

9 April 2020

## Ellerston Global Investments Limited (ASX: EGI) executes amendment to Scheme Implementation Deed

Ellerston Global Investments Limited ("EGI" or "the Company") refers to its announcement on 17 February 2020 in which it informed the market that it had executed a Scheme Implementation Deed ("the Deed") with Ellerston Capital Limited ("Ellerston"), in its capacity as the responsible entity of the Ellerston Global Mid Small Cap Fund ("the Fund").

EGI remains committed to eliminating the prevailing discount between EGI's Net Tangible Asset value ("NTA") and its share price while also delivering to those shareholders who desire liquidity the opportunity to achieve this at a price more closely approximate to underlying net asset value. EGI and Ellerston have today executed an amending deed to the Scheme Implementation Deed. An executed copy of the Amending Deed (with certain schedules redacted) accompanies this announcement. The amendments introduce the following important changes relating to your participation in the Scheme:

- Ellerston has four years remaining on its 10 year management agreement with EGI. Notwithstanding this, Ellerston has agreed to accept a termination fee payable by EGI of 1.50% of the NTA as determined by the ASX Listing Rules to terminate its management agreement. This early termination fee is subject to the Scheme proceeding and would be payable on the implementation date of the Scheme. This termination fee is lower than that to which Ellerston would be contractually entitled on termination and equates to two years' management fees.
- Ellerston has agreed that EGI shareholders who remain invested in Class B units will be given a management fee moratorium of two years, commencing from the date of implementation of the Scheme, meaning that investors who remain in the Fund will pay no additional management fees, and effectively offsetting the management agreement termination fee.
- Furthermore, EGI shareholders will be given the opportunity to top up their investment in the Fund by subscribing for additional Class B units in an amount up to the approximate value of their current investment in EGI ("Ellerston Unit Offer"). While no cash payment is required to receive an issue of Class B units under the Scheme, shareholders who elect to participate in the Ellerston Unit Offer will be required to subscribe for and pay for these additional top up units.
- All top up units issued as part of the Ellerston Unit Offer will also be subject to a management fee moratorium of two years. This means investors who take advantage of this offer and remain invested for two years post implementation date can effectively halve the management fee on their holding acquired under the Scheme and the Ellerston Unit Offer.

Complete details of the Scheme and the Ellerston Unit Offer will be included in an explanatory booklet to be provided to Shareholders ("Explanatory Booklet"). A copy of the Fund's Product Disclosure Statement in respect of Class B units will also be included in the Explanatory Booklet.

### Next steps and indicative timing

**Shareholders are not required to take any action at this time.** Shareholders will receive full details of the Scheme and the Ellerston Unit Offer once the Explanatory Booklet has been registered by ASIC.

The Explanatory Booklet will include the notice convening the Scheme meeting, the reasons for the Independent Board Committee's recommendation that EGI Shareholders vote in favour of the Scheme, in the absence of a superior proposal, a Product Disclosure Statement and the constitution for the Fund, a general outline of the taxation implications of the Scheme for EGI shareholders and an opinion from an independent expert as to whether the Scheme is in the best interests of EGI shareholders.

**The Explanatory Booklet will also include a form for EGI shareholders to complete and return with their details and identification documentation that Ellerston is required by law to collect from EGI shareholders. This process is complex and to successfully issue EGI shareholders with their units under the Scheme and the**

**Ellerston Unit Offer (for those electing to participate in that offer), we will require your cooperation to collect the necessary documentation.**

An updated indicative timetable for the Scheme is provided below. It is our intention to meet the timetable below which has been amended due to the unprecedented impact that the global COVID-19 pandemic and regulatory response have had on businesses. Further refinements to the below indicative timetable may become necessary due to the fluid and unpredictable nature of the crisis including its impact on the review processes of ASIC, ASX and the Court respectively. Should this occur we will inform the market accordingly.

Event	Date
Explanatory Booklet to be prepared and lodged with ASIC and ASX for their respective review	Week beginning Monday, 20 April 2020
First Court hearing: orders sought convening Scheme meeting	Week beginning Monday, 4 May 2020
Explanatory Booklet registered with ASIC and despatched to Shareholders	Week beginning Monday, 11 May 2020
Meeting of Shareholders to consider and vote on Scheme	Week beginning Monday, 15 June 2020
Second Court hearing: orders sought approving the Scheme	On or before Monday, 22 June 2020
Implementation Date	On or before Monday, 13 July 2020

EGI's Independent Board Committee and the Ellerston Board have respectively authorised this announcement to be released to ASX.

If investors have any queries regarding this announcement, please contact our Investor Relations team on 02 9021 7701 or [info@ellerstoncapital.com](mailto:info@ellerstoncapital.com)



# Amending Deed

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Ellerston Capital Limited as responsible entity of the  
Ellerston Fund (**Responsible Entity**)

Ellerston Global Investments Limited (**Company**)

Ellerston Capital Limited (**Manager**)

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# Details

Date 9 April 2020

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## Parties

Name **Ellerston Capital Limited** ACN 110 397 674 as responsible entity of the **Ellerston Global Mid Small Cap Fund** ARSN 609 725 868

Short form name **Responsible Entity**

Notice details Level 11, 179 Elizabeth Street, Sydney, NSW, 2000  
Email: JForde@ellerstoncapital.com  
Attention: John Forde

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Name **Ellerston Global Investments Limited** ACN 169 464 706

Short form name **Company**

Notice details Level 11, 179 Elizabeth Street, Sydney, NSW, 2000  
Email: IKelly@ellerstoncapital.com  
Attention: Ian Kelly

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Name **Ellerston Capital Limited** ACN 110 397 674 as investment manager of the Company

Short form name **Manager**

Notice details Level 11, 179 Elizabeth Street, Sydney, NSW, 2000  
Email: JForde@ellerstoncapital.com  
Attention: John Forde

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## Background

- A The parties to this deed are the parties to the Scheme Implementation Deed.
- B The parties wish to amend the Scheme Implementation Deed in the manner set out in this deed.
- C This deed is supplemental to the Scheme Implementation Deed.

# Agreed terms

## 1. Definition and interpretation

### 1.1 Defined terms

In this amending deed, unless otherwise defined below, terms defined in the Scheme Implementation Deed have the same meaning when used in this amending deed:

**Scheme Implementation Deed** means the scheme implementation deed between the parties dated 17 February 2020.

### 1.2 Interpretation

Clauses 1.2 to 1.6 inclusive of the Scheme Implementation Deed apply equally to this amending deed as if set out in full in this amending deed (with such changes as are necessary).

## 2. Amendment to Scheme Implementation Deed

### 2.1 Amendment

The parties acknowledge and agree that, on and from the date of this amending deed, the Scheme Implementation Deed is amended by:

- (a) inserting all clauses and words that are underlined; and
  - (b) deleting all clauses and words that are struck out or crossed through,
- in the copy of the Scheme Implementation Deed that forms Annexure A to this amending deed.

### 2.2 References

On and from the date of this amending deed, any reference in any document (other than this deed) to the Scheme Implementation Deed is a reference to the Scheme Implementation Deed as amended under clause 2.1.

## 3. General

### 3.1 Effect

Clause 2.1 of this amending deed is intended only to vary the relevant provisions of the Scheme Implementation Deed and not to terminate, discharge, rescind or replace the Scheme Implementation Deed. Except as amended under clause 2.1, the Scheme Implementation Deed continues in full force and effect.

### 3.2 Continuing liabilities and obligations

Nothing in this amending deed:

- (a) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Scheme Implementation Deed before the date of this amending deed; or
- (b) discharges, releases or otherwise affects the liability or obligation arising under the Scheme Implementation Deed before the date of this amending deed.

### 3.3 Notices

Any notice or other communication including any request, demand, consent or approval, to or by a party to this amending deed must be provided in accordance with clause 14 of the Scheme Implementation Deed.

### **3.4 Governing law and jurisdiction**

Clause 16.7 of the Scheme Implementation Deed applies to this amending deed as if set out in full in this amending deed.

### **3.5 Counterparts**

- (a) This amending deed may be executed in any number of counterparts (including counterparts created by way of facsimile).
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this amending deed by signing any counterpart.

### **3.6 Amendment**

No addition to or modification or amendment of this amending deed will bind any party to it unless it is in writing signed by or on behalf of all parties.

### **3.7 Deed is supplemental**

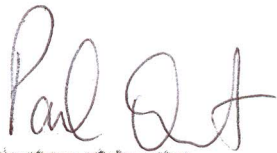
This amending deed is supplemental to the Scheme Implementation Deed.

# Signing page

EXECUTED as a deed

COMPANY

Executed by Ellerston Global Investments Limited in accordance with Section 127 of the Corporations Act 2001



Signature of director

PAUL DORTKAMP

Name of Director (print)



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



Name of director/company secretary (print)

## RESPONSIBLE ENTITY

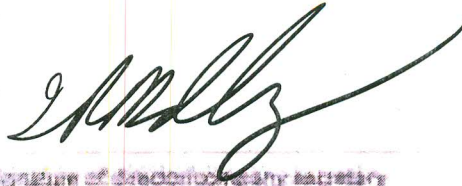
Executed by Ellerston Capital Limited as responsible entity of the Ellerston Global Mid Small Cap Fund ARSN 609 725 888 in accordance with Section 127 of the Corporations Act 2001



Signature of director

BRIAN O'SULLIVAN

Name of Director (print)



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

Ian Kelly

Name of director/company secretary (print)

## MANAGER

Executed by Ellerston Capital Limited as the manager of Ellerston Global Investments Limited in accordance with Section 127 of the Corporations Act 2001



Signature of director

BRIAN O'SULLIVAN



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

Ian Kelly

# Annexure A – Marked up changes to Scheme Implementation Deed





Amending deed (Annexure 1, marked up changes)

# Amended and Restated Scheme Implementation Deed

—  
Ellerston Capital Limited as responsible entity of the  
Ellerston Fund (**Responsible Entity**)  
Ellerston Global Investments Limited (**Company**)  
Ellerston Capital Limited (**Manager**)  
—

# Amended and Restated Scheme Implementation Deed

Details 5

<b>Agreed terms</b>	<b>6</b>
<b>1. Defined terms &amp; interpretation</b>	<b>6</b>
1.1 Defined terms	6
1.2 Interpretation	<del>11</del> 14
1.3 Business Day	11
1.4 Consents or approvals	11
1.5 Listing requirements included as law	11
1.6 Reasonable endeavours	<del>12</del> 44
<b>2. Agreement to proceed with Scheme and Ellerston Unit Offer</b>	<b>12</b>
2.1 Company to propose the Scheme	12
2.2 Responsible Entity and the Manager to assist	12
2.3 Responsible Entity to make Ellerston Unit Offer	12
<b>3. Conditions Precedent and Pre-implementation Steps</b>	<b>12</b>
3.1 Conditions precedent	12
3.2 Satisfaction	13
3.3 Waiver of conditions precedent	14
3.4 If a condition precedent is not fulfilled or waived	<del>15</del> 44
3.5 Appeal process	15
3.6 Scheme voted down	15
3.7 Termination on failure of condition precedent	15
<b>4. Transaction Steps</b>	<b>16</b>
4.1 Scheme	16
4.2 Collection of KYC Information	16
4.3 Scheme Consideration	16
4.4 Ellerston Unit Offer	16
4.5 Allotment and issue of Units	16
4.6 Foreign Scheme Shareholders	17
4.7 Identification of Scheme Shareholders	17
<b>5. Implementation</b>	<b>17</b>
5.1 Company's obligations	17
5.2 Manager's obligations	20
5.3 Responsible Entity's obligations	20
5.4 Explanatory Booklet - preparation principles	<del>22</del> 24
5.5 Conduct of the Company business	23
5.6 Operation of the Ellerston Fund	24
5.7 Independent Board Committee recommendations and Intentions	24
5.8 Early termination of EGI Management Agreement and related matters	25
<b>6. Actions on and following Implementation Date</b>	<b>25</b>
6.1 Reconstitution of the board of each member of Company Group	<del>26</del> 25
6.2 Sequence of actions on the Implementation Date	<del>26</del> 25
<b>7. Representations and Warranties</b>	<b>26</b>
7.1 Responsible Entity Representations and Warranties	26
7.2 Company Representations and Warranties	26
7.3 Timing of representations and warranties	26

7.4	Survival of representations	26
<b>8.</b>	<b>Releases</b>	<del>27</del> <b>26</b>
8.1	Company Parties	<del>27</del> <b>26</b>
8.2	Acquirer Parties	27
8.3	Directors' and officers' insurance	27
8.4	Obligations in relation to directors' and officers' insurance	27
<b>9.</b>	<b>Public Announcements</b>	<del>28</del> <b>27</b>
9.1	Announcement of the Scheme	<del>28</del> <b>27</b>
9.2	Other public announcements	<del>28</del> <b>27</b>
9.3	Required announcement	<del>28</del> <b>27</b>
9.4	Statements on termination	28
<b>10.</b>	<b>Exclusivity</b>	<b>28</b>
10.1	Termination of existing discussions	28
10.2	No shop restriction	28
10.3	No talk restriction	28
10.4	No due diligence	<del>29</del> <b>28</b>
10.5	Notification by Company	29
10.6	Response to Competing Proposal	29
10.7	Normal provision of information	<del>30</del> <b>29</b>
10.8	Acknowledgement	30
<b>11.</b>	<b>Termination</b>	<b>30</b>
11.1	General rights	30
11.2	Effect of termination	<del>31</del> <b>30</b>
11.3	Termination by written agreement	<del>31</del> <b>30</b>
<b>12.</b>	<b>Confidentiality</b>	<del>31</del> <b>30</b>
12.1	Confidentiality Obligation	<del>31</del> <b>30</b>
12.2	Exceptions to confidentiality	31
<b>13.</b>	<b>GST</b>	<b>31</b>
13.1	Recovery of GST	31
13.2	Liability net of GST	31
13.3	Adjustment events	31
13.4	Survival	31
13.5	Definitions	<del>32</del> <b>31</b>
<b>14.</b>	<b>Notices</b>	<del>32</del> <b>31</b>
<b>15.</b>	<b>Limitation of Responsible Entity's liability</b>	<b>32</b>
<b>16.</b>	<b>General Provisions</b>	<b>33</b>
16.1	Amendment	33
16.2	Assignment	33
16.3	Costs and stamp duty	33
16.4	Counterparts	33
16.5	Entire agreement	<del>34</del> <b>33</b>
16.6	Further assurances	<del>34</del> <b>33</b>
16.7	Governing law and jurisdiction	<del>34</del> <b>33</b>
16.8	No merger	<del>34</del> <b>33</b>
16.9	No third party beneficiary	<del>34</del> <b>33</b>
16.10	No waiver	34
16.11	Severability of provisions	34
16.12	Waiver of immunity	34
<b>Schedule 1 - Responsible Entity Representations and Warranties</b>		<b>35</b>
<b>Schedule 2 - Company Representations and Warranties</b>		<b>37</b>

<b>Schedule 3 - Form of Scheme</b>	<b>39</b>
<b>Schedule 4 - Form of Deed Poll</b>	<b>40</b>
<b>Schedule 5 - Indicative timetable</b>	<b>41</b>
<b>Signing page</b>	<b>42</b>

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# Details

Date 17 February 2020 ([incorporating amendments under Amending Deed dated 9 April 2020](#))

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## Parties

Name **Ellerston Capital Limited** ACN 110 397 674 as responsible entity of the **Ellerston Global Mid Small Cap Fund** ARSN 609 725 868

Short form name **Responsible Entity**

Notice details Level 11, 179 Elizabeth Street, Sydney, NSW, 2000  
Email: JForde@ellerstoncapital.com  
Attention: John Forde

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Name **Ellerston Global Investments Limited** ACN 169 464 706

Short form name **Company**

Notice details Level 11, 179 Elizabeth Street, Sydney, NSW, 2000  
Email: IKelly@ellerstoncapital.com  
Attention: Ian Kelly

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Name **Ellerston Capital Limited** ACN 110 397 674 as investment manager of the Company

Short form name **Manager**

Notice details Level 11, 179 Elizabeth Street, Sydney, NSW, 2000  
Email: JForde@ellerstoncapital.com  
Attention: John Forde

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## Background

- A The Responsible Entity has agreed to acquire all of the issued shares in the Company.
- B The Independent Directors of the Company intend to propose to Company Shareholders for their approval a merger with the Responsible Entity by way of a scheme of arrangement under section 411 of the Corporations Act, the effect of which would be to make the Company wholly owned by the Ellerston Fund.
- C The Responsible Entity and the Company have agreed to implement the Scheme on the terms and conditions of this deed.
- D The Manager has agreed to assist the Company with the preparation of the Explanatory Booklet and otherwise assist with the implementation of the Scheme.
- ~~D~~E [The Responsible Entity has also agreed to make the Ellerston Unit Offer to Company Shareholders on the terms and conditions of this deed and the Scheme.](#)

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

**Adviser** means in relation to an entity:

- (a) a financier to the entity in connection with the Scheme; or
- (b) a financial, corporate, legal, technical or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Scheme by the entity.

**AML/CTF Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**applicable customer identification procedure** has the meaning given in the AML/CTF Act.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited ACN 008 624 691 or, if the context requires or permits, the financial market known as the Australian Securities Exchange operated by it.

**Business Day** means a business day as defined in the ASX Listing Rules.

**Claim** means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Company Accounts** means the audited individual and consolidated accounts (including the financial statements, notes forming part of or intended to be read with the financial statements, directors' report and declaration, and auditor's report) of the Company at and for the year ended 30 June 2019.

**Company Board** means the board of directors of the Company.

**Company Conditions** means the conditions precedent set out under the heading, 'Company Conditions' in clause 3.1.

**Company Group** means the Company and its subsidiaries.

**Company Information** means information about the Company prepared by the Company or any of its Advisers for inclusion in the Explanatory Booklet.

**Company Party** means a director, officer or employee of the Company.

**Company Registry** means Link Market Services Limited or any replacement provider of share registry services to the Company.

**Company Representation and Warranty** means a representation and warranty of the Company set out in Schedule 2.

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

**Company Shareholder** means a person who is registered as the holder of Company Shares from time to time.

**Company Share Register** means the register of members of the Company maintained in accordance with the Corporations Act.

**Competing Proposal** means any expression of interest, proposal, offer, transaction or arrangement (including any takeover bid, scheme of arrangement, shareholder approved acquisition, share or asset sale, recapitalisation or issue of securities, capital reduction, share buy

back or repurchase, joint venture, reverse takeover, dual listed company structure or other synthetic merger) under which a Third Party will or may, if the expression of interest, proposal, offer, transaction or arrangement is entered into and completed:

- (a) acquire control of the Company;
- (b) acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in assets with an aggregate book value representing 20% or more of the total assets of the Company Group as set out in Company's consolidated balance sheet as at 30 June 2019;
- (c) otherwise (whether directly or indirectly) acquire or merge or amalgamate with Company;
- (d) come to have voting power in the Company of more than 20%; or
- (e) enter into any agreement or understanding requiring the Company to abandon, or otherwise fail to proceed with, the Scheme

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court** means the Supreme Court of New South Wales or the Federal Court of Australia or any other court of competent jurisdiction agreed between the Responsible Entity and the Company.

**Court Approval Date** means the date the Court approves the Scheme for the purposes of section 411(4)(b) of the Corporations Act.

**Deed Poll** means the deed poll in favour of all Scheme Shareholders in the form set out in Schedule 4 (or such other form agreed in writing between the parties acting reasonably).

**Early Termination Fee** means the fee payable by the Company to the Responsible Entity under clause 5.8 for the early termination of the EGI Management Agreement, being an amount equal to 1.50% of the net tangible asset value of each security in each class of the Company's asset portfolio as calculated under the ASX Listing Rules as at the Implementation Date.

**Effective** means the coming into effect under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

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

**EGI Management Agreement** means the investment management agreement between the Company and the Manager dated on or around 17 October 2014.

**Election** means an election that a Company Shareholder may make in accordance with the Scheme to apply for additional Ellerston Units under the Ellerston Unit Offer.

**Ellerston Fund** means the Ellerston Global Mid Small Cap Fund ARSN 609 725 868.

**Ellerston Unit** means a fully paid Class B Unit in the Ellerston Fund.

**Ellerston Unit Offer** means the offer or invitation to be made by the Responsible Entity to Company Shareholders to acquire by way of issue additional Ellerston Units as provided for in the Scheme.

**End Date** means ~~30 June 2020~~ 31 July 2020, subject to any extension under clause 3.4.

**Excluded Shareholder** has the meaning given in the Scheme.

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

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

**Explanatory Booklet** means the explanatory booklet to be prepared by the Company (with input from the Responsible Entity) in respect of the Scheme and the Ellerston Unit Offer in accordance with the terms of this deed and to be despatched to Company Shareholders.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Foreign Scheme Shareholder** means a Scheme Shareholder whose address in the Company Share Register is a place outside Australia and its external territories or New Zealand unless the Responsible Entity and the Company agree in writing that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with Units under the Scheme.

**Implementation Date** means the fifth Business Day after the Scheme Record Date or such other date agreed to in writing between the parties.

**Independent Board Committee** or **IBC** means a committee of the Company Board comprising all Independent Directors.

**Independent Director** means a director of the Company who is not nominated by or any officer or shareholder (directly or indirectly through one or more interposed entities) of the Manager.

**Independent Expert** means the independent expert in respect of the Scheme appointed by Company.

**Independent Expert's Report** means a report (including any updates to such report) of the Independent Expert stating whether or not in its opinion the Scheme is in the best interest of Company Shareholders.

**Ineligible Units** has the meaning given in clause 4.6(a).

**Identified Scheme Shareholder** means a Scheme Shareholder who has provided the Responsible Entity or the Company with KYC Information in respect of the Scheme Shareholder.

**Insolvency Event** means in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
  - (i) its winding up, dissolution, deregistration or administration; or
  - (ii) it entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them,(other than frivolous or vexatious applications, orders, proceedings, notices or steps);
- (f) a receiver, receiver and manager, administrative receiver or similar officer is appointed to:
  - (i) a security interest becomes enforceable or is enforced over; or
  - (ii) a distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

**ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth).

**Joint Conditions** means the conditions precedent set out under the heading 'Joint Conditions' in clause 3.1.

**Joint Information** means the information to be included in the Explanatory Booklet regarding the profile of the combined Company/Responsible Entity, assuming the Scheme is approved and implemented, and risk factors associated with the Scheme, being information that is to be prepared jointly by the Company, the Manager and the Responsible Entity.



**Joint Public Announcement** means the public announcement in relation to the Scheme to be issued by the Company and the Responsible Entity to ASX in the form agreed between the parties prior to the date of this deed.

**KYC Information** in relation to a Scheme Shareholder means all information required by the Responsible Entity to enable it to carry out the applicable customer identification procedure in respect of the Scheme Shareholder before the Scheme Shareholder may be issued Units under the Scheme and (in the case of Scheme Shareholders who make a valid Election) under the Ellerston Unit Offer.

**Liability** means a debt, obligation, liability, loss, expense, cost or damage of any kind and however arising, including any penalty, fine or interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**Regulatory Approvals** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption from, by or with a Regulatory Authority; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Regulatory Authority intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without notification.

**Regulatory Authority** means:

- (a) any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, tribunal, agency or entity;
  - (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
  - (c) any regulatory organisation established under statute,
- in Australia whether federal, state, territorial or local.

**Relevant Date** means in relation to a condition precedent, the date or time specified in this deed for its fulfilment (or where no such date or time is specified, the Business Day before the End Date), subject to extension under clause 3.4.

**Representative** means in relation to the Responsible Entity or the Company:

- (a) each other member of the Responsible Entity or the Company (as applicable);
- (b) an officer or employee of a member of the Responsible Entity or the Company (as applicable); or
- (c) an Adviser to a member of the Responsible Entity or the Company (as applicable).

**Responsible Entity Board** means the board of directors of the Responsible Entity.

**Responsible Entity Condition** means the condition precedent set out under the heading 'Responsible Entity Condition' in clause 3.1.

**Responsible Entity Group** means the Responsible Entity and its subsidiaries.

**Responsible Entity Information** means information about the Responsible Entity ~~or~~ the Ellerston Fund or the Ellerston Unit Offer provided or approved by the Responsible Entity or any of its Advisers to the Company in writing for inclusion in the Explanatory Booklet and includes all forms and other documents that the Responsible Entity requires to enable a Company Shareholder to comply with the Responsible Entity's applicable customer identification procedure to enable the issue of Units to the Company Shareholder as a Scheme Shareholder on implementation of the Scheme and under the Ellerston Unit Offer, in compliance with the AML/CTF Act.

**Responsible Entity Party** means a director, officer or employee of the Responsible Entity.

**Responsible Entity Representation and Warranty** means a representation and warranty of the Responsible Entity set out in Schedule 1.

**RG 60** means Regulatory Guide 60 issued by ASIC on 22 September 2011.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Company and the Scheme Shareholders under which the Responsible Entity proposes to acquire all of the Company Shares substantially in the form of Schedule 3, subject to any alterations or conditions:

- (a) agreed to in writing by the Responsible Entity and the Company; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Responsible Entity and the Company.

**Scheme Consideration** has the meaning set out in the Scheme.

**Scheme Meeting** means the meeting of the Company Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Scheme Record Date** means 7.00pm on the second Business Day after the Effective Date or such other time and date agreed to in writing between the parties.

**Scheme Resolution** means the approval of the Scheme by the Company Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

**Scheme Share** means a Company Share held by a Scheme Shareholder.

**Scheme Shareholder** means a Company Shareholder at the Scheme Record Date who is not an Excluded Shareholder.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Superior Proposal** means a bona fide Competing Proposal received after the date of this deed (that has not been directly or indirectly solicited, invited, encouraged or initiated in breach of clause 10.2, 10.3 or 10.4) that the Company Board or the IBC determines, acting in good faith in order to satisfy what the Company Board or IBC considers to be its fiduciary or statutory duties (having taken advice from its external financial and legal advisers):

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including any conditions and the likely availability of finance; and
- (b) would, if completed substantially in accordance with its terms, be likely to be more favourable to the Company Shareholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal.

**Tax** means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

**Tax Law** means any law in relation to any Tax.

**Tax Relief** means any relief, allowance, exemption, credit, exclusion set-off, deduction, loss, refund or rebate granted or available in respect of Tax under any Tax Law.

**Third Party** means any person or entity (including a Regulatory Authority) other than the Manager, the Responsible Entity or the Company.

**Timetable** means the indicative timetable for the implementation of the Scheme set out in Schedule 5, including any amendments to that timetable agreed by the parties in writing and acting reasonably.

**Unit** means a fully paid Class B unit in the Ellerston Fund.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or attachment is a reference to a clause of, or schedule or attachment to, this deed.
- (f) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and attachments to that agreement or document.
- (g) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to dollars and \$ is to Australian currency.
- (l) All references to time are to Sydney, Australia time.
- (m) Mentioning anything after **includes**, including, **for example**, or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (o) A reference to **associate**, **control** (by an entity of another entity), **officer**, **related body corporate**, **subsidiary**, **relevant interest** or **voting power** is to that term as it is defined in the Corporations Act.

## 1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## 1.4 Consents or approvals

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

## 1.5 Listing requirements included as law

A listing rule or business rule of a financial market, including an ASIC market integrity rule, will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

## 1.6 Reasonable endeavours

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

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or
  - (b) to commence any legal action or proceeding against any person,
- except where that provision expressly specifies otherwise.

## 2. Agreement to proceed with Scheme [and Ellerston Unit Offer](#)

### 2.1 Company to propose the Scheme

The Company agrees to propose and implement the Scheme on and subject to the terms of this deed.

### 2.2 Responsible Entity and the Manager to assist

The Responsible Entity and the Manager agree to assist the Company to propose and implement the Scheme on and subject to the terms of this deed.

### [2.3 Responsible Entity to make Ellerston Unit Offer](#)

[The Responsible Entity agrees to make the Ellerston Unit Offer on and subject to the terms of this deed and the Scheme.](#)

## 3. Conditions Precedent and Pre-implementation Steps

### 3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of the Responsible Entity under clauses 4.3, 4.4, 4.5 and 4.6 are not binding, unless each of the following conditions precedent is satisfied or waived in accordance with clauses 3.3 and 3.4:

#### Joint Conditions

(Conditions precedent for the benefit of all parties)

- (a) **(ASIC and ASX consents)** before 8.00am on the Second Court Date, ASIC and ASX issue or provide such consents or approvals or have done such other acts which the Company and the Responsible Entity agree are reasonably necessary to implement the Scheme;
- (b) **(Other Regulatory Authority approvals)** before 8.00am on the Second Court Date:
  - (i) all other approvals of a Regulatory Authority which the Company and the Responsible Entity agree are necessary to implement the Scheme are obtained and have not been withdrawn or revoked; and
  - (ii) none of the following has been issued or made:
    - (A) a conditional or unconditional decision, determination or statement by any Regulatory Authority to the effect that it objects to the Scheme, and that decision, determination or statement would have the effect or likely effect of materially impeding the implementation of the Scheme;
    - (B) a preliminary or final decision, determination, or order issued by any Regulatory Authority preventing the Scheme; or

- (C) a temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or the Takeovers Panel or other legal restraint or prohibition preventing the Scheme;
- (c) **(Company Shareholder approval)** before 8.00am on the Second Court Date, the Scheme is approved by Company Shareholders (excluding any Excluded Shareholders) at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (d) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon any party (acting reasonably);
- (e) **(Independent Expert's Report)** the Independent Expert's Report contains an opinion of the Independent Expert to the effect that the Scheme is in the best interest of Company Shareholders and the Independent Expert maintains that opinion (including by not withdrawing or changing that opinion) at all times up to 8.00am on the Second Court Date;

#### Responsible Entity Condition

(Condition precedent for the benefit of Responsible Entity only)

- (f) **(Company Warranties)** the Company Representation and Warranties being true and correct in all material respects on the date of this deed and at 8.00am on the Second Court Date;

#### Company Conditions

(Condition precedent for the benefit of Company only)

- (g) **(Responsible Entity Warranties)** the Responsible Entity Representation and Warranties being true and correct in all material respects on the date of this deed and at 8.00am on the Second Court Date.
- ~~(h) **(Termination of the EGI Management Agreement)** the Company and the Manager agree to terminate the EGI Management Agreement, which agreement may be conditional on the Scheme becoming Effective, for a negotiated amount of consideration payable to the Manager.~~

### 3.2 Satisfaction

- (a) The Responsible Entity and the Company must use reasonable endeavours to procure that the Joint Conditions (other than the condition precedent in clause 3.1(c)) are satisfied.
- (b) The Responsible Entity must use reasonable endeavours to procure that the Company Conditions ~~are~~ is satisfied.
- (c) The Company must use reasonable endeavours to procure that the Responsible Entity Conditions (and the condition precedent in clause 3.1(c)) are satisfied.
- (d) The Responsible Entity, the Manager and the Company must provide reasonable assistance in satisfying the other conditions precedent in clause 3.1, and ensure that there is no occurrence within the control of the Responsible Entity, the Manager or the Company (as the context requires) that would prevent any condition precedent in clause 3.1 being satisfied.
- (e) Each of the Responsible Entity, the Manager and the Company must:
  - (i) consult and co-operate fully with each other in relation to the satisfaction of the conditions precedent, including in relation to all material communications with Regulatory Authorities in relation to Regulatory Approvals;
  - (ii) promptly provide to each other all material communications with Regulatory Authorities in relation to Regulatory Approvals;
  - (iii) promptly notify each other if it becomes aware that any condition precedent has been satisfied; and

- (iv) promptly notify each other of any failure to satisfy a condition precedent or of any fact or circumstance that may result in a condition precedent becoming incapable of being satisfied or that may result in a condition precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under this clause).
- (f) Without limiting this clause 3.2:
  - (i) the Company must provide the Responsible Entity with all information reasonably requested in connection with the Responsible Entity's applications for each Regulatory Approval referred to in clauses 3.1(a) and 3.1(b); and
  - (ii) the Responsible Entity must consult with the Company, and the Company must consult with the Responsible Entity, as applicable, in relation to the submission of and progress of obtaining each Regulatory Approval referred to in clause 3.1.
- (g) On the Second Court Date:
  - (i) the Responsible Entity, the Manager and the Company must give the Court a joint certificate (or such other evidence as the Court requires) confirming whether or not the Joint Conditions (other than the condition precedent at clause 3.1(d)) have been satisfied or waived;
  - (ii) the Responsible Entity must:
    - (A) give the Court a certificate (or such other evidence as the Court requires) confirming (in respect of matters within its knowledge) whether or not the Company Conditions have been satisfied or waived; and
    - (B) give the Company a draft of its certificate by 5.00pm on the Business Day before the Second Court Date; and
  - (iii) the Company must:
    - (A) give the Court a certificate (or such other evidence as the Court requires) confirming (in respect of matters within its knowledge) whether or not the Responsible Entity Conditions have been satisfied or waived; and
    - (B) give the Responsible Entity a draft of its certificate by 5.00pm on the Business Day before the Second Court Date.

### 3.3 Waiver of conditions precedent

- (a) The conditions precedent in clauses 3.1(a), 3.1(b), 3.1(c) and 3.1(d) cannot be waived.
- (b) The remaining Joint Conditions are for the benefit of the Responsible Entity and the Company and may only be waived by both of them in writing.
- (c) The Responsible Entity Conditions ~~are~~ is for the sole benefit of the Responsible Entity and may only be waived by the Responsible Entity in writing.
- (d) The Company Conditions ~~are~~ is for the sole benefit of the Company and may only be waived by the Company in writing.
- (e) A party entitled to waive a condition precedent may do so conditionally or unconditionally in its absolute discretion.
- (f) If a party waives the breach or non-fulfilment of a condition precedent, that waiver will not preclude it from suing another party for any breach of this deed that resulted from the breach or non-fulfilment of the condition precedent that was waived or arising from the same event which gave rise to the breach or non-fulfilment of the condition precedent.
- (g) Waiver of a breach or non-fulfilment in respect of a condition precedent does not constitute:
  - (i) a waiver of the breach or non-fulfilment of any other condition precedent resulting from the same event; or
  - (ii) a waiver of the breach or non-fulfilment of that condition precedent resulting from any other event.



### 3.4 If a condition precedent is not fulfilled or waived

- (a) If a condition precedent cannot be fulfilled (or has not been fulfilled or waived) by the Relevant Date, or the Scheme has not become Effective by the End Date, the Company and the Responsible Entity must, prior to any termination under clause 3.7, consult in good faith and act reasonably (and obtain appropriate advice) for a period of at least 10 Business Days to develop potential structures and approaches and to determine whether:
  - (i) the Scheme may proceed by way of alternative means or methods and, if so, agree on the terms of such alternative means or methods (to avoid doubt, any such alternative means or methods must not involve any material additional economic cost (including increasing the amount of any Tax payable or reducing any Tax Relief available) to the Responsible Entity or to the Company or any Company Shareholder or be materially less advantageous to the Responsible Entity or Company Shareholders);
  - (ii) to extend the Relevant Date;
  - (iii) to adjourn or change the date of the Scheme Meeting; and/or
  - (iv) to extend the End Date.
- (b) Without limiting the foregoing, if a condition precedent is not satisfied by the date contemplated in the Timetable as the Second Court Date, the Company and the Responsible Entity agree (unless there is no reasonable prospect that the condition precedent will be satisfied) that the Second Court Date be deferred until such date (not later than the Business Day before the End Date) as reasonably required to enable more time to satisfy the condition precedent.

### 3.5 Appeal process

- (a) Without limiting clause 3.4, if the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme, the Company must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent barrister who is a Queens Counsel or Special Counsel with at least 15 years' experience advises in writing, a copy of which is provided to the Responsible Entity, that in their view an appeal would have no reasonable prospect of success).
- (b) Any costs incurred as a result of the operation of clause 3.5(a) are to be borne equally by the Company and the Responsible Entity.

### 3.6 Scheme voted down

Without limiting clause 3.4 or clause 3.5, if the Scheme is not approved by a majority in number of the Company Shareholders (other than Excluded Shareholders) present and voting (in person or by proxy) at the Scheme Meeting (headcount test), that fact will not of itself be treated as preventing the condition precedent in clause 3.1(c) from being satisfied, and the Company must, if counsel for the Responsible Entity has certified that there are reasonable prospects of success on such an application, do everything it reasonably can to obtain Court approval of the Scheme in accordance with section 411(4)(b) of the Corporations Act, and an order of the Court in accordance with section 411(4)(a)(ii)(B) of the Corporations Act that the headcount test need not be satisfied, and must consult and co-operate fully with the Responsible Entity in that regard.

### 3.7 Termination on failure of condition precedent

- (a) If:
  - (i) the Scheme has not become Effective by the End Date; or
  - (ii) any event occurs which would, or in fact does, prevent a condition precedent being satisfied and that condition precedent is not waived by the Company or the Responsible Entity or both (as applicable) in accordance with clause 3.3,then, subject to clause 3.7(b), the Responsible Entity, the Manager or the Company may terminate this deed without any liability to the others because of that termination.

- (b) A party will not be entitled to terminate this deed under clause 3.7(a) if the relevant occurrence, or the failure of the satisfaction of a condition precedent, or of the Scheme becoming Effective, arises out of, or is substantially contributed to by:
  - (i) a breach of this deed by that party; or
  - (ii) a deliberate act or omission of that party.
- (c) Subject to any rights or obligations arising under or under clauses that are expressed to survive termination of this deed, on termination of this deed no party will have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued before termination.

## 4. Transaction Steps

### 4.1 Scheme

The Company must propose the Scheme under which:

- (a) all of the Scheme Shares will be transferred to the Responsible Entity; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration.

### 4.2 Collection of KYC Information

- (a) The Responsible Entity appoints the Company to be its agent with authority and for the purpose of carrying out applicable customer identification procedures on the Responsible Entity's behalf in relation to Company Shareholders who provide KYC Information to the Company.
- (b) The Company accepts the appointment.

### 4.3 Scheme Consideration

The Responsible Entity undertakes to the Company (in its own right and as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to the Responsible Entity or its custodian of each Scheme Share under the terms of the Scheme, on the Implementation Date it will accept that transfer and the Responsible Entity will provide each Identified Scheme Shareholder the Scheme Consideration in accordance with the terms of the Scheme.

### 4.4 Ellerston Unit Offer

- (a) The Responsible Entity acknowledges and agrees that it will:
  - (i) make the Ellerston Unit Offer to Company Shareholders (other than Foreign Scheme Shareholders), which offer will be subject to the Scheme becoming Effective;
  - (ii) include in the Explanatory Booklet information relevant to the Ellerston Unit Offer (such information to form part of the Responsible Entity Information); and
  - (iii) issue Ellerston Units to Scheme Shareholders who have made a valid Election.
- (b) The Responsible Entity appoints the Company as its agent with authority to receive and process on behalf of the Responsible Entity all Elections, variations, withdrawals and revocations of Elections. The Company accepts the appointment.

### 4.4.5 Allotment and issue of Units

- (a) Subject to the Scheme becoming Effective, the Responsible Entity must:
  - (i) allot and issue the Units to Identified Scheme Shareholders in accordance with the Scheme on terms such that each such Unit will rank equally in all respects with each existing Unit as from the date of issue of the first-mentioned Units; ~~and~~



(ii) allot and issue the additional Units to Scheme Shareholders who have made a valid Election; and

~~(ii)~~(iii) ensure that on issue, each Unit so issued will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

- (b) To facilitate the issue of the Units to Identified Scheme Shareholders, the Company must provide to the Responsible Entity, or procure the provision to the Responsible Entity of, a complete copy of the Company Share Register as at the Scheme Record Date (which must include the name, address and registered holding of each Scheme Shareholder as at the Scheme Record Date) and whether the Scheme Shareholder is an Identified Scheme Shareholder, within 2 Business Days after the Scheme Record Date. The details and information to be provided under this clause must be provided in such form as the Responsible Entity, its Representatives or unit registry may reasonably require.
- (c) The Responsible Entity will not issue any Units to Foreign Scheme Shareholders or Scheme Shareholders who are not Identified Scheme Shareholders.

(d) The Responsible Entity will not offer participation in the Ellerston Unit Offer nor issue any Units under that offer to Foreign Scheme Shareholders.

#### **4.54.6 Foreign Scheme Shareholders**

- (a) The Responsible Entity will issue the Units that would otherwise have been issued to the Foreign Scheme Shareholders as Scheme Consideration to a nominee appointed by the Responsible Entity, in accordance with the terms of the Scheme (such Units, **Ineligible Units**).
- (b) The Responsible Entity must procure that the nominee deals with the Ineligible Units in accordance with the terms of the Scheme including remitting the net proceeds of withdrawal to the Company. On receipt of the net proceeds of withdrawal from the nominee, the Company must comply with the terms of the Scheme dealing with remitting payment to Foreign Scheme Shareholders.

#### **4.64.7 Identification of Scheme Shareholders**

- (a) This clause is subject to clause 4.6.
- (b) Scheme Consideration will not be provided to a Scheme Shareholder unless and until the Scheme Shareholder is an Identified Scheme Shareholder.
- (c) If a Scheme Shareholder is not an Identified Scheme Shareholder as at the Scheme Implementation Date, Units comprising the Scheme Consideration will be issued to the Scheme Shareholder within 10 Business Days after the earliest date that the Scheme Shareholder is an Identified Scheme Shareholder.
- (d) Units issued as provided in clause 4.7(c) will rank equally with other Units then on issue including for distributions subsequently made.

## **5. Implementation**

### **5.1 Company's obligations**

The Company must take all necessary steps to propose and (subject to all of the conditions in clause 3.1 being satisfied or waived in accordance with their terms) implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with the Responsible Entity on a regular basis about its progress in that regard), including by doing any acts it is authorised and able to do on behalf of the Company Shareholders and each of the following.

- (a) **(Preparation of Explanatory Booklet)** Prepare the Explanatory Booklet in accordance with clause 5.4.

- (b) **(Confirmation of the Company Information)** Before the Explanatory Booklet is provided to ASIC under section 411(2) of the Corporations Act and again before the Explanatory Booklet is despatched to the Company Shareholders, either:
  - (i) confirm in writing to the Responsible Entity that the Company Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) make the changes required to ensure that the Company Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission.
- (c) **(Joint Information)** Promptly contribute to and assist with the preparation and verification of the Joint Information.
- (d) **(Confirmation of Joint Information)** Before the Explanatory Booklet is provided to ASIC under section 411(2) of the Corporations Act and again before the Explanatory Booklet is despatched to the Company Shareholders, either:
  - (i) confirm in writing to the Responsible Entity that the Joint Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to the Responsible Entity the changes required to ensure that the Joint Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission,

to the extent that any part of the Joint Information is prepared or contributed solely by the Company.
- (e) **(Regulatory notifications)** In relation to the Regulatory Approvals, lodge with any Regulatory Authority within the relevant time periods all documentation and filings required by law to be so lodged by the Company in relation to the Scheme.
- (f) **(Independent Expert)** Appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report as soon as practicable (but ensuring that clause 5.1(y) is complied with in briefing the Independent Expert).
- (g) **(Consult with the Responsible Entity on ancillary documents)** Consult with the Responsible Entity as to the content and presentation of all relevant originating process, affidavits, submissions and draft minutes of Court orders and other civil procedure documents to be filed with the Court in connection with the Scheme, such consultation to include allowing the Responsible Entity a reasonable opportunity to review and make comments on drafts of those documents, consider in good faith, for the purpose of amending those drafts, comments from the Responsible Entity and its Representatives on those drafts, and provide the Responsible Entity with copies of any correspondence with ASIC and ASX in connection with the Scheme (and an opportunity to comment on drafts of any substantive written communications to ASIC or ASX).
- (h) **(approval of draft for ASIC and ASX)** As soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the IBC is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Appendix 7A to the Listing Rules.
- (i) **(liaison with ASIC and ASX)** As soon as reasonably practicable after the date of this deed:
  - (i) provide an advanced draft of the Explanatory Booklet, in a form approved in accordance with this deed to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Appendix 7A to the Listing Rules; and

- (ii) liaise with ASIC and ASX during the period of their respective consideration of that draft of the Explanatory Booklet and keep the Responsible Entity reasonably informed of any matters raised by ASIC or ASX in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with the Responsible Entity, to resolve any such matters.
- (j) **(approval of Explanatory Booklet)** As soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the IBC is held to consider approving the Explanatory Booklet for despatch to the Company Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act.
- (k) **(section 411(17)(b) statement)** Apply to ASIC for a statement under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Scheme.
- (l) **(confirmation of no objection from ASX)** Request ASX to confirm that it has no objection to the draft Explanatory Statement.
- (m) **(first Court hearing)** Apply to the Court under section 411(1) of the Corporations Act for orders directing the Company to convene the Scheme Meeting.
- (n) **(ASIC registration)** Request ASIC to register under section 412(6) of the Corporations Act the explanatory statement for the Scheme as contained in the Explanatory Booklet, in the form approved by the Court.
- (o) **(Scheme Meeting)** Use all reasonable endeavours necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Company Shareholders and convening and holding the Scheme Meeting, and using reasonable endeavours to ensure that all the Company Shareholders vote as a single class and with equal weight being given to their votes.
- (p) **(Proxy reports and KYC Information)** Cause the Company Registry to report to it and the Responsible Entity on:
  - (i) the status of proxy forms received by the Company Registry for the Scheme Meeting, at 15 Business Days before the Scheme Meeting, at each subsequent Business Day up to the deadline for receipt of proxy forms and at such deadline; and
  - (ii) those Company Shareholders that have provided their KYC Information; and provide such other information as it may receive concerning the voting intentions of the Company Shareholders to the Responsible Entity.
- (q) **(Court approval)** Subject to all conditions precedent in clause 3.1 (other than that in clause 3.1(d)) being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme, and consult with the Responsible Entity as to the content of all relevant affidavits, submissions and draft minutes of Court orders.
- (r) **(Court order)** Lodge with ASIC an office copy of any Court order approving the Scheme in accordance with the Timetable (or such later date as the Responsible Entity may agree in writing).
- (s) **(Implementation of Scheme)** If the Scheme is approved by the Court:
  - (i) subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, within the timeframe contemplated by the Timetable;
  - (ii) procure ASX to suspend trading in the Company Shares from the close of trading on the Effective Date;
  - (iii) with effect from the Scheme Record Date, determine the identity of Scheme Shareholders, which of those Shareholders are Identified Scheme Shareholders and the entitlements of the Identified Scheme Shareholders to the Scheme Consideration;

- (iv) subject to the Responsible Entity satisfying its obligations under clause 4.3 execute proper instruments of transfer of the Scheme Shares on behalf of the Scheme Shareholders and procure the registration in the Company Share Register of all transfers of Scheme Shares to the Responsible Entity under those instruments on the Implementation Date;
  - (v) use its best endeavours to ensure that the termination of official quotation and removal of Company from the official list of the ASX does not occur until after the Implementation Date; and
  - (vi) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme.
- (t) **(Regulatory notifications)** In relation to the Regulatory Approvals, lodge with any Regulatory Authority within the relevant time periods all documentation and filings required by law to be so lodged by Company in relation to the Scheme.
- (u) **(Acquirer-Responsible Entity Information)** Without the prior written consent of the Responsible Entity, not use the Responsible Entity Information or the Joint Information (to the extent any part of the latter is prepared or contributed solely by the Responsible Entity) for any purposes other than those expressly contemplated by this deed or the Scheme.
- (v) **(Compliance with laws)** Do everything reasonably within its power to ensure that the Scheme are effected in accordance with all applicable laws and regulations.
- (w) **(Engagement with major Company Shareholders)** In co-operation with the Responsible Entity and the Manager, consult with major Company Shareholders regarding the Scheme and encourage the public support of the Scheme by major Company Shareholders.
- (x) **(Practical assistance)** Make its officers and employees available for any meetings with the Company Shareholders which the Responsible Entity may seek, and permit the Responsible Entity to accompany them at such meetings and take such other steps as the Responsible Entity may require to facilitate an explanation by the Responsible Entity of the merits of the Scheme.
- (y) **(Presentation of information to the Independent Expert)** Allow the Responsible Entity such opportunities as it reasonably requests (and equal opportunity with [the Company](#)) to present to the Independent Expert in relation to its business, to assist the Independent Expert's understanding of those matters, and, to the extent any parts of the Independent Expert's Report are made available for review, provide those to the Responsible Entity and convey the Responsible Entity's comments to the Independent Expert (and enable the Responsible Entity to meet with the Independent Expert), and ensure that the Independent Expert is briefed in a manner which is balanced and fair to the Responsible Entity. The Company must ensure that the Responsible Entity receives equal access with the Company in briefing the Independent Expert. Any correspondence with the Independent Expert must be copied to all parties.

## 5.2 Manager's obligations

The Manager must assist the Company to comply with its obligations under clause 5.1.

## 5.3 Responsible Entity's obligations

The Responsible Entity must take all necessary steps to facilitate the Scheme [and the Ellerston Unit Offer](#) as soon as is reasonably practicable and, without limiting the foregoing, must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with the Company on a regular basis about its progress in that regard), including by doing each of the following:

- (a) **(Responsible Entity Information)** Prepare and provide to the Company the Responsible Entity Information for inclusion in the Explanatory Booklet to comply with all applicable laws, including the Corporations Act, the AML/CTF Act, RG 60 and the ASX Listing Rules relevant to the Responsible Entity Information and consult with Company as to the content and presentation of the Responsible Entity Information in the Explanatory Booklet, such consultation to include allowing Company a reasonable opportunity to review and make

comments on successive drafts of the Responsible Entity Information before lodgement of the Explanatory Booklet with ASIC.

- (b) **(Joint Information)** Promptly contribute to and assist with the preparation and verification of the Joint Information.
- (c) **(Confirmation of Joint Information)** Before the Explanatory Booklet is provided to ASIC under section 411(2) of the Corporations Act and to ASX under Appendix 7A to the Listing Rules and again before the Explanatory Booklet is despatched to the Company Shareholders, either:
  - (i) confirm in writing to the Company that the Joint Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to the Company the changes required to ensure that the Joint Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission,

to the extent that any part of the Joint Information is prepared or contributed solely by the Responsible Entity.

- (d) **(Regulatory notifications)** In relation to the Regulatory Approvals, lodge with any Regulatory Authority within the relevant time periods all documentation and filings required by law to be so lodged by the Responsible Entity in relation to the Scheme.
- (e) **(Assist Independent Expert)** Promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report as soon as practicable.
- (f) **(Review drafts of Explanatory Booklet)** As soon as practicable after delivery, review drafts of the Explanatory Booklet prepared by the Company and provide any comments on those drafts, with this review to incorporate a review of any parts of the Independent Expert's Report that have been supplied for review.
- (g) **(Confirmation of the Responsible Entity Information)** Before the Explanatory Booklet is provided to ASIC under section 411(2) of the Corporations Act and to ASX under Appendix 7A to the Listing Rules and again before the Explanatory Booklet is despatched to the Company Shareholders, either:
  - (i) confirm in writing to the Company that the Responsible Entity Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to the Company the changes required to ensure that the Responsible Entity Information in the form and context in which it appears in the Explanatory Booklet is not misleading or deceptive in any material respect and does not contain any material omission.
- (h) **(Deed Poll)** Before the First Court Date, enter into the Deed Poll and deliver it to Company. If the Scheme becomes Effective, discharge its obligations under and in accordance with the Deed Poll.
- (i) **(Court representation)** If requested by the Company or if the Responsible Entity acting reasonably considers it necessary or appropriate, procure that it is represented by counsel at the Court hearings convened for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act, at which, through its counsel or solicitors, the Responsible Entity will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme and the Deed Poll.
- (j) **(Company Information)** Without the prior written consent of the Company, not use the Company Information or the Joint Information (to the extent any part of the latter is



prepared or contributed solely by the Company) for any purposes other than those expressly contemplated by this deed or the Scheme.

- (k) **(Scheme Consideration)** If the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clauses 4.3 to ~~4.6~~4.7 on the Implementation Date and subsequently.

~~(l)~~ **(Ellerston Unit Offer)** If the Scheme becomes Effective, issue additional Ellerston Units in accordance with the Scheme to all Scheme Shareholders who have made a valid Election.

- ~~(m)~~ **(Compliance with laws)** Do everything reasonably within its power to ensure that the Scheme is ~~is~~ effected and the Ellerston Unit Offer is conducted in accordance with all applicable laws and regulations.

## 5.4 Explanatory Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, the Company must prepare the Explanatory Booklet in compliance with:
- (i) all applicable laws, in particular with the Corporations Act, the AML/CTF Act, RG 60 and the Listing Rules; and
  - (ii) this clause 5.4.
- (b) The Explanatory Booklet will include:
- (i) the terms of the Scheme and the Ellerston Unit Offer;
  - (ii) the notice of Scheme Meeting and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting;
  - (iii) the Company Information;
  - (iv) the Responsible Entity Information;
  - (v) the Joint Information;
  - (vi) a copy of this deed (without the schedules or annexures) or a summary of it;
  - (vii) a copy of the executed Deed Poll;
  - (viii) a copy of the Independent's Expert Report; and
  - (ix) the documents the Responsible Entity reasonably requires to be completed by Scheme Shareholders to enable the Responsible Entity to comply with the applicable customer identification procedure in respect of the Scheme Shareholders.
- (c) The Explanatory Booklet must include a statement that:
- (i) other than the Responsible Entity Information and the Independent Expert's Report, the Explanatory Booklet has been prepared by the Company and is the responsibility of the Company, and that the Responsible Entity does not assume any responsibility for the accuracy or completeness of the Explanatory Booklet (other than the Responsible Entity Information and the Joint Information);
  - (ii) the Responsible Entity Information has been provided by the Responsible Entity and is the responsibility of the Responsible Entity, and that the Company does not assume any responsibility for the accuracy or completeness of Responsible Entity Information; and
  - (iii) the Joint Information has been provided by the Responsible Entity and the Company and is their joint responsibility.
- (d) The Explanatory Booklet must include information on the Independent Directors' recommendations in connection with the Scheme in compliance with paragraph 8301 of Schedule 8 to the Corporations Regulations.

- (e) The Company must make available to the Responsible Entity drafts of the Explanatory Booklet (including any part of the draft of the Independent Expert's Report that has been made available to Company), consult with the Responsible Entity in relation to the content of those drafts, and consider in good faith, for the purpose of amending those drafts, comments from the Responsible Entity on those drafts, such consultation to include allowing the Responsible Entity a reasonable opportunity to review and make comments on successive drafts of the Company Information before lodgement of the Explanatory Booklet with ASIC. The Responsible Entity acknowledges and agrees that the Company has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as expressly provided in this deed with respect to the Responsible Entity Information.
- (f) The Company must seek approval from the Responsible Entity for the form and context in which the Responsible Entity Information appears in the Explanatory Booklet, which approval the Responsible Entity must not unreasonably withhold or delay, and the Company must not lodge the Explanatory Booklet with ASIC until such approval is obtained from the Responsible Entity.
- (g) The Company must take all reasonable steps to ensure that the Explanatory Booklet (other than the Responsible Entity Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to the Company Shareholders.
- (h) The Responsible Entity must take all reasonable steps to ensure that the Responsible Entity Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is despatched to the Company Shareholders.
- (i) The Responsible Entity and the Company must jointly take all reasonable steps to ensure that the Joint Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is despatched to the Company Shareholders.
- (j) The Company must provide to the Responsible Entity all such further or new information of which Company becomes aware that arises after the Explanatory Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Explanatory Booklet continues to comply with the Corporations Act, the AML/CTF Act, RG 60 and the Listing Rules.
- (k) The Responsible Entity must provide to the Company all such further or new information of which the Responsible Entity becomes aware that arises after the Explanatory Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Responsible Entity Information continues to comply with the Corporations Act, the AML/CTF Act, RG 60 and the Listing Rules.
- (l) The Company and the Responsible Entity each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Scheme are in the interests of the Company Shareholders and the Responsible Entity and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 5.4 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

## 5.5 Conduct of the Company business

- (a) From the date of this deed up until and including the Implementation Date, the Company and the Manager must ensure that the Company:
  - (i) conducts its business in the ordinary course and substantially (subject to any applicable laws, regulations and Regulatory Approvals) in the manner in which such business has been conducted in the period before the date of this deed and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals;

- (ii) make all reasonable efforts to:
    - (A) keep available the services of their officers and employees; and
    - (B) preserve their relationships with Regulatory Authorities, ratings agencies, customers, suppliers, landlords, trade unions, licensors, licensees and others with whom they have business dealings;
  - (iii) not enter any lines of business or other activities in which the Company is not engaged at the date of this deed; and
  - (iv) respond to any reasonable request from the Responsible Entity and its Representatives (including in response to requests for information from stock exchanges and Regulatory Authorities) for information concerning the Company and its business.
- (b) Nothing in this clause 5.5 requires the Company to provide the Responsible Entity with any information:
- (i) in breach of an obligation of confidentiality to any person;
  - (ii) of a commercially sensitive nature, except under clause 5.5(a); or
  - (iii) concerning the consideration of the Scheme by the Company Board or the Company management,
- or to provide access or co-operation to the extent it would result in a disruption to any material aspects of the Company Group's businesses and operations.

## 5.6 Operation of the Ellerston Fund

From the date of this deed up until and including the Implementation Date, the Responsible Entity must ensure that the Responsible Entity operates the Ellerston Fund in the ordinary course and substantially (subject to any applicable laws, regulations and Regulatory Approvals) in the manner in which the Ellerston Fund has been conducted in the period before the date of this deed and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals.

## 5.7 Independent Board Committee recommendations and Intentions

- (a) The parties acknowledge that the Joint Public Announcement will state that the IBC:
  - (i) unanimously considers the Scheme to be in the best interests of the Company Shareholders; and
  - (ii) recommends that the Company Shareholders approve the Scheme Resolution, in each case in the absence of a Superior Proposal for Company and subject to the Independent Expert's Report concluding that the Scheme is in the best interests of the Company Shareholders (**Recommendation**).
- (b) The Company represents and warrants that the IBC and each of the Independent Directors will:
  - (i) not withdraw the statements and recommendations set out in the Joint Public Announcement;
  - (ii) in the Explanatory Booklet, state that the IBC unanimously considers the Scheme to be in the best interests of the Company Shareholders and unanimously recommends that the Company Shareholders approve the Scheme Resolution, in the absence of a Superior Proposal for Company, and will not withdraw those statements or recommendations once made; and
  - (iii) does not make any public statement to the effect, or take any other action that suggests, that the Scheme is no longer so considered or recommended,

unless any of the following occur:

  - (iv) the Independent Expert concludes in the Independent Expert's Report (either initially or in any updated report) that the Scheme is not in the best interests of the Company Shareholders; or



- (v) the Company receives a Competing Proposal and, subject to the Company complying with clause 10.6, a majority of the IBC determines that the Competing Proposal constitutes a Superior Proposal and any Independent Director, after considering the matter in good faith, no longer considers the Scheme to be in the best interests of the Company Shareholders;
- (c) The Company must ensure that the Joint Public Announcement and the Explanatory Booklet state that each Independent Director intends to cause any Company Shares in which they have a relevant interest to be voted in favour of the Scheme Resolution (**Voting Intention**), which statement must not be qualified in any way other than by words to the effect of 'in the absence of a Superior Proposal' and in the case of the Joint Public Announcement only 'subject to the Independent Expert concluding that the Scheme is in the best interests of the Company Shareholders'.
- (d) The Responsible Entity acknowledges that each Independent Director may, at any time after the date of this deed, publicly (or otherwise) withdraw, change or in any way qualify their Voting Intention if:
  - (i) a Superior Proposal is made; or
  - (ii) the Independent Expert concludes in the Independent Expert's Report (either initially or in any updated report) that the Scheme is not in the best interest of Company Shareholders;
- (e) The Company represents and warrants to the Responsible Entity that each Independent Director has confirmed their agreement not to do anything inconsistent with their Voting Intention (including withdrawing, changing, or in any way qualifying their Recommendation or Voting Intention) other than in circumstances referred to in clause 5.7(d).
- (f) Nothing in this clause applies to a Company Director who is not an Independent Director and the Company does not give any warranty or undertaking in relation to any such Company Director.

## 5.8 Early termination of EGI Management Agreement and related matters

- (a) Subject to and conditional on the Scheme becoming Effective, the parties acknowledge and agree that:
  - (i) the EGI Management Agreement will by force of this clause be terminated with effect on and from the Implementation Date;
  - (ii) on the Implementation Date, the Company must pay the Responsible Entity the Early Termination Fee; and
  - (iii) as soon as reasonably practicable after the Implementation Date or such later date as the Responsible Entity determines from time to time, the investment portfolio of the Company will be sold and transferred to the Responsible Entity in accordance with clause 5.8(b).
- (b) For the purpose of clause 5.8(a)(a)(iii) the parties acknowledge and agree:
  - (i) before the Implementation Date, the parties will enter into a sale agreement under which the Company agrees to sell and the Responsible Entity agrees to purchase each security in each class of the Company's investment portfolio as at the Implementation Date (**Portfolio** and **Portfolio Sale Agreement** respectively);
  - (ii) the value of consideration payable by the Responsible Entity to the Company under the Portfolio Sale Agreement will be the aggregate market value of the Portfolio as agreed between the Company and the Responsible Entity on the Implementation Date (**Sale Consideration**) and
  - (iii) the Sale Consideration will be settled on terms as agreed between the parties from time to time.

## 6. Actions on and following Implementation Date

### 6.1 Reconstitution of the board of each member of Company Group

- (a) On the Implementation Date, but subject to the Scheme Consideration having been provided in full to Identified Scheme Shareholders and receipt by Company of signed consents to act, the Company must take all actions necessary (and in accordance with the constitution of the Company, the Corporations Act and the Listing Rules) to reconstitute the Company Board in accordance with the directions of Responsible Entity.
- (b) Without limiting clause 6.1(a), on the Implementation Date, subject to receipt by the Company of written notices of resignation to the effect that the outgoing directors have no claim outstanding against any the Company Group, the Company must procure that all outgoing Company Directors resign from the Company Board.

### 6.2 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:

- (a) the Responsible Entity will provide the Scheme Consideration to Identified Scheme Shareholders in accordance with the Scheme;
- (b) the Company Board will be reconstituted in accordance with clause 6.1; and
- (c) [the](#) Responsible Entity will acquire all of the Scheme Shares.

## 7. Representations and Warranties

### 7.1 Responsible Entity Representations and Warranties

The Responsible Entity represents and warrants to the Company (in its own right and separately as trustee or nominee for each of the other Company Parties) that each Responsible Entity Representation and Warranty is true and correct.

### 7.2 Company Representations and Warranties

The Company represents and warrants to the Responsible Entity (in its own right and separately as trustee or nominee for each of the other Responsible Entity Parties) that each Company Representation and Warranty is true and correct.

### 7.3 Timing of representations and warranties

Unless expressed to be given at a particular time (in which case it is given at that time), each Responsible Entity Representation and Warranty and each Company Representation and Warranty is given:

- (a) at the date of this deed; and
- (b) at all times up until 8.00am on the Second Court Date.

### 7.4 Survival of representations

Each Responsible Entity Representation and Warranty and Company Representation and Warranty:

- (a) is severable; and
- (b) survives the termination of this deed (but does not survive, and will be taken to have no further force or effect following implementation of the Scheme).

## 8. Releases

### 8.1 Company Parties

- (a) Without limiting the Responsible Entity's rights under clause 11, the Responsible Entity (for itself and as agent of every member of the Responsible Entity Group) releases all rights against and agrees with Company that it will not make a Claim against, any Company Party (other than the Company) in connection with:
- (i) the Company's execution or delivery of this deed;
  - (ii) any breach of any representation, covenant and warranty of the Company in this deed;
  - (iii) the implementation of the Scheme; or
  - (iv) any disclosure made by any Company Party that contains any statement which is false or misleading whether in content or by omission,
- except to the extent the relevant Company Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. The Company receives and holds the benefit of this clause as trustee for each other Company Party.

### 8.2 ~~Acquirer~~ Responsible Entity Parties

- (a) Without limiting the Company's rights under clause 11, the Company releases its rights against, and agrees with the Responsible Entity that it will not make a Claim against, any Responsible Entity Party (other than the Responsible Entity) in connection with:
- (i) the Responsible Entity's execution or delivery of this deed;
  - (ii) any breach of any representation, covenant and warranty of the Responsible Entity in this deed;
  - (iii) the implementation of the Scheme; or
  - (iv) any disclosure made by the Responsible Entity Party that contains any statement which is false or misleading whether in content or by omission,
- except to the extent that the relevant Responsible Entity Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. The Responsible Entity receives and holds the benefit of this clause as trustee for each other Responsible Entity Party.

### 8.3 Directors' and officers' insurance

The Responsible Entity acknowledges that the Company will prior to the Effective Date, arrange for the cover currently provided under its directors' and officers' insurance policy which expires on 31 August 2020 (**Policy**) to be extended for a further period of 12 months.

### 8.4 Obligations in relation to directors' and officers' insurance

From the Implementation Date, the Company must not:

- (a) vary or cancel the Policy; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim by a director or officer of the Company under the Policy as extended under clause 8.3 above.

Nothing in clause 8.3 or 8.4 will require the Responsible Entity or the Company to incur any additional premium after the Implementation Date or require the Company to not fulfil its contractual obligations under the Policy.

## 9. Public Announcements

### 9.1 Announcement of the Scheme

Immediately after the execution of this deed, the Company and the Responsible Entity must each issue the Joint Public Announcement.

### 9.2 Other public announcements

Subject to clause 9.3, prior to making any public announcement or disclosure of or in relation to the Scheme or any other transaction the subject of this deed or the Scheme each party must use its reasonable endeavours to consult with the other party as to, and seek to agree with the other party (each party acting reasonably and in good faith), the timing, form and content of that announcement or disclosure.

### 9.3 Required announcement

Where a party is required by applicable law, the ASX Listing Rules or any other applicable stock exchange regulation to make any announcement or to make any disclosure in connection with the Scheme or any other transaction the subject of this deed or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other parties as much notice as reasonably practical.

### 9.4 Statements on termination

The parties must act in good faith and use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 9.2 and 9.3 apply to any such statements or disclosures.

## 10. Exclusivity

### 10.1 Termination of existing discussions

The Company warrants that, as at the time of execution of this deed, it is not, and must ensure that none of its Representatives are, in any negotiations or discussions, and that it has, and its Representatives have, ceased any existing negotiations or discussions, in respect of any Competing Proposal (or which may reasonably be expected to lead to a Competing Proposal) with any person.

### 10.2 No shop restriction

During the Exclusivity Period, except with the prior written consent of the Responsible Entity, the Company must not, and must ensure that none of its Representatives or agents, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

### 10.3 No talk restriction

During the Exclusivity Period, the Company must not, and must ensure that none of its Representatives or agents, (whether directly or indirectly) enter into, continue or participate in negotiations or discussions with, or enter into any agreement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Company; or
  - (b) the Competing Proposal has been publicly announced,
- unless:
- (c) the IBC, acting in good faith, determines (after having taken written advice from its external financial and legal advisers) that, where there is a Competing Proposal, the

Competing Proposal is or may reasonably be expected to lead to a Superior Proposal having regard to the steps which the Company Board proposes to take; and

- (d) the IBC, acting in good faith, determines (after having taken written advice from its external legal advisers) that failing to respond to that Competing Proposal would constitute or would be likely to constitute a breach of the Company Board's fiduciary or statutory duties,

but only if that Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Company or any of its Representatives in a manner that would breach its obligations under this clause 10.3 or clause 10.2 or 10.4.

#### **10.4 No due diligence**

Without limiting the general nature of clause 10.3, during the Exclusivity Period the Company must not, and must ensure that its Representatives and agents do not, make available to any Third Party, or permit any Third Party, to receive any non public information relating to the Company in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, unless:

- (a) the Competing Proposal has not been directly or indirectly solicited, invited, encouraged or initiated in breach of this clause or clause 10.2 or 10.3;
- (b) the IBC, acting in good faith, determines (after having taken written advice from its external financial and legal advisers) that:
  - (i) the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal having regard to the steps which the IBC proposes to take; and
  - (ii) failing to provide any non-public information to a Third Party would be likely to constitute a breach of the IBC's fiduciary or statutory duties; and
- (c) if the Company proposes that any non-public information be provided to a Third Party, before the Company provides such information, the Third Party has entered into a written agreement in favour of the Company regarding the use and disclosure of the confidential information and that restricts the Third Party's ability to solicit the employees of any member of the Company and that information has also been provided to the Responsible Entity.

#### **10.5 Notification by Company**

- (a) Subject to clause 10.5(b), during the Exclusivity Period, the Company must promptly notify the Responsible Entity if:
  - (i) the Company is approached, directly or indirectly, by any Third Party to take any action of a kind referred to in clause 10.3 or 10.4; or
  - (ii) the Company proposes to take any action of a kind referred to in clause 10.3 or 10.4 (for the avoidance of doubt, such notice being given before the taking of the relevant action).
- (b) A notification given under clause 10.5(a) must include a summary of all material terms and conditions of the actual, proposed or potential Competing Proposal including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal.

#### **10.6 Response to Competing Proposal**

- (a) During the Exclusivity Period, the Company must not, and must procure that its Representatives do not publicly recommend a Competing Proposal or enter into any legally binding agreement, arrangement or understanding to give effect to or implement a Competing Proposal unless the Company has provided the Responsible Entity with full details of the Competing Proposal, including the identity of the relevant Third Party, the consideration offered under its Competing Proposal and any conditions to the Completion Proposal, and at least 5 Business Days to match the terms of the Competing Proposal. The Company's obligations under this clause 10.6 apply in respect of each new Competing Proposal and any material variation or amendment to a Competing Proposal.

- (b) If the IBC determines that Responsible Entity matches or exceeds the terms of a Competing Proposal (**Responsible Entity Counter Proposal**), then the Company and the Responsible Entity and each of their respective Representatives must use their best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Responsible Entity Counter Proposal and to enter into an amended deed to give effect to those amendments and to implement the Responsible Entity Counter Proposal, and the Company must use its best endeavours to procure that the IBC unanimously recommends the Responsible Entity Counter Proposal to the Company Shareholders and not recommend the applicable Competing Proposal.

## 10.7 Normal provision of information

Nothing in this clause prevents a party or its Representatives or agents from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Regulatory Authority; or
- (e) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business.

## 10.8 Acknowledgement

Each of the Company and the Responsible Entity has required the other to agree to the obligations set out in this clause in consideration of it proceeding with the Scheme and incurring significant costs in doing so. In the absence of obtaining these obligations from the other party, each of Company and Responsible Entity would not have entered into this deed.

# 11. Termination

## 11.1 General rights

- (a) The Responsible Entity or the Company may terminate this deed by written notice to the other at any time before 8.00am on the Second Court Date if:
  - (i) the other has materially breached any provision of this deed including any Company Representation and Warranty or Responsible Entity Representation and Warranty (as applicable);
  - (ii) the party wishing to terminate has given written notice to the other in a timely manner setting out the relevant circumstances and stating an intention to terminate this deed; and
  - (iii) the relevant circumstances continue to exist for 10 Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date).
- (b) The Responsible Entity may terminate this deed by written notice to each other party if the Company fails to issue the Joint Public Announcement in accordance with clause 9.1 or if, after issuing the Joint Public Announcement, the IBC:
  - (i) makes a public statement withdrawing or adversely changing or modifying its or their recommendation that the Company Shareholders vote in favour of the Scheme Resolution or makes a recommendation or statement that is inconsistent with such recommendation or statement; or
  - (ii) without limiting the foregoing, makes a public statement indicating that they no longer support the Scheme or that they support another transaction (including a Competing Proposal).



- (c) The Responsible Entity or the Company may terminate this deed by written notice to the others in the circumstances set out in, and in accordance with clause 3.7.

## **11.2 Effect of termination**

If this deed is validly terminated by a party in compliance with clauses 3.7 or 11.1, this deed will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued before termination and the provisions of this clause and of clauses 1, 7.4, 8, 9, 12, 13, 14 and 15, which will remain in force after the termination.

## **11.3 Termination by written agreement**

The parties may terminate this deed by another written agreement between them.

# **12. Confidentiality**

## **12.1 Confidentiality Obligation**

Each party acknowledges and agrees that all information received by it from any other party before or after the date of this deed is confidential and must remain confidential and not be disclosed to any Third Party without the consent of the other parties.

## **12.2 Exceptions to confidentiality**

A party may make any disclosures in relation to this deed as it thinks necessary:

- (a) to its professional advisers, insurers, bankers, financial advisers and financiers, if those persons undertake to keep information disclosed confidential;
- (b) to comply with any law or requirement of any Regulatory Authority or the rules of ASX; or
- (c) to its representatives to whom it is necessary to disclose the information if that representative undertakes to keep the information confidential.

# **13. GST**

## **13.1 Recovery of GST**

If GST is payable, or notionally payable, on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (**GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

## **13.2 Liability net of GST**

Where any indemnity, reimbursement or similar payment under this deed is based on any cost, expense or other liability, it may be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

## **13.3 Adjustment events**

If an adjustment event occurs in relation to a supply under or in connection with this deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties and the supplier shall issue an adjustment note to the recipient.

## **13.4 Survival**

This clause will continue to apply after expiration or termination of this deed.

### 13.5 Definitions

Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) have the same meaning in this clause.

## 14. Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this deed:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, fax or email to the address, fax number or email address specified in the Details or the address, fax number or email address last notified by the intended recipient to the sender;
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error; and
  - (iv) in the case of email, when the message is sent unless a transmission failure report is received or generated by the sender's computer or device,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place.

## 15. Limitation of Responsible Entity's liability

- (a) The parties agree that the Responsible Entity enters into this deed as trustee and responsible entity of the Ellerston Fund and in no other capacity.
- (b) The parties agree that the liability of the Responsible Entity to the Company is limited to the amount that the Responsible Entity actually receives in the exercise of its right of indemnity against the assets of the Ellerston Fund.
- (c) Each of the Company and the Manager may enforce its rights under this deed against the Responsible Entity only to the extent that the Responsible Entity's right of indemnity out of the assets of the Ellerston Fund.
- (d) If the Company or the Manager does not recover all money owing to it by enforcing the rights referred to in clause 15(c), it may not seek to recover the shortfall by:
  - (i) bringing proceedings against the Responsible Entity in its personal capacity; or
  - (ii) applying to have the Responsible Entity wound up or proving in the winding up of the Responsible Entity unless another creditor has initiated proceedings to wind up the Responsible Entity.
- (e) Each of the Manager and the Company waives its rights and releases the Responsible Entity from any personal liability whatever, in respect of any loss or damage which:
  - (i) it may suffer as a result of the Responsible Entity's non-performance of its obligations under this deed; and



- (ii) cannot be paid or satisfied out of the assets of the Ellerston Fund out of which the Responsible Entity is entitled to be indemnified in respect of any liability incurred as trustee.
- (f) The limitation in this clause does not apply to the extent that any liability of the Responsible Entity arises from fraud, gross negligence or breach of trust by the Responsible Entity as the trustee of the Ellerston Fund. For these purposes, the parties agree that the Responsible Entity cannot be regarded as having acted fraudulently, with gross negligence or in breach of trust to the extent to which the fraud, gross negligence or breach of trust has been contributed to by a failure of the Company or the Manager to fulfil its obligations under this deed or any other act or omission of either the Manager or the Company or any other person.
- (g) Nothing in clause 15(f) will make the Responsible Entity liable for any claim for an amount greater than the amount which the Responsible Entity would have been able to claim and recover from the assets of the Ellerston Fund in relation to the relevant liability if the Responsible Entity's right of indemnification out of the assets of the Ellerston Fund had not been prejudiced by the Responsible Entity's failure to properly perform its duties.
- (h) The Responsible Entity is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless the Responsible Entity's liability is limited in the same manner as set out above in this clause.
- (i) Each of the Manager and the Company acknowledges and agrees that in respect of any liability or obligation incurred by the Responsible Entity under or arising out of this deed, it will not be permitted to set off liabilities or obligations against it or have any recourse to the assets of any managed investment scheme or trust of which the Responsible Entity is the responsible entity or trustee, other than the Ellerston Fund.
- (j) This clause applies despite any other provision of this deed and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this deed. In the event of any inconsistency, this clause prevails and survives termination of this deed.

## 16. General Provisions

### 16.1 Amendment

- (a) This deed other than clause 8 may be amended only by another deed executed by all the parties.
- (b) Clause 8 may be amended only by another deed executed by all of the parties and the consent of all of the Responsible Entity Parties and all of the Company Parties.

### 16.2 Assignment

A party cannot assign, charge, encumber or otherwise deal with at law or in equity any of its rights or obligations under this deed, or attempt or purport to do so, without the prior consent of each other party.

### 16.3 Costs and stamp duty

Each party must each bear their own costs arising out of the negotiation, preparation and execution of this deed. All stamp duty (including fines, penalties and interest) payable on or in connection with this deed and any instrument executed under or any transaction evidenced by this deed must (subject to the remaining provisions of this clause) be borne by Responsible Entity.

### 16.4 Counterparts

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

### **16.5 Entire agreement**

This deed contains the entire agreement between the parties with respect to its subject matter. This deed sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

### **16.6 Further assurances**

Each party must do anything necessary (including executing agreements and documents) to give full effect to this deed.

### **16.7 Governing law and jurisdiction**

This deed is governed by the laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

### **16.8 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Scheme.

### **16.9 No third party beneficiary**

This deed is binding upon and inures solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed, express or implied, is intended to or will confer upon any other person, other than the Responsible Entity Parties and the Company Parties (to the extent set out in clause 8), any third party beneficiary rights.

### **16.10 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

### **16.11 Severability of provisions**

Any provision of this deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this deed nor affect the validity or enforceability of that provision in any other jurisdiction.

### **16.12 Waiver of immunity**

With respect to any legal action or proceedings arising out of or in any way related to this deed and related non contractual matters, Responsible Entity irrevocably and unconditionally:

- (a) waives any immunity that it or its assets may have at any time (including from suit, judgment, attachment, execution or other enforcement);
- (b) agrees that it will not raise, rely on or claim any immunity; and
- (c) consents to any relief or any process, including against any property (irrespective of its use or intended use).

# Schedule 1 - Responsible Entity Representations and Warranties

1. The Responsible Entity is a validly existing corporation registered under the laws of its place of incorporation. The Ellerston Fund has been duly constituted and registered by ASIC. The Responsible Entity is the sole trustee and responsible entity of the Ellerston Fund.
2. The execution and delivery of this deed has been properly authorised by all necessary corporate action and the Responsible Entity has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed.
3. This deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which the Responsible Entity is a party or is bound.
4. As at the date of this deed, the Ellerston Fund has 26,285,209.0686 units on issue (designated as Class A units), and the Responsible Entity has not issued (and is not required to issue) any other securities or instruments which are still outstanding (or may become outstanding) and which may convert into Units or other interests in the Ellerston Fund by way of new issue.
5. The Responsible Entity Information provided to Company for inclusion in the Explanatory Booklet will:
  - (a) be provided in good faith;
  - (b) comply in all material respects with the requirements of the Corporations Act, the AML/CTF Act, the Listing Rules and RG 60, including disclosure of all the information that would be required under paragraphs (c), (f), (g), (h), (i), (k), (l) and (m) of section 636(1) of the Corporations Act to be included in a bidder's statement if Responsible Entity were offering the Scheme Consideration as consideration under a takeover bid; and
  - (c) be provided on the understanding that Company will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act.
6. The Joint Information provided by Responsible Entity to Company for inclusion in the Explanatory Booklet will, to the extent that the Joint Information relates solely to Responsible Entity or has been prepared by Responsible Entity:
  - (a) be provided in good faith;
  - (b) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60, including disclosure of all the information that would be required under paragraphs (c), (f), (g), (h), (i), (k), (l) and (m) of section 636(1) of the Corporations Act to be included in a bidder's statement if Responsible Entity were offering the Scheme Consideration as consideration under a takeover bid; and
  - (c) be provided on the understanding that Company will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act.
7. All information provided by or on behalf of Responsible Entity to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Explanatory Booklet.
8. As at the date the Explanatory Booklet is despatched to the Company Shareholders, the Responsible Entity Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise).
9. As at the date of this deed, the Responsible Entity is not in breach of its continuous disclosure obligations under section 675 of the Corporations Act and is not relying on the exclusion in

regulation 6CA.1.01 of the Corporations Regulations 2001 (Cth) to withhold any information from disclosure and its public disclosures in relation to the Ellerston Fund (taken as a whole) are not misleading in any material respect (whether by omission or otherwise).

10. The Responsible Entity will, as a continuing obligation, provide to Company all such further or new information which may arise after the Explanatory Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Responsible Entity Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise).
11. There are no restrictions on the Responsible Entity issuing Units to Identified Scheme Shareholders in accordance with the Scheme [and under the Ellerston Unit Offer](#), whether under the constitution of the Ellerston Fund or otherwise.

# Schedule 2 - Company Representations and Warranties

1. The Company is a validly existing corporation registered under the laws of its place of incorporation.
2. The execution and delivery of this deed by the Company has been properly authorised by all necessary corporate action and the Company has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed.
3. This deed constitutes legal, valid and binding obligations on the Company and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which the Company or any of its Subsidiaries is a party or to which they are bound.
4. The Company Information contained in the Explanatory Booklet:
  - (a) will be prepared and included in the Explanatory Booklet in good faith; and
  - (b) will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60.
5. The Joint Information provided by the Company for inclusion in the Explanatory Booklet will, to the extent that the Joint Information relates solely to the Company or has been prepared by the Company:
  - (a) be provided in good faith; and
  - (b) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
  - (c) be provided on the understanding that Responsible Entity will rely on that information for the purposes of preparing the section of the Explanatory Booklet containing the Joint Information,
6. As at the date the Explanatory Booklet is despatched to the Company Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Responsible Entity Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise).
7. As at the date of this deed, the Company is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Scheme or as disclosed in writing to Responsible Entity on or before the Disclosure Cut-off Date) and its public disclosures to ASX (taken as a whole) are not misleading in any material respect (whether by omission or otherwise).
8. To the best of the Company's knowledge, after making due and proper enquiry, all information [the](#) Company has provided to the Responsible Entity or its Representatives ~~as at and from the Disclosure Cut-off Date~~ [prior to the date of this deed](#) is not misleading in any material respect (whether by omission or otherwise), including that there are reasonable grounds for all statements as to future matters and a reasonable basis for all statements of opinion in that information.
9. After making due and proper enquiry, the Company is not aware of any material information relating to its businesses that has not been disclosed to the Responsible Entity or its Representatives as at the date of this deed which:
  - (a) is objectively necessary for the Responsible Entity to make an informed decision as to whether to proceed with the Scheme; or
  - (b) might reasonably be expected to cause Responsible Entity not to proceed with the Scheme at all or to only proceed with the Scheme on materially different terms.

10. As at the date of this deed, the total issued capital of the Company is 105,300,394 Company Shares and there are no other Company options, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing).

# Schedule 3 - Form of Scheme

[Not reproduced here. Await Explanatory Booklet.]



# Schedule 4 - Form of Deed Poll

[Not reproduced here. Await Explanatory Booklet.]

# Schedule 5 - Indicative timetable

[Not reproduced here. Refer ASX announcement dated 9 April 2020 for updated indicative timing. Await Explanatory Booklet.]

# Signing page

**EXECUTED** as a deed.

## COMPANY

**Executed by Ellerston Global Investments Limited** in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

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

\_\_\_\_\_  
Name of director/company secretary (print)

## RESPONSIBLE ENTITY

**Executed by Ellerston Capital Limited** as responsible entity of the Ellerston Global Mid Small Cap Fund ARSN 609 725 868 in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

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

\_\_\_\_\_  
Name of director/company secretary (print)

## MANAGER

**Executed by Ellerston Capital Limited** as the manager of Ellerston Global Investments Limited in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

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

\_\_\_\_\_  
Name of director/company secretary (print)