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CheckVault Pty Ltd

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Perpetual Corporate Trust Limited

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# Escrow Deed

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**Date**

## Parties

**CheckVault Pty Ltd** ACN 159 355 781 of Level 26, 1 Bligh Street, Sydney, New South Wales 2000 (**CheckVault**)

**Perpetual Corporate Trust Limited** ACN 99 000 341 533 of Level 12, Angel Place, 123 Pitt Street, Sydney, New South Wales, 2000 (**Agent**)

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## Agreed terms

### 1 Definitions

In this document these terms have the following meanings:

<b>Account Bank</b>	Australian and New Zealand Banking Group Limited or, if CheckVault has nominated another bank in accordance with <b>clause 3.2</b> , the bank so nominated.
<b>Account Bank Criteria</b>	The relevant bank must: <ul style="list-style-type: none"><li>(a) be one of Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, Commonwealth Bank of Australia, National Australia Bank Limited; or</li><li>(b) satisfy such other criteria as CheckVault and the Agent may from time to time agree.</li></ul>
<b>Account Charges</b>	Taxes and bank or administrative charges (including brokerage, stamp duty, funds transfer fees and any other out of pocket expenses) payable by the Agent in respect of the Bank Accounts from time to time.
<b>Accrued Interest</b>	All interest or other income accrued in respect of the Bank Accounts.
<b>AML Act</b>	The <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth).
<b>AML Compliance Program</b>	The anti-money laundering and counter-terrorism financing program established by CheckVault or the Agent, as the case may be, for the purposes of Part 7 of the AML Act.
<b>Applicable Law</b>	Any law, regulation or rule that is relevant to the role that either CheckVault or the Agent performs in relation to the Escrow Account or the Escrow Services,

	including, but not limited to, the Corporations Act and the AML Act.
<b>Bank Account</b>	Each of the Escrow Account and the Reserve Account.
<b>Bank Account Deed</b>	The document between CheckVault, the Agent and the Account Bank which sets out the terms on which the Bank Accounts are maintained.
<b>Business Day</b>	A day which is not a Saturday, Sunday or public or bank holiday in Sydney.
<b>CheckTender Website</b>	The website located at <i>checktender.com.au</i> maintained and operated by CheckTender Pty Limited.
<b>Corporations Act</b>	The <i>Corporations Act 2001</i> (Cth).
<b>Deposit</b>	An amount deposited into the Escrow Account.
<b>Deposit Date</b>	In relation to a Deposit, the date on which the relevant Deposit is made.
<b>Depositor</b>	In relation to a Deposit, the person who made the relevant Deposit.
<b>Direction</b>	Each direction or instruction which CheckVault is required or entitled to give to the Agent under this document including each Release Direction and each direction under <b>clause 2.2(d)</b> , each in such form as CheckVault and the Agent may agree from time to time.
<b>Escrow Account</b>	The account maintained by Australia and New Zealand Banking Group Limited and titled <i>CheckVault Escrow Account</i> and each other bank account opened and maintained by the Agent in accordance with this document (or, in the circumstance contemplated in <b>clause 6.4(b)</b> , opened and maintained by CheckVault) with the Account Bank and titled <i>CheckVault Escrow Account</i> or such other name as the Agent and CheckVault may from time to time agree. Except where stated, it includes each Investment Account.
<b>Escrow Amount</b>	Each Deposit in relation to which CheckVault has given the Agent an Escrow Notice less: <ul style="list-style-type: none"> <li>(i) all Released Amounts in respect of that Escrow Amount which have been paid; and</li> <li>(ii) Expenses in respect of the Escrow Amount which have not been paid by the related Escrow Parties,</li> </ul> as determined by CheckVault from time to time.

<b>Escrow Notice</b>	A notice given under either <b>clause 2.1(a)</b> or <b>2.2(b)</b> .
<b>Escrow Party Details</b>	The name, address, Tax File Number and other information in respect of Escrow Parties agreed from time to time between CheckVault and the Agent.
<b>Escrow Party Representations and Acknowledgements</b>	As set out in schedule 1
<b>Escrow Party Undertakings</b>	As set out in schedule 2.
<b>Escrow Parties</b>	The persons who are parties to a Transaction in respect of which CheckVault has given to the Agent an Escrow Notice.
<b>Escrow Services</b>	The meaning given in the CheckTender Website.
<b>Escrow Terms</b>	<b>Clause 3</b> and each subsequent clause of this document and includes the Escrow Party Representations and Acknowledgements and the Escrow Party Undertakings.
<b>Expenses</b>	<p>In respect of an Escrow Amount or a Transaction, costs, charges, expenses, losses and liabilities (other than Account Charges) incurred by either CheckVault or the Agent in connection with holding or dealing with the relevant Escrow Amount and performing its obligations and exercising its rights under this document and the Bank Account Deed including costs, charges, expenses, losses and liabilities in respect of:</p> <ul style="list-style-type: none"> <li>(a) any dispute relating to the relevant Escrow Amount;</li> <li>(b) any investigation by any Government Agency in relation to the Escrow Amount or any related Escrow Party;</li> <li>(c) any of the Escrow Party Representations and Acknowledgements given by the Escrow Parties in respect of the Escrow Amount being untrue or any breach by the Escrow Parties of the Escrow Party Undertakings so far as they relate to the Escrow Amount; and</li> <li>(d) the Agent exercising any of its rights and powers under <b>clause 7.1</b> or <b>clause 7.2</b>.</li> </ul>
<b>Government Agency</b>	(a) A government or government department or other body;

- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Insolvency Event**

Any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act 2001 or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them; or
- (i) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

<b>Insolvency Control Event</b>	An administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or a controller is appointed in respect of any property of a corporation.
<b>Investment Account</b>	Each account opened and maintained as contemplated by <b>clause 3.3(a)</b> .
<b>Minimum Reserve</b>	\$35,000.
<b>Payment Request</b>	The meaning given in <b>clause 4.3(b)</b> .
<b>Release Date</b>	In respect of any Escrow Amount, the date on which the relevant Escrow Amount is paid to the Escrow Parties in accordance with the Escrow Terms.
<b>Release Direction</b>	A direction from CheckVault to the Agent in accordance with <b>clause 4.4(a)</b> .
<b>Released Amount</b>	In respect of an Escrow Amount, each amount which has been paid or is to be paid from the relevant Escrow Amount by the Agent to a related Escrow Party in accordance with a Release Direction.
<b>Reserve Account</b>	The account maintained by the Agent with Australia New Zealand Banking Group Limited and titled <i>CheckVault Reserve Account</i> and each other bank account opened and maintained by the Agent in accordance with this document (or, in the circumstances contemplated in <b>clause 6.4(b)</b> , opened and maintained by CheckVault) and titled <i>CheckVault Reserve Account</i> or such other name as the Agent and CheckVault may from time to time agree.
<b>Tax</b>	A tax, levy, duty, stamp duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge. It does not include tax on the overall net income of any person.
<b>Transaction</b>	An online transaction entered into pursuant to the CheckTender Website.
<b>Transaction Details</b>	The following details in relation to a Transaction: <ul style="list-style-type: none"> <li>(a) the related Escrow Party Details; and</li> <li>(b) the alphanumeric reference number used by CheckVault to identify the relevant Transaction.</li> </ul>

## 2 Deposits

### 2.1 CheckVault to advise Agent

As soon as possible after CheckVault becomes aware of any Deposit being made and in any event by not later than 11 am on the Business Day following the day on which the relevant Deposit is made, CheckVault shall give to the Agent a notice which either:

- (a) identifies the Transaction to which the Deposit relates and sets out the Transaction Details for the relevant Transaction; or
- (b) informs the Agent that CheckVault has been unable to identify a Transaction to which the Deposit relates (**Unidentifiable Transaction Notice**).

### 2.2 Dealing with Deposits

- (a) If CheckVault gives the Agent an Escrow Notice under **clause 2.1(a)** or **clause 2.2(b)**, upon the Agent's receipt of such Escrow Notice, the Agent will hold and deal with the Deposit in accordance with the Escrow Terms.
- (b) If CheckVault has given the Agent an Unidentifiable Transaction Notice in relation to a Deposit (**Unidentified Deposit**) as soon as CheckVault identifies the Transaction to which the Unidentified Deposit relates it will give a notice to the Agent which specifies the relevant Transaction and sets out the Transaction Details for that Transaction.
- (c) CheckVault must endeavour to identify as soon as practicable the Transaction to which each Unidentified Deposit relates and once identified, give the Agent an Escrow Notice as required by **clause 2.2(b)**.
- (d) CheckVault may at time prior to it having given to the Agent an Escrow Notice in relation to an Unidentified Deposit give a notice to the Agent directing the Agent to pay the Unidentified Deposit to the related Depositor and the Agent shall promptly comply with that direction.

## 3 Bank Accounts

### 3.1 Terms of accounts

Each of CheckVault and the Agent shall do all things necessary and reasonable on their respective parts to ensure that:

- (a) the sole signatories to the Bank Accounts are nominees of the Agent or, in the case of accounts opened in the name of CheckVault as contemplated by **clause 6.4(b)**, CheckVault; and
- (b) under the terms on which the Bank Accounts are maintained the Account Bank must agree:
  - (i) to credit all interest earned on either of the Accounts to the Reserve Account;

- (ii) to debit all Account Charges to the Reserve Account;
- (iii) not to credit interest or debit Account Charges to the Escrow Account;
- (iv) that to the extent that the balance of the Reserve Account is not sufficient to meet the Account Charges the Account Bank will not seek to recover the Account Charges from the Agent but instead seek to recover them from CheckVault; and
- (v) not to exercise any right of set-off or combination of accounts in respect of either of the Bank Accounts.

### **3.2 Account Bank**

- (a) The Bank Accounts must at all times be maintained with the Account Bank.
- (b) Subject to this **clause 3**, the Account Bank will be Australia and New Zealand Banking Group Limited.
- (c) CheckVault may from time to time notify the Agent that CheckVault wishes to change the Account Bank to another bank nominated in that notice (**New Account Bank**).
- (d) CheckVault may not nominate a bank as a New Account Bank unless the bank satisfies the Account Bank Criteria.
- (e) If CheckVault gives the Agent a notice under **clause 3.2(c)** CheckVault and the Agent must do all things necessary and reasonable (in the case of the Agent, as Directed by CheckVault) on their respective parts to open two accounts with the New Account Bank (one of which is to be designated as the new Escrow Account and the other the new Reserve Account) on the terms which reflect and are consistent with the terms described in **clause 3.1(b)**.
- (f) Upon the new accounts being opened in accordance with **clause 3.2(e)** the Agent must, in accordance with a Direction, transfer the balance of:
  - (i) the existing Escrow Account to the account designated as the new Escrow Account; and
  - (ii) the existing Reserve Account to the account designated as the new Reserve Account.

### **3.3 Investment Accounts**

The Agent shall, if directed to do so from time to time by CheckVault:

- (a) open and maintain with the Account Bank term or at call deposit accounts each of which is to be titled *CheckVault Escrow Account – Investment Account No [\*]* or such other name as the Agent and CheckVault may from time to time agree; and

- (b) transfer amounts between the Escrow Account and the various Investment Accounts.

### **3.4 Transaction records**

- (a) CheckVault shall maintain and make available to the Agent on request records in respect of each Escrow Amount, including records identifying:
  - (i) the Transaction to which the Escrow Amount relates;
  - (ii) each Escrow Party in relation to that Transaction;
  - (iii) the Deposit Date;
  - (iv) if the Released Amount or each of the Released Amounts has been paid, the Release Date and the name of each party receiving each of the Released Amounts; and
  - (v) the amount of each Escrow Amount; and
  - (vi) any other information that is reasonably required for the proper administration of an Escrow Account.
- (b) CheckVault shall update these records by not later than the 7<sup>th</sup> Business Day of each calendar month and promptly provide a copy of such updated records to the Agent.
- (c) CheckVault shall reconcile the Bank Accounts by not later than the 7<sup>th</sup> Business Day of each calendar month and give a copy of each such reconciliation to the Agent on request.

### **3.5 Minimum Reserve**

If the credit balance in the Reserve Account on the 1<sup>st</sup> Business Day of a calendar month is less than the Minimum Reserve by an amount (**Reserve Deficiency**), CheckVault shall deposit the Reserve Deficiency into the Reserve Account by not later than the 3<sup>rd</sup> Business Day of the relevant month.

## **4 Escrow Terms**

### **4.1 Escrow terms to prevail**

The Escrow Terms:

- (a) constitute an agreement between CheckVault, the Agent and the relevant Escrow Parties in relation to each Transaction; and
- (b) apply despite anything to the contrary contained in the terms of any Transaction and, to the extent of any inconsistency between the Escrow Terms and the terms of a Transaction, the Escrow Terms will prevail.

### **4.2 Treatment during escrow period**

- (a) The Agent shall hold each Escrow Amount in accordance with the Escrow Terms, and, in particular (but without limitation), shall not release the Escrow Amount or any part of it except in accordance with the Escrow Terms.

- (b) The Agent shall only pay amounts out of the Escrow Account (other than in accordance with a Direction under **clause 3.3(b)**) in accordance with a Release Direction given in accordance with **clause 4.4** or as ordered by a court of competent jurisdiction. Payment in accordance with a Release Direction or as ordered by a court shall constitute a full discharge by the Agent in respect of the relevant Escrow Amount.

### **4.3 Release Directions and disputes**

- (a) Subject to this document, if in relation to any Transaction all of the related Escrow Parties notify CheckVault or confirm to CheckVault (as contemplated by **clause 4.4(b)**) that the whole of the Escrow Amount is to be paid to one or more of the Escrow Parties, CheckVault will give a direction (**Release Direction**) to the Agent in accordance with **clause 4.4** to make payments accordingly. CheckVault will not otherwise give or be obliged to give a Release Direction to the Agent.
- (b) If an Escrow Party notifies CheckVault that it or another Escrow Party or Escrow Parties is or are entitled to be paid the whole or a specified portion of the Escrow Amount in relation to a Transaction (**Payment Request**), CheckVault must notify each other Escrow Party in relation to the Transaction and ask them to confirm to CheckVault that they agree with the Escrow Amount being paid:
  - (i) in accordance with the Payment Request, if the Payment Request relates to the whole of the Escrow Amount; or
  - (ii) if the Payment Request does not relate to the whole of the Escrow Amount, in accordance with the Payment Request and with the balance of the Escrow Amount being paid to the related Depositor.
- (c) If within 10 Business Days after CheckVault gives a notice under **clause 4.4(b)** it does not receive a notice from each of the Escrow Parties to whom the notice was addressed confirming that they agree with the related Escrow Amount being paid in accordance with the notice, CheckVault will notify all of the Escrow Parties in relation to the Transaction that there is a dispute in relation to the Payment Request (**Dispute**).

### **4.4 Release Directions and payments**

- (a) Each Release Direction must:
  - (i) be in a form agreed from time to time between CheckVault and the Agent;
  - (ii) be given by CheckVault to the Agent;
  - (iii) specify the Transaction and Escrow Amount to which the Release Direction relates; and
  - (iv) specify how the whole of the related Escrow Amount is to be distributed including each amount (**Released Amount**) to be paid and the Escrow Party to whom each Released Amount is to be

paid together with the details of the bank account into which each Released Amount is to be paid.

- (b) If the Agent receives a Release Direction in relation to an Escrow Amount, the Agent shall pay out of the Escrow Amount each Released Amount to each Escrow Party as specified in the relevant Release Direction on the day on which the Agent receives the Release Direction unless it receives the Release Direction after 1:00 pm on the relevant day in which case the Agent shall transfer the relevant payment or payments by not later than 11 am on the next Business Day.

#### **4.5 Agent to comply with reasonable written directions and instructions**

- (a) In performing its duties, the Agent must:
  - (i) comply with all reasonable Directions (including from any liquidator, administrator or Controller (as defined in the Corporations Act) of CheckVault); and
  - (ii) act only in accordance with this document and the Bank Account Deed.
- (b) To the extent to which the Agent acts in accordance with any Directions, or the provisions of this document, the Bank Account Deed or as required by law, it shall not be held liable for the consequences of so acting.
- (c) The Agent shall not have any duties or responsibilities other than those set out in this document and the Bank Account Deed and no further or additional obligations, responsibilities or duties (including, without limitation, any fiduciary duties) shall be implied into this document or the Bank Account Deed.

## **5 Fees and expenses**

### **5.1 Agent's fees**

CheckVault shall pay to the Agent fees (**Agent's Fees**) for performing the services which the Agent performs under this document in amounts and at times agreed in writing from time to time between CheckVault and the Agent (**Agent Fee Agreement**). The Agent's Fees are payable in accordance with the Agent Fee Agreement. If the Agent's Fees are not paid by CheckVault when due the Agent may withdraw from the Reserve Account an amount equal to those unpaid Agent's Fees and apply it in payment of those fees.

### **5.2 Surplus reserve**

Subject to **clause 5.5**, the Agent shall, upon being directed by CheckVault to do so, pay to CheckVault out of the Reserve Account by not later than the 3rd Business Day of each calendar month the amount, if any, by which the credit balance in the Reserve Account on the 1<sup>st</sup> Business Day of the relevant month is greater than the Minimum Reserve. To avoid doubt, if the credit balance in

the Reserve Account on the 1<sup>st</sup> Business Day of any calendar month is not greater than the Minimum Reserve the Agent will not be obliged to pay CheckVault any amount under this **clause 5.2** in that month.

### **5.3 Expenses**

- (a) Each of CheckVault and the Agent will be entitled to reimbursement for Expenses:
  - (i) if the related Expenses relate to a particular Escrow Amount, firstly out of the Escrow Account but only to the extent of the relevant Escrow Amount; and
  - (ii) if the Expenses do not relate to any particular Escrow Amount or the related Escrow Amount is not sufficient to satisfy those Expenses, the Reserve Account.
- (b) Subject to **clause 5.4** the Agent shall, upon being directed by CheckVault to do so, pay to CheckVault out of the Escrow Account or, as the case may be, the Reserve Account and by not later than the 3<sup>rd</sup> Business Day of each calendar month all amounts for which CheckVault is entitled to be reimbursed out of the Escrow Account or the Reserve Account (as they case may be) pursuant to **clause 5.3(a)**.

### **5.4 Agent's step-in expenses**

The Agent shall be entitled to reimburse itself out of the Reserve Account for all costs, charges, expenses, losses and liabilities which the Agent may incur as a result of or in connection with the Agent exercising any of its rights and powers under **clause 7.1** or **clause 7.2**.

### **5.5 Priority of payments**

At any time at which both the Agent and CheckVault are entitled to be paid amounts or reimbursed in accordance with this **clause 5** there are insufficient funds to satisfy the amounts owing to both the Agent and CheckVault the Agent is entitled to be paid the relevant amounts or to reimburse itself before it is obliged to pay any amount to CheckVault.

## **6 Termination of escrow**

### **6.1 Escrow Amounts**

Subject to **clause 6.5** the obligations of the Agent in respect of each Escrow Amount shall terminate on the earlier of:

- (a) the day the Agent pays the relevant Escrow Amount to the related Escrow Parties in accordance with a Release Direction or the Agent delivers to a court of competent jurisdiction all of the relevant Escrow Amount pursuant to **clause 12(b)**; and
- (b) the day on which the Agent is, subject only to **clause 6.5(c)**, released from all further obligations and liabilities under this document pursuant to **clause 6.5(a)**.

## **6.2 Termination of Agent's role**

- (a) The Agent may give a notice to CheckVault stating that the Agent will cease acting as the Agent:
  - (i) if any Insolvency Control Event has occurred in relation to CheckVault, immediately; or
  - (ii) otherwise, from a date specified in the notice, being a date not earlier than 90 days from the date on which the notice was given.
- (b) CheckVault may give a notice to the Agent terminating the Agent's role as Agent with effect:
  - (i) if an Insolvency Event has occurred in relation to the Agent, immediately; or
  - (ii) otherwise, from the later of the day which is 90 days after the date on which CheckVault gives the Agent that notice and the day on which a replacement Agent is appointed in accordance with **clause 6.2**.
- (c) The Agent's role as Agent will cease on and from the day referred to in **clause 6.1(b)**.

## **6.3 Appointment of replacement Agent**

If the Agent or CheckVault gives a notice to the other of them pursuant to **clause 6.2** CheckVault shall as soon as possible after it receives or gives the notice:

- (a) appoint a replacement Agent on terms such that the replacement Agent agrees for the benefit of CheckVault and the Escrow Parties to be bound by this document and to hold all existing and future Escrow Amounts on and to deal with the Bank Accounts in accordance with the Escrow Terms; and
- (b) cause the replacement Agent to open with the Account Bank one account which is designated as the new Escrow Account (**Replacement Escrow Account**) and another designated as the new Reserve Account (**Replacement Reserve Account**).

## **6.4 Dealing with Bank Accounts**

- (a) If prior to the Agent's role as Agent terminating in accordance with **clause 6.2** CheckVault has appointed a replacement Agent the Agent shall pay into the Replacement Escrow Account and the Replacement Reserve Account the balance (if any) in, respectively, the Escrow Account and the Reserve Account.
- (b) If the Agent's role terminates in accordance with **clause 6.2** prior to CheckVault appointing a replacement Agent then, unless an Insolvency Control Event has occurred in relation to CheckVault:
  - (i) CheckVault shall, before or, where the Agent's role terminates pursuant to **clause 6.2**, as soon as possible after the Agent's role

terminates, either open in CheckVault's name with the Account Bank one account designated as the temporary Escrow Account (**Temporary Escrow Account**) and another designated as the temporary Reserve Account (**Temporary Reserve Account**) or, in consultation with the Agent and the Account Bank, arrange for the Bank Accounts to be novated to CheckVault; and

- (ii) if CheckVault has opened a Temporary Escrow Account and a Temporary Reserve Account the Agent shall pay into those accounts the balance (if any) in, respectively, the Escrow Account and the Reserve Account.
- (c) If in accordance with **clause 6.4(b)** either the Bank Accounts are novated to CheckVault or the balances in the Bank Accounts are paid into the Temporary Escrow Account and the Temporary Reserve Account, CheckVault shall:
  - (i) until a replacement Agent has been appointed in accordance with **clause 6.3**, hold and deal with the Escrow Amounts and the Bank Accounts in accordance with the Escrow Terms and as if it were the Agent; and
  - (ii) as soon as a replacement Agent has been appointed in accordance with **clause 6.3**, pay into the Replacement Escrow Account and the Replacement Reserve Account the balance (if any) in, respectively, the Temporary Escrow Account and the Temporary Reserve Account.

## **6.5 Discharge of responsibility**

- (a) If the Agent deposits the balance of each Bank Account with the replacement Agent or CheckVault in accordance with **clause 6.4(a)** or **6.4(b)** or the Bank Accounts are novated to CheckVault as contemplated by **clause 6.4(b)** then, subject to **clause 6.5(c)**, the Agent will be taken to have discharged its obligations under this document to pay Escrow Amounts and to deal with the Bank Accounts and will be released from all further obligations and liabilities under this document.
- (b) If CheckVault deposits the balance of each Bank Account with the Replacement Agent in accordance with **clause 6.4(c)(ii)** then, subject to **clause 6.5(c)**, CheckVault will be taken to have discharged its obligations under **clause 6.4(c)(i)**.
- (c) **Clause 6.5(a)** and **(b)** do not release the Agent or CheckVault from liabilities which arise as a result of acts or omissions occurring prior to the time it deposited the balance of each of the Bank Accounts in accordance with **clause 6.4** or the Bank Accounts were novated to CheckVault as contemplated by **clause 6.4(a)**.

## 7 CheckVault Insolvency Control Event

### 7.1 Agent may direct

If an Insolvency Control Event occurs in relation to CheckVault CheckVault must take all reasonable action which it is directed to take by the Agent for the purpose of achieving the following:

- (a) stopping new people from registering to use the Escrow Services and amounts being deposited into the Escrow Account in respect of new Transactions; and
- (b) the orderly dealing with all Escrow Amounts in accordance with the Escrow Terms.

### 7.2 Agent may act on behalf of CheckVault

The Agent may, on behalf of CheckVault, take all action which CheckVault is obliged to take under **clause 7.1**.

### 7.3 Agent not obliged to act

The Agent will not be obliged to exercise any of its rights and powers under **clause 7.1** or **clause 7.2** and will have no liability if it fails to do so.

### 7.4 Agent not liable

- (a) If the Agent exercises any of its rights and powers under **clause 7.1** or **clause 7.2** it will not incur any liability to CheckVault, the Escrow Parties or any other person for doing so or for the manner in which it does so except to the extent to which the liability arises as a result of the Agent's fraud, gross negligence or wilful default.
- (b) Without limiting **clause 7.4(a)**, the Agent will not be liable to CheckVault, the Escrow Parties or any person for the manner in which it exercises its rights or powers under **clause 7.1** or **clause 7.2** or not being able to exercise those rights or powers because of the state of the records or systems of CheckVault or because it is unable to access those records or systems.

## 8 CheckVault Undertakings and Representations and Warranties

### 8.1 Undertakings

CheckVault must:

- (a) **(Amendments)** not amend the CheckTender Website, this document or the Bank Account Deed to the extent that such amendments relate to the Escrow Terms, the Escrow Services or this document, other than with the Agent's prior written consent;
- (b) **(Notify defaults)** promptly advise the Agent in writing of the occurrence of any Insolvency Event, Insolvency Control Event or default in relation to CheckVault upon it becoming actually aware of the relevant event; and

- (c) **(Business Continuity)** maintain appropriate back up procedures and disaster recovery procedures to the reasonable satisfaction of CheckVault and the Agent as they relate to each Transaction and each Escrow Amount.

## **8.2 Representation and Warranty**

CheckVault represents and warrants to the Agent that the terms of each Transaction to which the Escrow Terms apply comply with all applicable laws.

## **9 AML Act**

Where the Agent provides a designated service (as that term is defined in the AML Act), CheckVault acknowledges that the Agent is bound by the AML Act, and agrees to:

- (a) provide the Agent with any documents, information or assistance or to undertake any activities that may be reasonably requested by the Agent from time to time to ensure the Agent's compliance with any Applicable Law and the Agent's AML Compliance Program, as soon as practicable after that request is made; and
- (b) permit the Agent and any regulatory body and their respective representatives and agents access to its places of business during normal business hours and at other reasonable times to inspect, examine, audit, review and take copies of documents or extracts of documents in relation to any issue, matter or thing relating to its obligations under this clause.

## **10 Compliance with laws**

### **10.1 Licences**

Each of CheckVault and the Agent undertakes that it will obtain (to the extent it does not already hold) and maintain all licences under all Applicable Laws necessary for it to do all things which it is required to do under this document and, in the case of CheckVault, to provide any financial services (as defined in the Corporations Act) in relation to the Escrow Services.

### **10.2 Compliance with the Applicable Law**

Each of CheckVault and the Agent undertakes to comply with all Applicable Laws.

## **11 Liability of the Agent and CheckVault**

### **11.1 Agent's limitation of liability**

No attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of the Agent in a way which exposes the Agent to any liability.

## **11.2 Agent indemnity for acts or omissions**

CheckVault indemnifies the Agent on demand in respect of all costs, damages, losses, liabilities and expenses incurred as a result of any act or omission by CheckVault in respect of this document except where such costs, damages, losses or expenses are incurred as a result of the Agent's breach of this document (except where the Agent has acted on the express written directions or instructions of CheckVault).

## **11.3 Agent indemnity for directions or instructions**

CheckVault indemnifies the Agent on demand in respect of all costs, damages, losses, liabilities and expenses incurred as a result of it acting on any express or written direction or instruction (including each Direction) given by CheckVault or any party acting on behalf of CheckVault except to the extent that such costs, damages, losses, liabilities or expenses are incurred as a result of the Agent's breach of this document and that breach does not arise from the Agent acting on the directions or instructions given by CheckVault.

## **11.4 Liability limited to Bank Accounts**

- (a) Each of the Agent and CheckVault is only liable to pay amounts which are payable from a Bank Account to the extent to which it is able to withdraw the amount from the relevant Bank Account.
- (b) Neither the Agent nor CheckVault will be liable to any party for any failure to pay or delay in paying any amount to the extent to which that failure or delay results from its inability or any restriction on its ability to withdraw the amount from the relevant Bank Account except to the extent that such inability or restriction results from its fraud, gross negligence or wilful default.

## **11.5 General**

- (a) Neither the Agent nor CheckVault shall be liable to anyone in respect of the performance of its duties and obligations under the Escrow Terms unless such liability arises as a result of its fraud, gross negligence or wilful default. In particular, but without limiting the generality of the foregoing, neither the Agent nor CheckVault shall be liable for the credit worthiness of the bank with which the Bank Accounts are held or any failure to maximise the amount of interest or other amounts earned on all or part of any Escrow Amount unless such failure arises as a result of its fraud, gross negligence or wilful default.
- (b) Each of the Agent and CheckVault shall be entitled to rely on, and shall be protected in acting upon, and shall be entitled to treat as genuine and as the document it purports to be, any letter, information, form, list, paper or other document (including email) supplied or purported to be supplied to it by CheckVault (in the case of the Agent) or supplied or purported to be supplied to it by the Agent (in the case of CheckVault) or any Escrow Party (in the case of each of the Agent and CheckVault), and believed by the Agent or CheckVault (as the case may be), acting reasonably, to be

genuine and to have been signed and presented by the proper party or parties.

- (c) The Agent will not be obliged to enquire into or be liable to any person whatsoever for the accuracy, description or relevance of the terms, conditions or contents of this document or of the accuracy of any direction or instructions (including a Direction) and shall have no liability for acting in accordance with a direction or instruction (including a Direction).
- (d) The Agent is not liable for any loss, cost, liability or expense arising out of the exercise or non-exercise of a discretion by CheckVault or the act or omission of CheckVault.
- (e) Each of the Agent and CheckVault may rely upon advice given to it by its legal advisers on any legal questions arising in connection with the administration of this document and will be free of liability for acting in reliance on that advice.

#### **11.6 Where limitation cannot be excluded under law**

If any provision of this document (including the Escrow Party Undertakings) limits the Agent's or CheckVault's liability in a way which is not permitted under law (for example the provisions of the *Australian Securities and Investments Commission Act 2001*), each of the Agent's and CheckVault's liability is limited to:

- (a) the supplying of the relevant service to the Escrow Party again; or
- (b) the payment of the cost of having the relevant service to the Escrow Party supplied again.

## **12 Disputes**

- (a) The Escrow Parties must pursue any legal redress or recourse in connection with any dispute between them relating to the related Escrow Amount or any Transaction without making either the Agent or CheckVault a party, unless the dispute is based upon fraud, gross negligence or wilful default on the part of the Agent or CheckVault (as the case may be) or their respective agents or employees.
- (b) If a dispute arises with respect to any Escrow Amount (as contemplated in **clause 12(a)** or otherwise), each of CheckVault and the Agent:
  - (i) may (but is not obliged to) interplead in a court of competent jurisdiction for a determination of the respective rights and obligations of the parties under this document; and
  - (ii) in the case of the Agent (whether or not it interpleads under **clause 12(b)(i)**), may deliver to a court of competent jurisdiction all of the Escrow Amount; and

- (iii) will then be fully relieved from any liability or obligation with respect to the relevant Escrow Amount (and for clarity in the case of the Agent, this applies if it delivers to a court of competent jurisdiction all of the Escrow Amount under **clause 12(b)(ii)**, whether or not it interpleads under **clause 12(b)(i)**).

## 13 Notices

### 13.1 General

A notice, demand or other communication (including a Direction) in relation to this document must be in writing and in English. In this clause, writing includes:

- (a) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
- (b) words created or stored in any electronic medium and retrievable in perceivable form.

### 13.2 How to give a communication

A communication may be given:

- (a) if to the Agent, by email or other electronic communication to the email address or other electronic communication address last notified by the Agent;
- (b) if to CheckVault, by email or other electronic communication to the email address or other electronic communication address last notified by CheckVault; or
- (c) if to the Escrow Parties, by email or other electronic communication to the address provided by each Escrow Party to CheckVault when applying for registration as a member, or as subsequently updated by each Escrow Party.

### 13.3 Communications by email

A communication sent by email (or other electronic means) is given on the day and at the time at which the transmitting computer indicates that the email was sent to the email address of the recipient for the purposes of this **clause 13**, unless a delivery failure report is received by the sender in relation to that email.

## 14 General

### 14.1 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those

courts and waives any right to object to any proceedings being brought in those courts.

#### **14.2 Assignment**

- (a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this clause is of no effect.

#### **14.3 Amendment**

- (a) Subject to **clause 14.3(b)**, this document cannot be amended except by written agreement between the Agent and CheckVault. All such amendments will be binding on the Escrow Parties as well as the Agent and CheckVault.
- (b) CheckVault may from time to time by deed executed by CheckVault amend this document or the CheckTender Website (to the extent that it relates to the Escrow Terms, the Escrow Services or this document) provided that:
  - (i) CheckVault has given at least 5 Business Days' prior written notice to the Agent of such proposed amendments;
  - (ii) the Agent has provided its written confirmation that such proposed amendment is not prejudicial and will not be prejudicial to the Agent's rights or obligations either under this document or in respect of any Transaction (such confirmation not to be unreasonably withheld or delayed); and
  - (iii) CheckVault considers in its reasonable opinion that such proposed amendment is not materially prejudicial and will not be materially prejudicial to the rights or obligations of Escrow Parties in relation to any Transaction entered into prior to the time the relevant amendment is to take effect, and the amendment:
    - (A) is necessary to correct a manifest error or is of a formal, technical or administrative nature only;
    - (B) in the reasonable opinion of CheckVault will enable the provisions of this document to be more conveniently, advantageously, profitably or economically administered; or
    - (C) in the reasonable opinion of CheckVault is otherwise desirable for any reason.
- (c) For the avoidance of doubt, an amendment will not be prejudicial to the rights or obligations of Escrow Parties to the extent to which it will only affect rights or obligations in relation to Transactions to be entered into after the time the relevant amendment is to take effect.

#### **14.4 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## **14.5 Indemnities**

Any indemnity in this document is a continuing obligation independent of the party's other obligations under this document and continues after this document ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this document.

## **14.6 Knowledge of the Agent and CheckVault**

Each of the Agent and CheckVault will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any thing, by virtue of the officers of that party having day to day responsibility for the administration or management of that party's obligations under this document or, in the case of CheckVault, the Escrow Services having actual knowledge, actual awareness or actual notice of that thing, or grounds or reason to believe that thing (and similar references will be interpreted in this way). In addition, any knowledge, notice or awareness of an Insolvency Event, Insolvency Control Event or default means knowledge, notice and awareness of the events or circumstances constituting the Insolvency Event, Insolvency Control Event or default (as the case may be) and knowledge, notice or awareness that those events or circumstances constitute an Insolvency Event, Insolvency Control Event or default (as the case may be).

## **14.7 Construction**

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Sydney;
  - (vii) '\$' or 'dollars' is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) this document includes all schedules and annexures to it; and
  - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

#### **14.8 Headings**

Headings do not affect the interpretation of this document.

#### **14.9 Deed**

This document is a deed. Factors which might suggest otherwise are to be disregarded. The covenants and undertakings of each of CheckVault and the Agent operate for the benefit of, respectively, the Agent and CheckVault and also for the benefit of the Escrow Parties.

# Schedule 1

## Escrow Party Representations and Acknowledgements

### 1 Representations

Each Escrow Party represents and warrants to the Agent and CheckVault that:

- (a) neither giving the Escrow Party Representations and Acknowledgements nor agreeing to comply nor complying with the Escrow Party Undertakings constitutes a breach of any Applicable Law;
- (b) payments to be made from the Escrow Account in respect of the Escrow Amount in accordance with **clause 3** will not be prohibited by any Applicable Law;
- (c) funds deposited by it into the Escrow Account will not be sourced from any illegal activities, or obtained from the pursuit of an illegal purpose;
- (d) where the Escrow Party provides a designated service (as that term is defined in the AML Act) in respect of any Escrow Amount deposited by it, it will:
  - (i) comply with the requirements of the AML Act;
  - (ii) have established and will maintain an AML Compliance Program requiring it to obtain and verify information about the identity of its customers (as that term is defined in the AML Act); and
  - (iii) have made reasonable inquiries regarding the source of the funds deposited by it into the Escrow Account;
- (e) it will not seek to use or cause to be used the Escrow Account as a conduit for money laundering or other illegal purposes; and
- (f) it will not seek to use or cause to be used the Agent as a conduit for money laundering or other illicit purposes.

### 2 Acknowledgement

Each Escrow Party acknowledges that the Agent will agree to accept Deposits and CheckVault will allow the Escrow Party to make Deposits in reliance on the above representations and warranties.

# Schedule 2

## Escrow Party Undertakings

- 1 Each Escrow Party must immediately notify the Agent and CheckVault as soon as it becomes aware that any representation contained in the Escrow Party Representations and Acknowledgements and made by it is or has become incorrect.
- 2 Where either CheckVault or the Agent provides a designated service (as that term is defined in the AML Act), each Escrow Party acknowledges that the Agent is bound by the AML Act, and agrees to:
  - (a) provide the Agent or CheckVault (as the case may be) with any documents, information or assistance or to undertake any activities that may be reasonably requested by the Agent or CheckVault from time to time to ensure the Agent's or CheckVault's compliance with any Applicable Law and the Agent's or CheckVault's (as the case may be) AML Compliance Program, as soon as practicable after that request is made; and
  - (b) permit the Agent and CheckVault and any regulatory body and their respective representatives and agents access to its places of business during normal business hours and at other reasonable times to inspect, examine, audit, review and take copies of documents or extracts of documents in relation to any issue, matter or thing relating to its obligations under this clause.
- 3 Each Escrow Party expressly waives all rights which it may have or acquire against either the Agent or CheckVault or their respective officers, employees, agents and representatives in connection with the Escrow Terms and undertakes to indemnify and hold harmless each of the Agent and CheckVault from and against all Expenses in relation to the relevant Escrow Amount except to the extent that such rights or the relevant Expenses arise as a result of fraud, gross negligence or wilful default on the part of the Agent or CheckVault (as the case may be) or their respective agents or employees.

# Execution

**Executed** as a deed.

**Executed by CheckVault Pty Ltd** )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed by Perpetual Corporate** )  
**Trust Limited** by the party's attorney )  
pursuant to power of attorney )  
dated ..... who states that no )  
notice of revocation of the power of )  
attorney has been received in the )  
presence of: )

.....  
Witness

.....  
Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)