
- (b) agrees to use its reasonable endeavours to include in the Notice of Meeting statement that the VIML Independent Directors who are entitled to vote on the resolutions to be proposed at the Securityholder Meeting in relation to the Proposal and the Ancillary Resolutions will vote their Stapled Securities in favour of all resolutions to be proposed at the Securityholder Meeting in relation to the Proposal and the Ancillary Resolutions.

4.6 Withdrawal of recommendation

Subject to clauses 2.4 and the VIML Independent Directors not taking any action under clause 4.7(a), VIML will procure that the VIML Independent Directors do not withdraw or adversely modify in any material respect their recommendation of the Proposal as contemplated by clause 4.5(a).

4.7 Duties to Securityholders

- (a) The VIML Independent Directors may decline to recommend, withdraw or adversely modify their recommendation of the Proposal or the Ancillary Resolutions or announce their intention to vote against the Proposal or the Ancillary Resolutions, or abstain from voting on the Proposal or Ancillary Resolutions if:
 - (i) the Independent Expert fails to conclude, or changes its conclusion, that the Proposal is fair and reasonable to, and in the best interests of, Securityholders;
 - (ii) they have determined in good faith, having received expert advice as appropriate, that they must do so because of their duties to the Securityholders; or
 - (iii) VIML or the VIML Independent Directors are otherwise required to do so in accordance with clause 2.4.
- (b) VIML must immediately give notice to the Owners if the VIML Independent Directors form the view that it is reasonably likely they will decline to recommend, withdraw or adversely modify their recommendation of the Proposal and the Ancillary Resolutions in accordance with clauses 2.4 and 4.7(a).

4.8 Adjournment

- (a) Notwithstanding clause 4.1, VIML may adjourn the Securityholder Meeting if:
 - (i) it has determined that it must do so having regard to its duties to the Securityholders;
 - (ii) it is required to do so in accordance with clause 2.4; or
 - (iii) the parties otherwise agree.
- (b) The rights of adjournment under clause 4.8(a) are in addition to, and not limited by, any other rights of adjournment by the chairman of the Securityholder Meeting in accordance with the VCET I Constitution and the VCET II Constitution.

4.9 Executive Option Proposal

- (a) VIML agrees to take all reasonable steps to enable VIML or its Subsidiary to give effect to the Executive Option Proposal, including seeking any necessary approval of the Securityholders in relation to the Executive Option Proposal at the Securityholder Meeting and procuring a recommendation from the VIML Independent Directors that Securityholders vote in favour of the Executive Option Proposal.
- (b) Provided that Securityholder approval and all relevant regulatory approvals have been obtained in respect of the Executive Option

Proposal, VIML agrees to take all reasonable steps to grant the options under the Executive Option Proposal.

5 Completion

5.1 Completion

The Acquisition Steps and the Subscription Steps are to take place on the Completion Date.

5.2 Performance of Steps

- (a) On the Completion Date, each party must perform the Completion Steps and obligations referable to it in accordance with clauses 5.3 to 5.7 (inclusive).
- (b) No party is obliged to perform any Completion Step or obligation under clause 5.3 to 5.7 (inclusive) unless all steps and obligations required to be performed under those clauses occur on the same date, it being the intention of the parties that those steps and obligations are interdependent.
- (c) All steps and obligations required to be performed under clauses 5.3 to 5.7 (inclusive) will be taken to have occurred in the order set out in those clauses on the Completion Date.

5.3 Acquisition Steps

On the Completion Date, the following steps (comprising the Acquisition Steps) are to take place in the following order:

- (a) the Owners are to execute and submit to VIML all necessary transfer forms for the Shares for execution by VIML (in its capacity as responsible entity of VCET II), or the Custodian at the direction of VIML;
- (b) VIML (in its capacity as responsible entity of VCET II), or the Custodian at the direction of VIML, is to execute the transfer forms referred to in clause 5.3(a) and pay the Purchase Price to the Owners in consideration for all the Shares;
- (c) the Owners are to transfer all the Shares to VIML (in its capacity as responsible entity of VCET II), or the Custodian at the direction of VIML; and
- (d) VEC is to record on the register of members of VEC that VIML (in its capacity as responsible entity of VCET II), or the Custodian if VIML directs under clause 5.3(c) is the holder of all the Shares transferred to it under clause 5.3(c).

5.4 Free from Encumbrance

The Shares must be transferred free from any Encumbrance and with all rights, including dividend rights, attached or accruing to them on and from the date of this deed.

5.5 Owners' obligations

On Completion, the Owners will give to VIML:

- (a) **(share certificates)** the share certificates for the Shares and any consents which VIML or the Custodian (as applicable) reasonably requires to obtain registration of the transfers referred to in clause 5.3(c);
- (b) **(records and common seal)** the records and the common seal (if any) of VEC and each Subsidiary of VEC, including all share certificates issued by each Subsidiary of VEC;
- (c) **(bank authority)** duly completed bank authorities directed to the bankers of VEC and each Subsidiary of VEC authorising the operation of each of the bank accounts of VEC and each Subsidiary of VEC by nominees of VIML and terminating the authority of each of the present signatories (if required);
- (d) **(Subscription Letter)** a duly executed Subscription Letter from each Owner or its nominee in connection with the acceptance of the offer in accordance with clause 2.2(b) and the subscription for Stapled Securities in accordance with clause 5.7; and
- (e) **(directors' resolution)** a certified copy of a resolution of directors of VEC resolving that, subject to the payment of stamp duty (if any), the transfer of the Shares referred to in clause 5.3(c) will be registered.

5.6 VIML as agent for Owners

Notwithstanding clause 5.3, each Owner irrevocably appoints VIML as the agent and attorney of the Owner to receive the Purchase Price and apply the Purchase Price in accordance with clause 5.7(f) and to do all things which VIML reasonably considers are necessary to give effect to the Subscription Steps.

5.7 Subscription Steps

On the Completion Date and immediately following completion of the Acquisition Steps, the following steps (comprising the Subscription Steps) are to take place in the following order:

- (a) IBAL is to subscribe for 2,415,420 Stapled Securities at the Subscription Price;
- (b) PEP is to subscribe for 2,114,840 Stapled Securities at the Subscription Price;
- (c) Chetwyn or its nominee is to subscribe for 71,260 Stapled Securities at the Subscription Price;
- (d) Oaktel is to subscribe for 9,269,400 Stapled Securities at the Subscription Price;
- (e) Hurstwood or its nominee is to subscribe for 129,080 Stapled Securities at the Subscription Price;
- (f) VIML as agent for the Owners is to apply the Purchase Price in payment of the aggregate amount payable for the subscription for Stapled Securities under clauses 5.7(a) to 5.7(e) (inclusive);
- (g) VIML is to issue to the Owners the number of Stapled Securities subscribed for under clauses 5.7(a) to 5.7(e) respectively at the Subscription Price; and

- (h) VIML is to record or procure recording on the register of Securityholders that the Owners are the holders of the Stapled Securities issued to them under clause 5.7(g).

5.8 Distribution entitlement of Stapled Securities

- (a) The Stapled Securities issued under clause 5.7(g) are to be issued on the condition that their entitlement to distributions for the distribution period ending 31 December 2009 is proportional to the length of time they have been on issue for that period.
- (b) Subject to clause 5.8(c), during the period in which the restrictions in clause 14.2 apply, distributions in respect of the Stapled Securities issued under clause 5.7(g) may be paid, at the election of VIML, as cash or as additional Stapled Securities at the issue price determined in accordance with the terms of the distribution reinvestment plan of VCEG from time to time.
- (c) Notwithstanding any other provision of this clause 5.8, the Owners will be entitled to be paid cash distributions in respect of the Stapled Securities issued under clause 5.7(g) if those distributions are not made in the ordinary course in accordance with VCEG's stated distribution policy (for example, a distribution which is made as a result of a reorganisation, extraordinary distribution, asset disposal or restructure).
- (d) For the avoidance of doubt, the right of VIML to make an election contemplated by clause 5.8(b) is not intended to be binding on any subsequent purchaser of any Stapled Securities issued under clause 5.7(g), except as provided for in this deed. It is intended that if, for any reason, any of the Owners transfers the Stapled Securities issued under clause 5.7(g) during the period in which the restrictions in clause 14.2 apply (including with the written consent of VIML), that Owner must procure that the transferee undertakes to be bound by the arrangement set out in clause 5.8(b).

5.9 Discharge of obligations

- (a) The parties acknowledge and agree that VIML's obligations to pay the Purchase Price to the Owners under clause 5.3(b) and the Owners' obligations to pay the Subscription Price to VIML under clauses 5.7(a) to 5.7(e) (inclusive) are to be paid by direction, and neither VIML nor the Owners will be required to make cash payment. VIML and the Owners give all necessary directions to give effect to the steps in clause 5.3(b) and clauses 5.7(a) to 5.7(e) (inclusive).
- (b) The recording on the register of Securityholders under clause 5.7(h) that the Owners are the holders of the Stapled Securities issued to them under clause 5.7(g) operates to complete the full and final discharge of VIML's obligations to pay the Purchase Price to the Owners under clause 5.3(b) and neither the Owners nor VEC will have any further claim in respect of those payments.

6 Other Completion and Post Completion Steps

6.1 Executive Bonus Plan and Excess Cash Amount

- (a) The parties acknowledge that the Executives have existing entitlements under the Executive Bonus Plan under the terms of the existing senior executive employment agreement between each Executive and VEC.

- (b) Each of Chetwyn and Hurstwood on behalf of the relevant Executive represents and acknowledges that each Executive has agreed under the Amended Employment Agreement to waive all rights in respect of the entitlements described in clause 6.1(a) immediately prior to Completion, except that each Executive is entitled to receive \$55,000 from VEC, less any amount that must be withheld by VEC in accordance with the Tax Act.
- (c) VEC will pay on Completion the amounts described in clause 6.1(b) as specified below:
 - (i) \$55,000 to Chetwyn; and
 - (ii) \$55,000 to Hurstwood,
 less any amount that must be withheld by VEC in accordance with the Tax Act, provided that, immediately prior to Completion, VEC has an Excess Cash Amount exceeding the sum of the amounts specified in clauses 6.1(c)(i) and 6.1(c)(ii).
- (d) If, immediately prior to Completion, VEC has an Excess Cash Amount which is less than the sum of the amounts specified in clauses 6.1(c)(i) and 6.1(c)(ii), then VEC agrees to pay on Completion that Excess Cash Amount to each of Chetwyn and Hurstwood on a pro rata basis, less any amount that must be withheld by VEC in accordance with the Tax Act.
- (e) The payment made by VEC under clause 6.1(c) or 6.1(d) will be deemed to take effect immediately prior to Completion.
- (f) Each of Chetwyn and Hurstwood on behalf of the relevant Executive acknowledges that:
 - (i) the payment made by VEC under clause 6.1(c) or 6.1(d) will operate as the full and final discharge of VEC's liabilities to the Executives in respect of the entitlements described in clause 6.1(a); and
 - (ii) the Executives will not have any further claim in respect of the entitlements described in clause 6.1(a) or the amounts described in clause 6.1(b).
- (g) Each of Chetwyn and Hurstwood acknowledges that, if there is no Excess Cash Amount immediately prior to Completion, VEC will not make any payment to the Executives, however, the waiver given by the Executives as described to in clause 6.1(b) will operate as complete waiver of all rights in respect of the entitlements described in clause 6.1(a) or the amounts described in clause 6.1(b).
- (h) If, immediately after Completion, there is any Excess Cash Amount remaining after the payment has been made under clause 6.1(c), then VIML agrees to pay the remaining Excess Cash Amount to the Owners in their Respective Proportions.
- (i) If, on Completion, VEC does not have sufficient amount of cash to meet its cash needs requirement under condition 5(d) of the VEC Licence, VIML agrees to provide the shortfall to VEC, to ensure that condition 5(d) of the VEC Licence is satisfied at all times.
- (j) All actions required to be performed by a party under clause 6.1(c) or 6.1(d) (as applicable) and clause 6.1(i) are taken to have occurred simultaneously at Completion.

6.2 Application for Official Quotation

VIML will apply to the ASX for, and take all reasonable steps to achieve, Official Quotation of the Stapled Securities to be issued to the Owners under clause 5.7(g) in accordance with the Corporations Act and Listing Rules, such Official Quotation to be effective from the commencement of trading on ASX on the first ASX trading day after the Completion Date.

6.3 Provision of Notice

VIML will take all reasonable steps to issue a written notice that complies with section 1012DA(6) of the Corporations Act.

6.4 Executive Option Proposal

Each of Chetwyn and Hurstwood on behalf of the relevant Executive, VEC and VIML acknowledge that:

- (a) the implementation of the Executive Option Proposal is conditional on:
 - (i) all relevant regulatory approvals being obtained in respect of the Executive Option Proposal; and
 - (ii) Securityholder approval being obtained in respect of the Executive Option Proposal; and
- (b) the implementation of the Proposal is not conditional on any requisite Securityholder approval or regulatory approval of the Executive Option Proposal being obtained.

6.5 Amendments to Investment Management Agreement

On the Completion Date, VEC and VIML agree to amend the Investment Management Agreement to give effect to the amendments set out in Schedule 4.

6.6 2009 Accounts

For the purposes of the preparation of the 2009 Accounts in accordance with the Accounting Standards, the Owners must:

- (a) provide or ensure the provision of all information and assistance which may be reasonably requested by VIML and its representatives; and
- (b) permit VIML and its representatives to have reasonable access to and take extracts from or copies of any books, accounts or other records relating to VEC in its possession or control.

7 Adjustment to Purchase Price

7.1 Adjustment to Purchase Price

The parties agree that, if a VCEG Control Transaction where the Bid Price is greater than \$0.40 is:

- (a) completed prior to the date that is six months after Completion; or
- (b) recommended to Securityholders by the VIML Independent Directors prior to the date that is six months after Completion and subsequently completed,

then:

- (c) the total consideration receivable by the Owners under the VCEG Control Transaction in respect of the Stapled Securities issued or to be issued under clause 5.7(g) must not exceed the Cap;
- (d) to give effect to clause 7.1(c), the parties will take all steps that are reasonably necessary or beneficial to implement one of the Adjustment Mechanisms; and
- (e) the appropriate Adjustment Mechanism will be determined by VIML following consultation with the Owners. In making its determination, VIML must reasonably take into account the impact of the proposed Adjustment Mechanism on the Owners.

7.2 Limitations

- (a) Clause 7.1 and the Adjustment Mechanism do not apply to an Owner who does not participate in the relevant VCEG Control Transaction in respect of the Stapled Securities issued or to be issued to it under clause 5.7(g) and who has not entered into any agreement or understanding in respect of those Stapled Securities in connection with the relevant VCEG Control Transaction.
- (b) Where an Owner participates in a VCEG Control Transaction, or enters into any agreement or understanding in connection with a VCEG Control Transaction, in respect of only some of the Stapled Securities issued or to be issued to it under clause 5.7(g), clause 7.1 and the Adjustment Mechanism apply to that Owner in proportion to that Owner's participation.

8 Pre-Completion Conduct

The Owners will take all reasonable steps to ensure that (except as expressly required under this deed or agreed in writing by VIML) from the date of this deed until the Completion Date, each of VEC and its Subsidiaries:

- (a) **(ordinary course)** will conduct its business in the ordinary course of business and in accordance with all applicable Laws, contractual commitments, including the VCET I Constitution, the VCET II Constitution and the Investment Management Agreement, and will not change its business or enter into any new investment management agreements;
- (b) **(abnormal or unusual transactions)** will not enter into any abnormal or unusual transaction which relates to or adversely affects its business;
- (c) **(corporate actions)** will not:
 - (i) increase, reduce or otherwise alter its share capital or grant any options for the issue of shares or other securities;
 - (ii) make a distribution or revaluation of assets; or
 - (iii) buy back or make any offer to buy back its share capital;
- (d) **(constitution)** will not vary its constitution or the rights attaching to its share capital;

- (e) (**contract**) will not enter into (or make any binding offer to enter into), amend in any material respect, or terminate, any contract or obligation which is not in the ordinary course of business;
- (f) (**asset disposal**) will not dispose, or agree to dispose of the whole or any substantial part of its business or assets;
- (g) (**no Encumbrance**) will not create any Encumbrance over all or any of its assets;
- (h) (**capital expenditure**) will not make any loans, advances or capital expenditure other than in the ordinary course of business;
- (i) (**liabilities**) will not incur any material liabilities other than in the ordinary course of business;
- (j) (**financing**) will not borrow or otherwise raise any amount of financial accommodation;
- (k) (**no forgiveness of debt**) will not cancel (or enter into any arrangement to cancel) any indebtedness for money owed to it, or waive any claim or right;
- (l) (**dividend**) will not declare or pay any dividend or return any capital;
- (m) (**employment contracts**) will not enter into any employment contract, or renew or amend any existing material employment contract (including with regard to superannuation benefits) other than the Amended Employment Agreement;
- (n) (**Tax matters**) will not make any Tax election or settle or compromise any Tax liability, unless that election, settlement or compromise:
 - (i) is required by law and is supported by an opinion of counsel; or
 - (ii) is in the ordinary course of business and is consistent with past practices;
- (o) (**accounting practices**) will not make any change in the accounting methods, principles or practices used by it at the Last Balance Date;
- (p) (**accounts**) will fully and properly maintain all accounts, books, financial and other records so that they contain accurate records of all matters required by Law and give a true and fair view of its financial and contractual position;
- (q) (**insurances**) will maintain (and where necessary use reasonable efforts to renew) the Insurance Policies;
- (r) (**intellectual property**) will not grant any licence, assignment or other right or interest in respect of intellectual property, other than in the ordinary course of business;
- (s) (**information**) will not disclose information, which is owned or used by it in relation to its business or assets, to any third party other than in the ordinary course of business; and
- (t) (**no Prescribed Event**) will ensure that no Prescribed Event occurs.

9 No solicitation

9.1 No solicitation

The Owners, until the Completion Date, will not (directly or indirectly), without VIML's prior written consent, through any director, officer, shareholder, employee, representative, agent or adviser of the Owners or any of their Related Bodies Corporate:

- (a) initiate, induce, solicit, invite or encourage another person to initiate a Competing Proposal or continue any existing Competing Proposal or negotiate the terms of a Competing Proposal with another person;
- (b) take any action of any kind which may compete or interfere with the Proposal; or
- (c) provide to any person any information with respect to or respond to any inquiries which may reasonably be expected to lead to any Competing Proposal or the making of any Competing Proposal.

9.2 Notification of Competing Proposal

The Owners must immediately notify VIML of:

- (a) any current or future Competing Proposal; or
- (b) any request for non public information relating to VEC, its Subsidiaries or their respective businesses.

9.3 Notice details

A notice given under clause 9.2 must be given orally and in writing and must indicate full details of the proposal, enquiry or contact and the identity of the person making it.

10 Representations and Warranties

10.1 Representations and warranties by Owners and VIML

Each of the Owners represents and warrants to VIML, and VIML represents and warrants to the Owners and VEC, that:

- (a) it has the power to enter into and perform this deed and (subject to obtaining the approvals contemplated by this deed) has obtained all necessary approvals and consents to enable it to do so;
- (b) the entry into and performance of this deed does not constitute a breach of any obligation (including any statutory, contractual or fiduciary obligation), or default under any agreement or undertaking, by which it is bound;
- (c) this deed constitutes valid and binding obligations upon it which are enforceable in accordance with its terms by appropriate legal remedy; and
- (d) subject to obtaining the approvals contemplated by this deed, this deed and Completion do not conflict with or result in a breach of or default under any applicable Law, its constitution or any material term or provision of any agreement or deed to which it is a party (and in the case

of VIML, the VCET I Constitution, the VCET II Constitution or the Listing Rules).

10.2 Representations and warranties by VEC

VEC represents and warrants to VIML that:

- (a) it has the power to enter into and perform this deed and (subject to obtaining the approvals contemplated by this deed) has obtained all necessary approvals and consents to enable it to do so;
- (b) the entry into and performance of this deed does not constitute a breach of any obligation (including any statutory, contractual or fiduciary obligation), or default under any agreement or undertaking, by which it or its Subsidiary is bound;
- (c) this deed constitutes valid and binding obligations upon it which are enforceable in accordance with its terms by appropriate legal remedy; and
- (d) subject to obtaining the approvals contemplated by this deed, this deed and Completion do not conflict with or result in a breach of or default under any applicable Law, VEC Constitution, the constitution of any of its Subsidiaries, or any material term or provision of any agreement or deed to which it or its Subsidiary is a party.

10.3 Owners' Warranties

Each of the Owners represents and warrants to VIML that each of the Owners' Warranties is true and correct on the date of this deed and will be true and correct on Completion as if made on and as at each of those dates. Each of the Owners' Warranties is to be treated as a separate representation and warranty and the interpretation of any statement made may not be restricted by reference to or inference from any other statement.

10.4 Knowledge and belief of Owners

- (a) If any of the Owners' Warranties is marked with an asterisk (*), the representation and warranty of the Owners in clause 10.3 for that Owners' Warranty is made to the best of the knowledge and belief of the Owners.
- (b) The representation and warranty of the Owners in clause 10.3 for the Owners' Warranties in paragraphs 2.4, 2.5 and 2.6 of Schedule 2 is made to the best of the knowledge and belief of each Owner to the extent that those Owners' Warranties relate to the Shares held by each other Owner. For the avoidance of doubt, the Owners' Warranties in paragraphs 2.4, 2.5 and 2.6 are not qualified by knowledge and belief of an Owner to the extent that those Owners' Warranties relate to its own Shares.
- (c) For the purposes of this clause 10.4, the best of the knowledge and belief of the Owners means the actual knowledge of the Key Personnel having made all due and reasonable enquiries.

10.5 Acknowledgments

VIML acknowledges that:

- (a) in entering into this deed and in proceeding to Completion, it does not rely on any representation, warranty or statement other than those made under or in accordance with this deed; and
- (b) except as expressly set out in this deed, subject to any law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, in relation to the Shares are excluded and the Owners disclaim all liability in relation to these to the maximum extent permitted by law.

10.6 Indemnity

- (a) Each of the Owners indemnifies VIML both in its personal capacity and in its capacity as responsible entity of VCEG against all Liabilities or Loss arising from, or incurred as a consequence of, any inaccuracy in or breach of any of the Owners' Warranties. For the avoidance of doubt, Liabilities include an amount that would be necessary to put VIML in the same position as if the Owners' Warranties are true and correct.
- (b) Without limiting the generality of this clause 10, and as an additional right of VIML:
 - (i) if the value of any asset of VEC is less than the value it would be if all of the Owners Warranties were accurate and not breached then the Owners agree to pay to the person(s) directed by VIML the difference between:
 - (A) the value of that asset at Completion had all of the Owners' Warranties been accurate and not breached; and
 - (B) the value of that asset at Completion,
 so that VIML is in the same position as if the Owners' Warranties were true and correct; and
 - (ii) if there is a liability of VEC which would not exist or would be less if all of the Owners' Warranties were accurate and not breached then the Owners agree to pay to the person(s) directed by VIML the amount of that liability or the amount of the increase in that liability, as applicable, so that VIML is in the same position as if the Owners' Warranties were true and correct.

10.7 Adjustment to Purchase Price

A payment made by the Owners in connection with the Owner's Warranties, Owner's Indemnities or a Tax Claim shall be treated, for the purposes of tax and accounting, as a pro rata reduction of the Purchase Price of each Share.

10.8 Gross-up

If a payment is made to a Group Member or the Buyer's Head Company ("**recipient**") in respect of the Owners' Warranties, Owners' Indemnities or a Tax Claim and that amount is treated as assessable income of the recipient or the Buyer's Head Company under any Law relating to Tax, the Owners must pay the recipient an additional payment so that:

- (a) after deducting all Tax or Duty from the total amount paid by the Owners to the recipient; and

- (b) adding any Tax benefit to the recipient that directly results from the payment or the satisfaction of the relevant claim,

the balance remaining is the amount that must be paid under clause 10 or 11 (as appropriate).

In applying clause 10.8(a) to a payment made to VIML in its capacity as responsible entity of VCEG, the Tax to be deducted is to be calculated by reference to the tax rate as specified in Section 99A of the Tax Act if Division 6C of Part III of the Tax Act does not apply to VCEG with respect to this receipt.

10.9 Notification of Breach

If VIML becomes aware of any matter or circumstance that may give rise to a claim against the Owners under the Owners' Warranties, VIML must notify the Owners within a reasonable time of becoming aware of that claim and must also provide the Owners with details of that fact.

10.10 Limits on Owners' Warranties and Owners' Indemnities

- (a) VIML may not claim for a breach of the Owners' Warranties or under the Owners' Indemnities:
 - (i) unless notice of the claim has been given in writing to the Owners setting out full particulars of the specific matter in respect of which the claim is made (which must be sufficient to demonstrate that the claim is bona fide and which must include the amount claimed (if ascertainable) and how that amount was calculated) within 18 months after the Completion Date, or in relation to a claim under a Tax Warranty or a Tax Indemnity, five years and six months after the Completion Date;
 - (ii) unless the amount finally adjudicated or agreed in respect of the claim exceeds \$10,000; and
 - (iii) unless the aggregate amount finally adjudicated or agreed in respect of all claims for breach of the Owners' Warranties would exceed \$75,000 (in which case a claim may be made for the whole amount of the claim and not merely the excess).
- (b) In applying the limits in clauses 10.10(a)(ii) and 10.10(a)(iii), any additional amounts payable under clause 10.8 are to be disregarded, so that the amount of the claim in the case of clauses 10.10(a)(ii) and 10.10(a)(iii) are determined before any additional amounts payable under clause 10.8 are added.
- (c) In applying the limit in clause 10.10(a)(ii), claims relating to a series of connected matters are to be aggregated and counted as one claim.

10.11 Exclusions

The limitations in clause 10.10(a) do not apply to a claim for breach of the Owners' Warranties to the extent the claim arises or is increased or is delayed as a result of fraud, wilful misconduct or wilful default by that Owner or any officer or shareholder of that Owner.

10.12 Maximum liabilities

- (a) Notwithstanding any other provision of this deed but subject to clause 10.12(b), the maximum liability of each Owner for loss or damage of any

kind however caused, in contract, tort (including negligence), under any statute or otherwise from or relating in any way to this deed, including:

- (i) that Owner's liability in respect of any breach of the Owners' Warranties (including the Tax Warranties);
- (ii) that Owner's liability in respect of a breach of the obligations under clause 9; and
- (iii) that Owner's liability under the Owners' Indemnities (including the Tax Indemnities),

is limited in aggregate for any and all claims to that Owner's Respective Proportion of the Purchase Price.

- (b) In applying the limit in clause 10.12(a), any additional amounts payable under clause 10.8 are to be disregarded, so that the amount of the liabilities under clause 10.12(a) are determined before any additional amounts payable under clause 10.8 are added.

10.13 Individual Owner's Warranty

- (a) To the extent that the Owners' Warranties in clauses 10.1 and 18.2 and paragraph 8 of Schedule 2 are given in respect of an Owner ("**Individual Owner's Warranty**"), it is given by that Owner individually, and VIML may make a claim in respect of a breach of an Individual Owner's Warranty only against the Owner who is in breach of that Individual Owner's Warranty.
- (b) In applying the limit in clause 10.10(a)(iii) in respect of a breach of any Individual Owner's Warranty, the limit is taken to be \$25,000.
- (c) For the avoidance of doubt, the maximum liability of an Owner in respect of any breach of an Individual Owner's Warranty is limited to that Owner's Respective Proportion of the Purchase Price in accordance with clause 10.12.

10.14 Limitations

- (a) The Owners' liability in respect of any breach of the Owners' Warranties will be reduced to the extent that the breach has arisen as a result of any act or omission after Completion by or on behalf of the Owners where VIML has expressly requested that act or omission.
- (b) If, at any time after 1 March 2010, a person acquires a relevant interest in or becomes the holder of all of the issued Stapled Securities, the Owners will not be liable for:
 - (i) any claim in respect of a breach of the Owners' Warranties; or
 - (ii) any claim under the Owners' Indemnities but excluding the Tax Indemnities,

which are made after the date on which that person acquired a relevant interest in or became the holder of all of the issued Stapled Securities.

10.15 Consequential loss

The Owners will not be liable for consequential loss or damage, loss of profits, loss of business opportunity or loss of anticipated savings arising from or related in any way to this deed, including:

- (a) a claim in respect of a breach of the Owners' Warranties (including the Tax Warranties); and
- (b) a claim under the Owners' Indemnities (including the Tax Indemnities).

10.16 No double recovery

To the extent that VIML has recovered an amount:

- (a) under the Owners' Indemnities in respect of a matter that is also the subject matter of an Owners' Warranty, VIML is not entitled to recover that amount in respect of a breach of that Owners' Warranty;
- (b) for a breach of an Owners' Warranty, VIML is not entitled to recover that amount under the Owners' Indemnities; or
- (c) under clause 10.6(a) in respect of a matter that is also the subject matter of a claim under clause 10.6(b), VIML is not entitled to recover that amount under clause 10.6(b).

10.17 Qualifications

The Owners' Warranties are given subject to and qualified by any relevant fact, matter or circumstances disclosed:

- (a) in this deed;
- (b) fully, fairly and accurately in the material relating to VEC that has been disclosed to VIML and its advisers by or on behalf of VEC;
- (c) in the Disclosure Letter; or
- (d) in the Second Disclosure Letter provided in accordance with clause 10.18.

10.18 Second Disclosure Letter

- (a) During the period from the date of this deed until five Business Days prior to the Meeting Date, if the Owners become aware of any new matter or circumstance:
 - (i) which has arisen since the date of this deed; and
 - (ii) which was not within the control of the Owners; and
 - (iii) as a result of which an Owners' Warranty would become false, misleading or incorrect as at the Completion Date,

the Owners may disclose that matter or circumstance to VIML in a letter identifying the relevant Owners' Warranty and setting out full particulars of that matter or circumstance ("**Second Disclosure Letter**").

- (b) On receipt of the Second Disclosure Letter, VIML must consult with the Owners in connection with the content of the Second Disclosure Letter to enable it to assess the effect of the disclosures made in the Second Disclosure Letter on VIML and the Proposal. The Owners agree that VIML may conduct a reasonable due diligence investigation in relation to the subject matter of the Second Disclosure Letter.
- (c) Following the process described in clause 10.18(b), VIML may do any of the following:

- (i) terminate this deed in accordance with clause 12.2(c), if VIML determines, in its absolute discretion, that the relevant Owners' Warranty would become materially false, misleading or incorrect as at the Completion Date;
 - (ii) serve a notice on the Owners requesting the Owners to take such action (including the payment of money) as is necessary to put VIML in the same position as if the relevant Owners' Warranty were true and correct as at the Completion Date, following which VIML may:
 - (A) notify the Owners that it will proceed to Completion, if it is satisfied, in its absolute discretion, that it has been put in the same position as if the relevant Owners' Warranty were true and correct as at the Completion Date; or
 - (B) terminate this deed in accordance with clause 12.2(c) if the Owners do not comply with the notice by the Meeting Date; or
 - (iii) notify the Owners that it will proceed to Completion without requiring any action by the Owners, if VIML determines, in its absolute discretion, that the new matter or circumstance disclosed in the Second Disclosure Letter would not adversely affect VEC, any of its Subsidiaries, their assets, their business or the implementation of the Proposal.
- (d) If VIML does not within five Business Days from the date of the receipt of the Second Disclosure Letter:
- (i) terminate this deed under clause 10.18(c)(i); or
 - (ii) serve a notice on the Owners under clause 10.18(c)(ii),
- it is taken to have determined to proceed to Completion under clause 10.18(c)(iii).
- (e) For the avoidance of doubt, the Second Disclosure Letter must not relate to:
- (i) any matter or circumstance as a result of which the Owners' Warranties would become false, misleading or incorrect as at the date of this deed; and
 - (ii) any matter or circumstance within the control of the Owners, including any matter or circumstance arising from fraud, dishonesty, bad faith, negligence, wilful misconduct or wilful default of the Owners.
- (f) VIML acknowledges to Owners that, where VIML determines to proceed to Completion under clause 10.18(c)(ii)(A) or 10.18(c)(iii):
- (i) it will treat the relevant Owners' Warranty as not being breached in respect of the subject matter of the Second Disclosure Letter; and
 - (ii) it will not claim for a breach of the relevant Owners' Warranty or under the Owners' Indemnities in respect of the subject matter of the Second Disclosure Letter,

provided that the Owners have not acted in any way misleading, deceptive or fraudulent in:

- (iii) providing the Second Disclosure Letter;
 - (iv) consulting with VIML in connection with the Second Disclosure Letter;
 - (v) assisting VIML in its due diligence investigation in connection with the Second Disclosure Letter; or
 - (vi) taking any action to comply with a notice given by VIML under clause 10.18(c)(ii).
- (g) Nothing in this clause 10.18 limits:
- (i) the Owners' obligations to indemnify VIML under clause 10.6 for any inaccuracy in or breach of the Owners' Warranties, except as provided for in clause 10.18(f);
 - (ii) the obligations of VEC under clauses 4.3 and 4.4(a); or
 - (iii) the obligations of the Owners under clause 4.4(b).

10.19 Third Party Claims

- (a) If VIML becomes aware of a Third Party Claim:
- (i) it must notify each of the Owners in writing describing the nature of the Third Party Claim and providing copies of all papers served with respect to the claim (if any); and
 - (ii) it must, at the cost of the Owners, take all reasonable action in good faith and with due diligence as the Owners may require to mitigate the Third Party Claim.
- (b) The Owners agree that upon receiving a notice in accordance with Clause 10.19(a)(i), they may appoint a person to act as their representative ("**Representative**"), who will be empowered by each of the Owners to take all necessary actions in relation to the Third Party Claim.
- (c) The Representative may notify VIML that it elects to assume the defence of the Third Party Claim. The Representative will (if it has elected to assume the defence) have full control of such defence and proceedings including any compromise or settlement.
- (d) If requested by the Representative, VIML agrees, at the expense of the Owners, to co-operate with the Representative in contesting any Third Party Claim.
- (e) If the Representative does not elect to assume the defence of the Third Party Claim, VIML must, at the expense and direction of the Representative, take such action as the Representative may reasonably require to avoid, dispute, defend, appeal, compromise or mitigate the Third Party Claim and any adjudication of it.

10.20 VIML's representation and acknowledgement

- (a) VIML represents to the Owners that VIML is not actually aware as at the date of this deed that VIML will have a claim under any of the Owners'

Warranties. The actual awareness of VIML for this purpose means that of the VIML Independent Directors.

- (b) The VIML Independent Directors acknowledge that VIML, in connection with its entry into this deed, had an opportunity to conduct due diligence investigations and inquiries concerning VEC.

10.21 No merger

The Owners' Warranties and the Owners' Indemnities do not merge on Completion.

10.22 Insurance

- (a) Subject to all applicable Law, on and from Completion, VIML agrees to use its best endeavours to maintain or put in place insurance policies for such amounts and such risks similar to those covered by the Insurance Policies, provide that such insurance policies:
 - (i) are available from a reputable insurance company at commercial rates VIML considers appropriate; and
 - (ii) contain the terms, conditions, exclusions and covers VIML considers appropriate.
- (b) If, following a payment by the Owners of an amount for a claim in respect of a breach of the Owners' Warranties, VIML recovers an amount in respect of that breach of the Owners' Warranties under an insurance policy referred to in clause 10.22(a), then VIML agrees to pay the Owners as soon as reasonably practicable, the lesser of:
 - (i) the amount paid by the Owners to VIML; and
 - (ii) the amount recovered under the insurance policy,after deduction of applicable Tax or Duty.

10.23 Obligation to mitigate

Nothing in this clause 10 restricts or limits the general obligation at Law to mitigate any Loss or damage which a party may incur as a consequence of any breach of the terms of this deed, including a breach of the Owners' Warranties.

10.24 Benefit of VIML's representations and warranties

Each of the Owners acknowledges that:

- (a) in entering into this deed and in proceeding to Completion, they do not rely on any representation, warranty or statement other than those made under or in accordance with this deed, which may have been made by or on behalf of VIML; and
- (b) subject to any law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, in relation to the issue of Stapled Securities to them under clause 5.7(g) are excluded and VIML disclaims all liability in relation to these to the maximum extent permitted by law.

11 Tax indemnity**11.1 Tax Claim**

If, at any time a Group Member receives or suffers a Tax Claim, then each of the Owners agree to pay to VIML (or as directed by VIML), by way of indemnity, an amount equal to the Tax Claim Amount with respect to the Tax Claim.

11.2 Exclusions

The obligations of the Owners under clause 11.1 or with respect to the breach of a Tax Warranty do not apply:

(a) to the extent that the Tax Claim or breach of Tax Warranty arises from an act by the Group Member after the Completion Date (other than an act by VIML to comply with an obligation imposed under the Tax Law), without the approval of the Owners (which must not be unreasonably withheld);

(b) to the extent that the Tax Claim or breach of Tax Warranty arises from the failure by the Group Member after the Completion Date, in a timely manner, to:

(i) lodge any return, notice, objection or other document in relation to the Tax Claim or breach of Tax Warranty;

(ii) lawfully claim all or any portion of any relief, allowance, deduction, credit, rebate or right to repayment;

(iii) disclose or correctly describe in any return, notice, objection or other document relating to the Tax Claim or breach of Tax Warranty, any material fact, matter or thing to the extent that it was within the knowledge of the Group Member; or

(iv) take any other action which the Group Member is required to take under this clause or any laws relating to Tax other than in circumstances where the Group Member is acting at the direction of the Owners,

except to the extent to which the failure by the Group Member arises from the a failure of the Owners to comply with its obligations under this deed in connection with the Tax Claim or breach of Tax Warranty; or

(c) to the extent that the Tax Claim or breach of Tax Warranty arises from a change to, or the announcement, introduction or enactment of, any legislation or regulation, unless that change has been announced before Completion and that announcement specifies that the change in law will take effect from a date prior to the Completion Date.

11.3 No double claim

If a breach of Tax Warranty arises from a fact or circumstance which also results in a Tax Claim, the Owner's liability for that breach of Tax Warranty is reduced by an amount equal to the amount paid by the Owners pursuant to clause 11.1.

11.4 Timing of Payments

Payments under clause 11.1 or with respect to the breach of a Tax Warranty must be made to, or as directed by, VIML:

- (a) if the Group Member or Buyer's Head Company must make a payment of Tax - within 7 Business Days before the latest date on which that payment may lawfully be made without incurring any penalty or additional tax for late payment; or
- (b) in any other case - within 30 Business Days after notice has been received by the Owners in accordance with clause 11.5.

11.5 Notice of Tax Claims

If a Group Member becomes aware of a Tax Claim or breach of Tax Warranty or receives written notification which could give rise to such a claim or breach ("**potential Tax Claim**"), the Group Member must give written notice of it to the Owners as soon as reasonably practicable after becoming so aware.

11.6 Access

The Group Member must give the Owners and their professional advisers reasonable access to the personnel and premises of the Group Member and to relevant chattels, accounts, documents and records within the power, possession or control of the Group Member in relation to the Tax Claim or the potential Tax Claim to enable the Owners and its professional advisers to examine such circumstances, premises, chattels, accounts, documents records and to take copies or photographs thereof at their own expense. However, the parties must at all times act having regard to the extent to which legal professional privilege or similar privilege extends to any communication or document.

11.7 Resisting Tax Claims

- (a) At the direction of the Owners, VIML must procure that the relevant Group Member in good faith and with all necessary diligence takes such action (including legal proceedings) as the Owners may reasonably require to dispute, defend, appeal or compromise any Tax Claim and any adjudication of it, provided that this action is supported by an opinion from a senior counsel, QC or qualified tax adviser with at least 10 years of relevant experience. The Owners shall have the right to have any such action conducted by professional advisers nominated by it for this purpose.
- (b) The Owners agree to pay the Group Member's reasonable costs and expenses that are incurred by the Group Member or Buyer's Head Company in connection with any action taken to avoid, resist or settle any Tax Claim, but only to the extent that such action has been undertaken on the instruction of the Owners.

11.8 Ceasing resistance of Tax Claim

If the Group Member:

- (a) does not wish to comply with a request by the Owners under clause 11.7; or
- (b) wishes to cease to comply with the directions of the Owners in relation to a Tax Claim under clause 11.5 or 11.6, then the Group Member must give written notice to the Owners to that effect under this clause 11.8;

then:

- (c) the relevant Group Member will be under no obligation to undertake the action requested by the Owners in relation to the Tax Claim under clause 11.5, 11.6 or 11.7;

- (d) the Owners are not liable to make a payment in respect of the Tax Claim; and
- (e) to the extent to which the Owners have made a payment with respect to the Tax Claim, the Group Member must immediately refund that payment to the Owners.

11.9 Refunds

If, following payment by the Owners of an amount with respect to a Tax Claim, all or part of that amount is refunded either in cash or by credit to a Group Member, VIML must immediately pay to the Owners an amount equal to the lesser of:

- (a) the refund; and
- (b) the amount of the payment paid by the Owners with respect to the Tax Claim.

11.10 Tax returns

The Owners must provide VIML with reasonable assistance and access to all relevant information, to the extent that such information is within the custody or control of the Owners, in order to allow VIML (or its advisers) to prepare any tax return that relates to a post-Completion period.

12 Termination

12.1 Termination by either party

Either VIML or the Owners may terminate this deed by giving notice to the other parties:

- (a) **(agreement)** at any time immediately by written agreement between the parties (or on such later date as specified in such agreement);
- (b) **(Independent Expert)** at any time before the Meeting Date, if the Independent Expert opines that the Proposal is not fair and reasonable to, or in the best interests of, Securityholders;
- (c) **(withdrawal of recommendation)** at any time before the Meeting Date, if the VIML Independent Directors decline to recommend, withdraw or adversely modify their recommendation of the Proposal where permitted to do so under clause 4.7(a);
- (d) **(approvals)** if the Proposal is not approved by the requisite majorities at the Securityholders Meeting;
- (e) **(Insolvency)** at any time if a party becomes Insolvent;
- (f) **(conditions precedent)** in accordance with clause 3.4;
- (g) **(material breach)** at any time if a party is in material breach of this deed (other than a breach of the Owners' Warranties) which is not remedied by the earlier of five Business Days after it receives a notice setting out the breach or the scheduled time for Completion; or
- (h) **(Material Adverse Change)** at any time if a Material Adverse Change occurs in respect of:

- (i) in the case of VIML being the terminating party, VEC or any of its Subsidiaries; or
- (ii) in the case of the Owners being the terminating party, VCEG.

12.2 Termination by VIML

VIML may terminate this deed by giving notice to the other parties:

- (a) **(solicitation)** at any time immediately after service of notice by VIML, if the Owners are in breach of clause 9.1;
- (b) **(Owners' Warranties)** at any time immediately after service of notice by VIML, if any of the Owners' Warranties is or becomes materially false, misleading or incorrect when made or regarded as made under this deed;
- (c) **(Second Disclosure Letter)** at any time immediately after service of notice by VIML if it becomes entitled to terminate this deed in accordance with clause 10.18(c)(i) or 10.18(c)(ii)(B); or
- (d) **(Prescribed Event)** at any time if a Prescribed Event occurs.

12.3 Termination by the Owners

The Owners may terminate this deed by giving notice to VIML:

- (a) **(disposals)** at any time if VIML disposes, or agrees to dispose of the whole or a substantial part of the assets of VCEG, other than:
 - (i) sale of its interest in the German wind farms;
 - (ii) sale of its interest in the Ardrossan wind farm; and
 - (iii) any action taken by VIML which is in accordance with a recommendation or consent of VEC;
- (b) **(new class of securities)** at any time if VIML creates or issues a new class of securities in VCEG or other instruments convertible into a new class of securities in VCEG; or
- (c) **(winding up)** at any time if:
 - (i) VIML gives a notice to Securityholders terminating VCET I or VCET II in accordance with the VCET I Constitution or the VCET II Constitution, respectively;
 - (ii) the Securityholders call a securityholders' meeting to consider and vote on an extraordinary resolution directing VIML to wind up VCET I or VCET II; or
 - (iii) the Court, by order, directs VIML to wind up VCET I or VCET II.

12.4 Rights not limited

- (a) The rights of termination under this clause 12 are in addition to, and not limited by, any other rights and remedies of the parties.
- (b) If a party does not exercise its rights under this clause 12, its other rights and remedies against the other parties will not be limited or lost in any way.

12.5 Effect of termination

If this deed is terminated under this clause 12 or clause 3.4, then in addition to any other rights, powers or remedies provided by law:

- (a) each party is released from its obligations to further perform this deed except those under clauses 13.2, 13.3 and 17 to 22 inclusive; and
- (b) each party retains any accrued rights or remedies it has against any other party (including in respect of any past breach of this deed).

13 Transaction Costs

13.1 Acknowledgment

The Owners acknowledge that:

- (a) VIML will suffer Transaction Costs if the Proposal is not implemented; and
- (b) VIML has required that this clause 13 be included in this deed and would not otherwise have entered into this deed.

13.2 Reimbursement of Transaction Costs

VEC must pay or reimburse VIML on demand for its Transaction Costs up to an amount not exceeding \$500,000, if VIML terminates this deed pursuant to clause 12.2(a), 12.2(b) or 12.1(g) (in the case of 12.1(g), in respect of material breach by the Owners or VEC).

13.3 Expert determination

In the event of a dispute as to the quantification of the amount of VIML's Transaction Costs, any party may require the dispute to be resolved by an Expert. The Expert shall make a determination within 4 weeks acting as an expert and not as an arbitrator and his or her determination shall in the absence of manifest error be conclusive and binding upon the parties. The Expert's fees in respect of any determination shall be borne equally by VEC and VIML.

14 Undertaking

14.1 Standstill Deed Poll

The Owners acknowledge and agree that they continue to be bound by the Standstill Deed Poll until the first to occur of:

- (a) the Completion Date; and
- (b) the date of termination of this deed.

14.2 Standstill

Subject to clauses 14.3 and 14.4, each of Oaktel, IBAL, PEP, Chetwyn and Hurstwood (each a "**Relevant Owner**") undertakes to VIML that it will not, for 18 months from the Completion Date:

- (a) Deal in all or any part of the Restricted Stapled Securities or Deal in any interest or right in respect of all or any part of the Restricted Stapled Securities;

- (b) create, or agree or offer to create, any Encumbrance over or affecting all or any part of the Restricted Stapled Securities; or
- (c) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of all or any part of the Restricted Stapled Securities.

14.3 Exceptions

After 6 months from the Completion Date, notwithstanding the period of restriction specified in clause 14.2:

- (a) in the case of PEP, for any reason;
- (b) in the case of IBAL, if it ceases to be represented on the board of directors of VIML;
- (c) in the case of Oaktel, if it ceases to be represented on the board of directors of VIML other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct or breach of duty of Oaktel or its representative on the board of directors of VIML;
- (d) in the case of Chetwyn, if Duncan Jewell ceases to be employed by VEC other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct, bankruptcy or a material criminal offence; or
- (e) in the case of Hurstwood, if Edward Northam ceases to be employed by VEC other than as a result of fraud, dishonesty, bad faith, negligence, wilful misconduct, bankruptcy or a material criminal offence,

the Relevant Owner may be released from the restrictions in clause 14.2, provided that VIML has confirmed to the Relevant Owner in writing that the sale process of the Restricted Securities being proposed by the Relevant Owner is satisfactory to VIML (acting reasonably).

14.4 Exclusion

Notwithstanding clause 14.2, the Relevant Owners will be released from the restrictions in clause 14.2 to participate in:

- (a) a takeover bid for VCEG in accordance with Chapter 6 of the Corporations Act; or
- (b) an informal trust scheme in respect of VCEG.

14.5 Guarantee

If the restrictions in clause 14.2 have ceased to apply in respect of Oaktel or PEP for any reason, then Oaktel or PEP must provide to VIML a duly executed Guarantee, unless VIML and Oaktel or PEP (as applicable) enter into an agreement to give effect to the continuance of the restrictions in clause 14.2 in respect of Oaktel or PEP (as applicable).

14.6 Holding lock

Each Relevant Owner agrees that while the restrictions in clause 14.2 apply to that Relevant Owner, to the extent permitted by the ASTC Settlement Rules, a holding lock may be placed on its Restricted Stapled Securities on ITS or any other register to prevent a Proper ASTC Transfer of the Restricted Stapled Securities.

15 Confidentiality and publicity**15.1 Confidentiality Agreement**

Nothing in this clause 15 limits or otherwise affects the terms of the Confidentiality Agreement.

15.2 Confidential information

The terms of the Proposal and this deed and all information exchanged between the parties under this deed or in connection with the Proposal or during the negotiations preceding the execution of this deed are confidential to the parties, their officers, employees, agents, advisers, auditors, financiers and other consultants (who must only be informed of that information if that person needs to know that information for the purposes of the Proposal or this deed and who must be instructed to maintain the confidentiality of that information) and must not be disclosed to any person except:

- (a) for the purposes of this deed or the Proposal or otherwise with the consent of the party who supplied the information;
- (b) if required by law;
- (c) in connection with legal proceedings relating to this deed or the Proposal;
- (d) where reasonably provided (on conditions similar to those contained in this clause) to the Independent Expert for the preparation of the Independent Expert's report in relation to the Proposal;
- (e) in connection with any announcement, the Notice of Meeting or the Explanatory Memorandum contemplated by this deed, having regard to the need to make full disclosure of all material matters to Securityholders; or
- (f) if the information is generally and publicly known otherwise than as a result of a breach of this clause 15.2.

15.3 Publicity

- (a) The parties acknowledge that, immediately on execution of this deed, VIML will make an announcement to the ASX relating to this deed and the transactions the subject of this deed.
- (b) A party may not make any press or other announcements or releases relating to this deed or the transactions the subject of this deed without the approval of the other parties to the form and manner of the announcement or release (each acting reasonably), unless that announcement or release is required to be made by law or any Governmental Agency or rules of a stock exchange.

15.4 Provision of information

Each party agrees to provide to each other party all relevant information which is in its possession and is reasonably requested by another party in relation to the preparation of the Notice of Meeting and the Explanatory Memorandum, and such further information reasonably requested in connection with the Proposal. This includes, in the case of the Owners, allowing VIML and its directors, officers, employees, agents and advisers reasonable access (including taking copies) at reasonable times to:

- (a) books, records, contracts, financial, operating and other data and information in relation VEC; and
- (b) directors, officers, employees, agents and contractors providing services to VEC to provide assistance and give information and explanation,

which they may reasonably request from time to time (including or the purposes of conducting due diligence investigation referred to in clause 3.1(c)).

16 GST

16.1 Consideration does not include GST

The consideration specified in this deed does not include any amount for GST.

16.2 Recovery of GST

If a supply under this deed is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

16.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

16.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount accordingly.

16.5 Reimbursement

If a party indemnifies, reimburses or makes a contribution ("**Contribution**") to the other party, and the other party can obtain an input tax credit on an acquisition associated with the Contribution, the amount of the Contribution for the first party is reduced by the amount of that input tax credit. The reduction is to be made before any increase under clause 16.2.

17 VIML's limitation of liability

- (a) Any liability of VIML arising in connection with this deed is limited to the extent that VIML is able to be indemnified for that liability out of the assets of VCET I under the VCET I Constitution or VCET II under the VCET II Constitution.
- (b) Each other party acknowledges and agrees that it may enforce its rights against VIML with respect to the non-observance of VIML's obligations under this deed only to the extent necessary to enforce the other party's rights, powers and remedies against VIML in respect of the assets of VCET I or VCET II by subrogation or otherwise.
- (c) Despite anything in this clause 17, VIML is liable to the extent that a liability under this deed arises out of VIML's own fraud, negligence, breach of trust or breach of duty which disentitles it from an indemnity out of the assets of VCET I or VCET II in relation to the relevant liability.

18 Certain Owners as trustee

18.1 Acknowledgement

Each of Oaktel, Hurstwood and Chetwyn acknowledges that it enters into this deed in its capacity as trustee of the trust specified opposite its name in the Details ("**Respective Trust**").

18.2 Representations and warranties

Each of Oaktel, Hurstwood and Chetwyn represents and warrants to VIML, that:

- (a) it is the only trustee of the Respective Trust and no action has been taken or is proposed to remove it as trustee of the Respective Trust;
- (b) it has the power under the terms of the Respective Trust to enter into and comply with its obligations under this deed including the power to sell the Shares;
- (c) it has a right to be fully indemnified out of the assets of the Respective Trust in respect of obligations incurred by it under this deed and the assets of the Respective Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the trustee has a right to be indemnified out of the assets of the Respective Trust;
- (d) it is not, and has never been, in default under the terms of the Respective Trust;
- (e) no action has been taken or is proposed to terminate the Respective Trust; and
- (f) it and its directors and other officers have complied with their obligations in connection with the Respective Trust.

18.3 Restrictions

Until all obligations under this deed are discharged, each of Oaktel, Hurstwood and Chetwyn may not, without the consent of VIML, do anything which:

- (a) effects or facilitates the retirement, removal or replacement of it as trustee of the Respective Trust;
- (b) could restrict its right of indemnity from the assets of the Respective Trust in respect of obligations incurred by it under this deed;
- (c) could restrict or impair its ability to comply with its obligations under this deed;
- (d) effects or facilitates the termination of the Respective Trust;
- (e) effects or facilitates the variation of the terms of the Respective Trust;
- (f) effects or facilitates the resettlement of the funds of the Respective Trust; or
- (g) could result in the assets of the Respective Trust being mixed with other property.

19 Notices and other communications**19.1 Form**

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an authorised officer of the sender; and
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

Communications sent by email need not be marked for attention in the way stated in clause 19.1(c). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

19.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details;
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by Law.

However, if the intended recipient has notified a changed address, fax number or email address, then the communication must be to that address, fax number or email address.

19.3 When effective

Communications take effect from the time they are received or taken to be received under clause 19.4 (whichever happens first) unless a later time is specified.

19.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email, the earlier of:
 - (i) when the sender receives an automated message confirming delivery; and

- (ii) four hours after 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.

19.5 Receipt outside business hours

Despite clauses 19.3 and 19.4, if communications are received or taken to be received under clause 19.4 after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

20 Costs and stamp duty

- (a) Each of the parties agrees to bear their own legal and other costs and expenses in connection with the negotiation, preparation and execution of this deed, except for stamp duty.
- (b) VIML agrees to pay all stamp duty payable or assessed in connection with the execution of this deed and the transactions contemplated by it. Nothing in this deed limits or restricts VIML's right of reimbursement under the VCET I Constitution and the VCET II Constitution.

21 Miscellaneous

21.1 Exercise of Rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent further exercise of that or any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

21.2 Approvals and Consent

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

21.3 Further assurances

Each party undertakes to the other that it will, upon request by another party and at its own expense, sign and deliver all documents and do all things necessary or appropriate for giving effect to the terms of this deed and the transactions contemplated by it.

21.4 Waiver and variation

- (a) This deed may not be varied except in writing signed by the parties.
- (b) A provision of or a right created under this deed may not be waived except in writing signed by the party granting the waiver.

21.5 Remedies Cumulative

The rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this deed.

21.6 No merger

The warranties, undertakings and indemnities in this deed do not merge on the Completion Date.

21.7 Survival of Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this deed.

21.8 Enforcement of Indemnities

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

21.9 Assignment

A party may not assign its rights under this deed without the consent of the other parties.

21.10 Counterparts

This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

21.11 Entire agreement

Except for:

- (a) the Confidentiality Agreement; and
- (b) the Standstill Deed Poll,

and subject to clause 2.4, this deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

22 Governing law

- (a) This deed and the transactions contemplated by it are governed by the laws in force in Victoria and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and courts of appeal from them.
- (b) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address in the Details.

EXECUTED as a deed.