

# ASX Announcement

13.06.18

## Investa Office Fund (ASX:IOF)

### IOF and Blackstone enter into Scheme Implementation Agreement

Investa Listed Funds Management Limited (**ILFML**), as Responsible Entity of the Investa Office Fund (**IOF**), refers to its announcement dated 28 May 2018 in relation to an unsolicited, indicative and non-binding proposal from funds managed or advised by Blackstone Singapore Pte. Ltd. or its affiliates (collectively, **Blackstone**) to acquire all of the units in IOF by way of trust scheme.

ILFML today announces that following further confirmatory due diligence by Blackstone under the Process Deed announced on 28 May 2018, ILFML and Blackstone have now entered into a binding Scheme Implementation Agreement (**SIA**) in relation to a trust scheme pursuant to which Blackstone would acquire all of the units in IOF (**Scheme**).

#### Summary of the Scheme

Under the Scheme, IOF unitholders will be entitled to \$5.25 cash per unit reduced by any distributions declared or paid by IOF after 4 May 2018 and prior to completion of the Scheme. The Scheme represents an offer price of approximately \$5.15 per unit once IOF's expected 2H18 distribution is taken into account (based on previous distribution guidance). This distribution is expected to be paid to IOF unitholders in August 2018.

#### Unanimous recommendation of the Directors

The Directors of ILFML unanimously recommend that IOF unitholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert opining that the Scheme is in the best interests of IOF unitholders. Subject to those same qualifications, each ILFML Director intends to vote all the IOF units held or controlled by them in favour of the Scheme.

Richard Longes, Independent Chairman of ILFML, said: "We are pleased to be entering into a binding Scheme Implementation Agreement with Blackstone today which provides IOF unitholders the opportunity to realise their investment in IOF at an attractive and certain price. Once the Scheme is implemented, IOF unitholders will receive a cash payment at a significant premium to the trading price of IOF units prior to the announcement of the Blackstone proposal."

The Directors of ILFML are being advised by J.P. Morgan Australia Limited as financial adviser and Allens as legal adviser.

#### Scheme conditions and indicative timetable

The Scheme is expected to be implemented in late August 2018, conditional upon a number of matters set out in the SIA, including approvals by the requisite majorities of IOF unitholders and the Court; no material adverse change, prescribed occurrence or breach of warranty in relation to IOF; as well as the approval from Australia's Foreign Investment Review Board.

The SIA includes terms and conditions customary for a transaction of this nature, including exclusivity arrangements and provisions for payment of a break fee of \$20 million to Blackstone in certain circumstances.

## **Independent Expert**

ILFML has appointed KPMG Corporate Finance as the Independent Expert to prepare a report opining on whether the Scheme is in the best interests of IOF unitholders. The Independent Expert's report will be included in the explanatory memorandum to be sent to IOF unitholders.

## **Indicative Timetable**

IOF unitholders do not need to take any action at the present time. It is expected that IOF unitholders will receive the explanatory memorandum for the Scheme before the end of July. This will include a more detailed explanation of the Scheme, including the reasons for the ILFML Board's recommendation, along with a copy of the independent expert's report.

A meeting of IOF unitholders is expected to be held in August to consider the Scheme, with implementation scheduled to occur in late August 2018.

In order for the Scheme to be implemented, IOF unitholders eligible to vote must approve each resolution at the meeting by the requisite majorities, including the resolution to amend the IOF constitutions to effect the Scheme which must be approved by eligible unitholders representing at least 75% of the units voted at the meeting (in person or by proxy).

A copy of the SIA is attached.

**End**

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## **About Investa Office Fund**

Investa Office Fund (ASX code: IOF) is an externally managed Australian listed real estate investment trust, included in the S&P/ASX 100 index. IOF is governed by the Independent Board of Investa Listed Funds Management Limited as Responsible Entity, and managed by Investa – one of Australia's largest and most highly regarded office managers. IOF has total assets under management of \$4.0 billion, with 20 investment grade office buildings in core CBD markets across Australia. The Fund receives rental income from more than 400 tenants, including government agencies and blue chip organisations. IOF's strategy is to deliver attractive risk-adjusted returns investing in high quality Australian office buildings, leveraging Investa's fully integrated specialist property sector capabilities to outperform.

## **About Blackstone**

Blackstone is one of the world's leading investment firms. We seek to create positive economic impact and long-term value for our investors, the companies we invest in, and the communities in which we work. We do this by using extraordinary people and flexible capital to help companies solve problems. Our asset management businesses, with US\$450 billion in assets under management, include investment vehicles focused on private equity, real estate, public debt and equity, non-investment grade credit, real assets and secondary funds, all on a global basis. Further information is available at [www.blackstone.com](http://www.blackstone.com). Follow Blackstone on Twitter @Blackstone.

Quartz BidCo Pty Ltd

Quartz Sub TC Pty Ltd as trustee of the Quartz Bid Trust

Investa Listed Funds Management Limited as responsible entity of the Armstrong Jones Office Fund  
and the Prime Credit Property Trust

## Scheme Implementation Agreement

Execution Version

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This Agreement is made on 12 June 2018

### Parties

- 1 **Quartz BidCo Pty Ltd** (ACN 626 431 927) c/- Seed Outsourcing Pty Limited, Suite 6, Level 7, 122 Arthur Street, North Sydney NSW 2060 (**BidCo**); and
- 2 **Quartz Sub TC Pty Ltd** (ACN 626 431 963) **as trustee of the Quartz Bid Trust** c/- Seed Outsourcing Pty Limited, Suite 6, Level 7, 122 Arthur Street, North Sydney NSW 2060 (**BidTrust**); and
- 3 **Investa Listed Funds Management Limited** (ABN 37 149 175 655) as responsible entity for the Armstrong Jones Office Fund and the Prime Credit Property Trust of Level 30, 420 George Street, Sydney NSW 2000 (**ILFML**).

### Recitals

- A BidCo and BidTrust propose to acquire all of the IOF Scheme Units pursuant to the Schemes, subject to the terms and conditions of this Agreement.
- B ILFML has agreed to propose the Schemes to IOF Unitholders and to issue the Explanatory Memorandum to IOF Unitholders, and the Acquirer and ILFML have agreed to implement the Schemes, upon and subject to the terms and conditions of this Agreement.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Acquirer** means BidCo and BidTrust and either of them as the case may be.

**Acquirer Group** means the Acquirer and its Related Bodies Corporate.

**Acquirer Group Member** means a member of an Acquirer Group.

**Acquirer Indemnified Parties** means each of:

- (a) the Acquirer;
- (b) any entity which is an affiliate of the Acquirer which provides an equity commitment letter or a limited guarantee on terms agreed to by the Acquirer and ILFML,

and their respective Officers.

**Acquirer Information** means all information provided by the Acquirer to ILFML for inclusion in the Explanatory Memorandum regarding the Acquirer as is required by the Corporations Act (and the Corporations Regulations), ASIC Regulatory Guides 60 and 74 and the Guidance Note 15, as applicable. For the avoidance of doubt, Acquirer Information does not include the IOF Information, the Independent Expert's Report, any third party tax advice or any other information about IOF (except to the extent it relates to any statement of intention relating to IOF following the Effective Date).

**Acquirer Representations and Warranties** means the representations and warranties of the Acquirer set out in Schedule 1.

**Adviser** means, in relation to an Entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged by that Entity.

**Agreed Public Announcement** means the public announcement to be made by ILFML and approved in advance by the Acquirer in writing, in the form of Schedule 7.

**AJO** means the Armstrong Jones Office Fund (ARSN 090 242 229).

**AJO Constitution** means the constitution of AJO adopted on 6 December 2011 (as amended).

**AJO Register** means the register of members of AJO maintained by or on behalf of AJO in accordance with section 168(1) of the Corporations Act.

**AJO Scheme Consideration** means the consideration payable for the AJO Units in accordance with the AJO Trust Scheme.

**AJO Scheme Unitholders** means each person who is registered on the AJO Register as a holder of AJO Scheme Units as at the Record Date, other than an Acquirer (if applicable).

**AJO Scheme Units** means the AJO Units on issue as at the Record Date, other than those AJO Units on issue to an Acquirer (if any).

**AJO Supplemental Deed** means the deed poll pursuant to which ILFML will amend the AJO Constitution, to be executed by ILFML in the form of Part A of Schedule 5 (or in such other form as BidCo and ILFML agree in writing).

**AJO Trust Scheme** means the arrangement in accordance with Guidance Note 15 under which BidCo acquires all of the AJO Scheme Units, facilitated by amendments to the AJO Constitution as set out in the AJO Supplemental Deed.

**AJO Unit** means a fully paid ordinary unit in AJO.

**Announcement Date** means:

- (a) the date on which this Agreement is executed; or
- (b) if this Agreement is executed on a day that is not a Trading Day, the first Trading Day immediately following the day of execution.

**Anti-Corruption Laws** means all anti-corruption laws of all jurisdictions in which ILFML performs business, or of the United States, or of the United Kingdom, including without limitation, the Criminal Code of Australia, the Foreign Corrupt Practices Act of 1977, as amended ("FCPA"), the U.K. Bribery Act of 2010, and where applicable, legislation enacted by member states and signatories implementing the OECD Convention Combating Bribery of Foreign Officials.

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

**Associate** has the meaning given in sections 10 to 17 of the Corporations Act.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

**ASX Listing Rules** means the official listing rules of ASX.

**ATO** means the Australian Taxation Office.

**Break Fee** means an amount equal to \$20,000,000.00.

**BudgetFY19** comprises the documents in data room folder 12.03 in the Due Diligence Material.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Sydney, New South Wales.



**CHES** means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited, a wholly-owned subsidiary of ASX.

**Claim** means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person:

- (a) based on contract (including breach of warranty);
- (b) based in tort (including misrepresentations or negligence);
- (c) under common law; or
- (d) under statute (including the *Competition and Consumer Act 2010* (Cth), the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any State or Territory fair trading legislation),

however arising and whether present, unascertained, immediate, future or contingent.

**Communications** means all forms of communications, whether written, oral, in electronic format or otherwise, and whether direct or indirect via agents or Representatives.

**Competing Proposal** means any actual or proposed proposal, agreement, arrangement or transaction (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise), which, if entered into or completed, would mean:

- (a) a Third Party (other than ICPF pursuant to a transaction permitted by item 9 of section 611 of the Corporations Act), either alone or together with any other person, would directly or indirectly acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, or the right to vote, 20% or more of IOF Units; or
- (b) a Third Party (either alone or together with any other person) would:
  - (i) acquire Control of IOF;
  - (ii) directly or indirectly acquire or obtain a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part or material part of all of the business or assets of IOF;
  - (iii) otherwise directly or indirectly acquire or merge with IOF; or
  - (iv) require ILFML to abandon, or otherwise fail to proceed with, the Schemes or any part of a Scheme, and

in each case, includes a variation or modification of an earlier Competing Proposal. For the avoidance of doubt, the parties agree that the announcement by Investa Wholesale Funds Limited on 29 May 2018 of a potential strategic investment with an institutional partner for the Investa management platform is not a Competing Proposal.

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

**Confidentiality Deed** means the confidentiality deed between Blackstone Singapore Pte. Ltd and ILFML dated 3 May 2018.

**Control** has the meaning given in section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

**Controlled Entities** means, in relation to an Entity, another Entity which is a Subsidiary of it, or which is Controlled by it.

**Constitution** means the AJO Constitution and the PCP Constitution (in each case as amended) and **Constitution** means any one of them (as the context requires).

**Co-owned Sub-Trust** means each of the following:

- (a) 242 Exhibition Street Trust;
- (b) Macquarie Street Trust;
- (c) Macquarie Street Sub-Trust;
- (d) Phillip Street Trust;
- (e) Phillip Street Sub-Trust; and
- (f) 567 Collins Street Trust.

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

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

**Court** means the Supreme Court of New South Wales or such other court of competent jurisdiction as the Acquirer and ILFML may agree in writing.

**Deed Poll** means a deed poll to be executed by the Acquirer in favour of the IOF Scheme Unitholders substantially in the form of Schedule 6 (or in such other form as the Acquirer and ILFML may agree in writing).

**Delegation Authority** means the document at data room reference 11.02 in the Due Diligence Material.

**Distributable Income** has the meaning given in the Constitutions.

**Distribution Entitlement** has the meaning given in the Constitutions.

**Distribution Period** has the meaning given in the Constitutions.

**Due Diligence Material** means:

- (a) the documents and information contained in the data room made available by ILFML to the Acquirer and its Representatives, the index of which has been initialled by, or on behalf of, the parties for identification prior to 7pm on 7 June 2018;
- (b) the information disclosed in writing by or on behalf of IOF (including in response to requests for information) to the Acquirer prior to 7pm on 7 June 2018 and included in the data room; and
- (c) any other documents, information, responses or disclosures agreed in writing by the parties to comprise the Due Diligence Material.

**Effective** means, in relation to the Schemes, each Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act.

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

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

**End Date** means the date which is six months from the date of this Agreement, or such later date as the Acquirer and ILFML may agree in writing.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**Exclusivity Period** means the period commencing on the date of this Agreement and ending on the earlier of:

- (a) the termination of this Agreement in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

**Explanatory Memorandum** means the explanatory memorandum to be prepared in respect of the Schemes in accordance with the terms of this Agreement and to be despatched to IOF Unitholders, including the Independent Expert's Report, each Supplemental Deed, the Deed Poll and the Notice of Meeting, and which must include a notice of meeting and proxy form for the Scheme Resolutions.

**Fairly Disclosed** means fully, fairly and accurately disclosed, with sufficient detail so as to enable a reasonable and sophisticated recipient to identify the nature and scope of the relevant matter, event or circumstance.

**FIRB** means the Foreign Investment Review Board.

**First Court Date** means the first day of hearing for the First Judicial Advice, or if the hearing of that application is adjourned for any reason, means the first day of the adjourned hearing.

**First Judicial Advice** means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that, among other things, ILFML would be justified in convening the Scheme Meetings for the purposes of considering the Scheme Resolutions.

**Funds From Operations** means "funds from operations" calculated in a manner that is consistent with the methodology for the calculation of underlying and recurring "funds from operations" in financial statements for the relevant entity for the 6 months ending on 31 December 2017. For the avoidance of doubt, in relation to IOF, it will be calculated without deducting any costs incurred in connection with the Schemes, and will exclude unrealised gains or losses, certain non-cash items such as the amortisation of tenant incentives, fair value gains or losses on investments and other unrealised or one-off items.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity.

**Government Official** means (i) an officer, agent or employee of a government, government owned enterprise (or any agency, department or instrumentality thereof), political party or public international organization, (ii) a candidate for government or political office, or (iii) an agent, officer, or employee of any entity owned by a government.

**Guidance Note 15** means *Guidance Note 15: Trust Scheme Mergers* issued by the Takeovers Panel of Australia.

**Holding Company** has the meaning given in the Corporations Act, but as if references to:

- (a) "body corporate" were to "Entity"; and
- (b) "subsidiaries" include Subsidiaries as defined in this Agreement.

**ICPF** means Investa Wholesale Funds Management Limited (ACN 149 681 390) in its capacity as responsible entity of the Investa Commercial Property Fund.

**ILFML Board** means the board of directors of ILFML as at the date of the Explanatory Memorandum.

**Implementation Date** means 3 Business Days following the Record Date, or such other date as ILFML and the Acquirer may agree in writing or as may be required by ASX.

**Independent Expert** means an independent expert commissioned by ILFML to express an opinion on whether the Scheme is fair and reasonable and in the best interests of IOF Unitholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by ILFML for inclusion in the Explanatory Memorandum, and any update to such report that the Independent Expert issues prior to the Scheme Meeting.

**Insolvent or insolvency** means, in relation to an entity:

- (a) a receiver, receiver and adviser, administrator, trustee or similar official, is appointed over any of the assets or undertakings of the entity;
- (b) the entity suspends payment of its debts generally;
- (c) the entity is or becomes unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Act;
- (d) the entity enters into or resolves to enter into any arrangement, competition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application (that is not frivolous or vexatious) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator, to the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction that has the prior consent of the other party;
- (f) an administrator is appointed under the Corporations Act; or
- (g) something having a substantially similar effect to (a) to (f) happens in connection with that entity under the law of any jurisdiction.

**IOF** means Investa Office Fund (ASX: IOF) which comprises PCP and AJO.

**IOF Group** means AJO, PCP and each of their Controlled Entities, which, for the purpose of this Agreement, is a reference to an Entity that is a Controlled Entity of ILFML by reason of the fact that ILFML is the responsible entity of IOF.

**IOF Group Member** means a member of the IOF Group.

**IOF Indemnified Parties** means ILFML and each member of the IOF Group and each of their respective Officers.

**IOF Material Adverse Change** means one or more events, changes or circumstances occurring, discovered or announced between the date of this Agreement and 8:00am on the Second Court Date which, whether individually or when aggregated with all such events, changes, or circumstances or things of a like kind, have, or is reasonably likely to have, a negative impact (excluding mark to market movements relating to investment properties, financial derivatives, hedge accounted interest bearing liabilities and foreign exchange rates) on the net tangible assets of IOF of at least \$150 million or on recurring Funds From Operations of at least \$12.5 million other than those events, changes or circumstances:

- (a) expressly required or permitted by this Agreement, the Schemes or the transactions contemplated by the Agreement or the Schemes;
- (b) done or not done at the written request or with the written acknowledgement and approval of the Acquirer, including any consequences arising as a result of such matters;
- (c) resulting from changes in generally accepted accounting principles or the interpretation of them;
- (d) arising as a result of any change in law or governmental policy;

- (e) arising from changes in economic or business conditions or securities markets in general; or
- (f) that ILFML Fairly Disclosed in an announcement made by IOF to ASX, or a document lodged by it with ASIC, prior to the date of this Agreement, or the Due Diligence Material, including the BudgetFY19,

but in respect of paragraphs (c), (d) and (e), in each case excluding any change, event, occurrence, circumstance or matter which has a disproportionate adverse effect on IOF, taken as a whole, as compared to other participants in the principal business segments in which IOF operates.

**IOF Prescribed Occurrence** means the occurrence of any of the following events:

- (a) **(conversion)** IOF (acting through ILFML) converts all or any of its securities into a larger or smaller number of securities or a resolution is passed to do so;
- (b) **(reduction of capital)** IOF (acting through ILFML) reduces or resolves to reduce its capital in any way;
- (c) **(redemption)** IOF (acting through ILFML) redeems any IOF Units or resolves to redeem any IOF Units;
- (d) **(buy back)** IOF (acting through ILFML) buys back or agrees to buy back any IOF Units, including:
  - (i) entering into a buy-back agreement (or something having a substantially similar effect under the law of any jurisdiction); or
  - (ii) resolving to approve the terms of a buy-back agreement or withdrawal offer under the Corporations Act (or something having a substantially similar effect under the law of any jurisdiction);
- (e) **(issuing units or options)** IOF (acting through ILFML) issues securities or grants an option over its securities, or agrees to make such an issue or grant such an option;
- (f) **(convertible securities)** IOF (acting through ILFML) issues or agrees to issue convertible notes or other security or instrument convertible into its securities;
- (g) **(Encumbrances)** IOF (acting through ILFML) creates, or agrees to create, any Encumbrance over any of its business or assets;
- (h) **(actions or events)** IOF (acting through ILFML) or any IOF Group Member (acting through its respective trustee):
  - (i) enters into or agrees to enter into any contract, arrangement or understanding;
  - (ii) changes or seeks to change the terms of any contract, arrangement or understanding;
  - (iii) pays, discharges or satisfies any liability under a contract, arrangement or understanding other than in accordance with its terms and consistently with past practice; or
  - (iv) waives any material Claim or rights under, or waives the benefit of, any provisions of any contract, arrangement or understanding,
 other than:
  - (v) subject to paragraph (vi), any event, action, plan, intention or proposal:
    - (A) as set out in the BudgetFY19;
    - (B) within the Delegation Authority; or

- (C) which is Fairly Disclosed in the Due Diligence Material; and
- (vi) provided that ILFML has, prior to the relevant action, consulted with the Acquirer in good faith, anything:
  - (D) which does not fall within the Delegation Authority and must be referred to the ILFML Board (including all related party transactions), even where the relevant matter is provided for in the BudgetFY19; or
  - (E) in relation to the Properties located at 388 George Street, Sydney or 347 Kent Street, Sydney, where the relevant matter is outside the valuation and feasibility work for such projects as Fairly Disclosed in the Due Diligence Material.
- (i) **(Co-owned Sub-Trusts)** the termination, variation, amendment, or exercise of rights by ILFML or any IOF Group Member, without the prior written consent of the Acquirer, under:
  - (i) a co-ownership or joint venture agreement in relation to a Co-Owned Sub-Trust or the Property which is owned by the relevant Co-Owned Sub-Trust; or
  - (ii) the constitution of any Co-owned Sub-Trust.
- (j) **(Termination of contracts, arrangements or understandings)** IOF (acting through ILFML) or any IOF Group Member (acting through its respective trustee) terminates:
  - (i) any lease which represents greater than 2% of the gross income of the relevant property without the prior written consent of the Acquirer; or
  - (ii) any supply contract, arrangement or understanding, pursuant to which the IOF Group is, or is reasonably likely to incur, a liability of more than \$500,000 in any one year, other than:
    - (A) in the ordinary course of IOF's business; and
    - (B) provided that the contract, undertaking or arrangement or understanding may be terminated by IOF (acting through ILFML) on no more than 30 days' notice without any penalty or payment required as a result of such termination;
- (k) **(Arrangements with the manager)** IOF (acting through ILFML) or any member of the IOF Group (acting through its respective trustee) enters into or amends any contract or commitment (or any series of related contracts or commitments) which involve IOM, Investa Office Management Holdings Pty Ltd, Investa Asset Management Pty Ltd, Investa Asset Management (QLD) Ltd, Investa Property Group Holdings Pty Ltd or any of their Related Bodies Corporate;
- (l) **(Insolvency)** IOF, ILFML or any IOF Group Member or any Co-owned Sub Trust becomes Insolvent or a court makes an order for the winding up of IOF, ILFML or any IOF Group Member or any Co-owned Sub Trust, or any of the following occurring in relation to any of those entities:
  - (i) an application being made in any court for an order to wind up that entity in accordance with the Corporations Act; or
  - (ii) the members of that entity resolving to wind up that entity; or
  - (iii) that entity being required to wind up by law; or
  - (iv) the commencement of the winding up of that entity,

other than in respect of IOF Finance Pty Ltd (ACN 099 531 585), the Belconnen Trust (ABN 38 819 083 520) or the Toorak Road Tooronga Trust (ABN 61 653 004 425).

- (m) **(Constitution)**
- (i) the AJO Constitution, the PCP Constitution or the constitution of any other IOF Group Member, or a provision of it is modified, repealed or replaced; or
  - (ii) the constitution of ILFML or the trustee of any IOF Group Member, or a provision of it is modified, repealed or replaced,
- or ILFML or the IOF Unitholders call a meeting to consider any such modification, repeal or replacement;
- (n) **(distributions)** other than in accordance with clause 7.3, IOF (acting through ILFML) agrees to pay, declares, pays or makes, or incurs a liability to pay or make, a distribution of income, profits, assets or capital to any entity;
- (o) **(Trusts)** any of the following occur:
- (i) ILFML ceases to be the responsible entity of IOF;
  - (ii) the trustee of any IOF Group Member as at the date of this Agreement ceases to be the trustee of that IOF Group Member;
  - (iii) the IOF Unitholders resolve to remove or replace ILFML as responsible entity of IOF or the trustee of any IOF Group Member or any Co-owned Sub Trust that IOF Controls;
  - (iv) a meeting being convened to consider a resolution for the removal, retirement or replacement of ILFML as responsible entity of IOF, or the trustee of any IOF Group Member or any Co-owned Sub Trust; or
  - (v) any application being made in any court for the appointment of a temporary responsible entity of IOF or any IOF Group Member or any Co-owned Sub Trust in accordance with the Corporations Act;
- (p) **(indemnity)** ILFML (or its Representatives) doing or failing to do anything that could restrict ILFML's right of indemnity from the Trust Property in respect of the obligations incurred by ILFML under the documents to which it is a party;
- (q) **(termination)** ILFML (or its Representatives) effects or facilitates the termination or winding up of IOF or any IOF Group Member or any Co-owned Sub Trust;
- (r) **(resettlement)** ILFML (or its Representatives) effects or facilitates the resettlement of the Trust Property;
- (s) **(delisting and extended suspension)** IOF ceases to be admitted to the official list of ASX or IOF Units cease to be quoted by ASX or IOF is suspended from trading by ASX for a consecutive period of more than 2 weeks;
- (t) **(deregistration)** IOF (acting through ILFML) or any IOF Group Member or any Co-owned Sub Trust becomes or takes steps to become deregistered as a registered managed investment scheme or is otherwise dissolved;
- (u) **(financial accommodation)** IOF (acting through ILFML) or any other IOF Group Member (acting through its respective trustee):
- (i) enters into a new loan, advance or financing arrangement (other than with another IOF Group Member or Co-Owned Sub-Trust) as lender or borrower;

- (ii) guarantees or indemnifies the obligations of any other person other than an IOF Group Member; or
  - (iii) amends (or waives any right under) any existing financing arrangements;
- (v) **(financing)** in respect of any financing arrangement, agreement or instrument which IOF (acting through ILFML) or any other IOF Group Member (acting through its respective trustee) has with any person, IOF (acting through ILFML) or any other IOF Group Member (acting through its respective trustee):
  - (i) breaches any covenant or makes any misrepresentation which is not remedied in accordance with the cure rights under the arrangement, agreement or instrument;
  - (ii) relies on any waiver or amendment to avoid the potential breach of any covenant or to avoid the making of any misrepresentation or to avoid an event of default or potential event of default occurring;
  - (iii) allows an event of default or potential event of default to occur which is not remedied in accordance with the relevant cure rights under the arrangement, agreement or instrument;
  - (iv) allows an obligation to pay any amount to be accelerated; or
  - (v) permanently reduces the amount of debt ahead of a maturity date;
- (w) **(derivative instruments)** IOF (acting through ILFML) or any IOF Group Member (acting through its respective trustee) enters into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges or interest rate hedges made to replace existing foreign currency or interest rate hedges in the ordinary course of business consistent with past practice and in accordance with existing policy as at the date of this agreement;
- (x) **(accounting policies)** there is a change to the existing accounting policies of IOF other than required by law or the Australian Accounting Standards;
- (y) **(Debt forgiveness)** IOF (acting through ILFML) or any IOF Group Member (acting through its respective trustee) and any service providers acting on their behalf waive, forgive, settle or compromise Claims that they have against any other person between the date of this agreement and the Implementation Date with an aggregate value in excess of \$500,000 compared to the full compensation due to IOF;
- (z) **(Claim)** a Claim is brought against IOF (acting through ILFML) or any IOF Group Member or any Co-owned Sub Trust (acting through its respective trustee) or in respect of a Property (other than a frivolous or vexatious Claim) which will or is likely to involve criminal and/ or non-monetary penalties;
- (aa) **(ceases business)** IOF (acting through ILFML), ILFML or any of their Controlled Entities ceases, or threatens to cease, to carry on business;
- (bb) **(Division 6C)** ILFML or the relevant sub-trustee approves or takes any action or makes any investment that could reasonably result in IOF or any member of the IOF Group commencing to carry on a trading business within the meaning of Division 6C of the Income Tax Assessment Act 1936 (Cth) or controlling or having the ability to control, directly or indirectly the affairs or operations of another person in respect of the carrying on by that other person of a trading business (within the meaning of that Division); and



- (cc) (**resolutions**) ILFML (or its Representatives) or IOF (acting through ILFML) or any IOF Group Member (acting through its respective trustee) agrees or resolves to do any of the foregoing,

provided that an IOF Prescribed Occurrence will not include a matter:

- (i) that is required to be undertaken or procured by ILFML or IOF pursuant to, or otherwise as contemplated by, the Transaction Documents;
- (ii) with the exception of (c) and (d) above, to the extent that it was Fairly Disclosed to the Acquirer in the Due Diligence Material or in announcements to ASX made by IOF to ASX, prior to the date of this Agreement; or
- (iii) approved in writing by the Acquirer.

**IOF Provided Information** means all information included in the Explanatory Memorandum, and any updates to that information prepared by or on behalf of IOF other than:

- (a) the Acquirer Information and any information solely derived from, or prepared solely in reliance on, the Acquirer Information;
- (b) the Independent Expert's Report; and
- (c) any description of the taxation effect of the Schemes or IOF Scheme Unitholders prepared by an external advisor to ILFML.

**IOF Register** means the AJO Register and the PCP Register which together form the register of members of IOF maintained by or on behalf of IOF in accordance with section 168(1) of the Corporations Act.

**IOF Registry** means Link Market Services Limited (ABN 54 083 214 537).

**IOF Representations and Warranties** means the representations and warranties of ILFML set out in Schedule 2.

**IOF Scheme Unit** means the IOF Units on issue as at the Record Date, other than those IOF Units on issue that are held by the Acquirer (if any).

**IOF Scheme Unitholders** means the AJO Scheme Unitholders and the PCP Scheme Unitholders.

**IOF Unit** means a stapled security in IOF consisting of one AJO Unit and one PCP Unit.

**IOF Unitholder** means a person who is registered in the IOF Register as a holder of IOF Units from time to time.

**IOM** means Investa Office Management Pty Limited (ACN 161 354 016).

**Judicial Advice** means the First Judicial Advice and the Second Judicial Advice.

**Management Deed** means the management deed between ILFML and IOM originally dated 25 September 2014, as amended and restated with effect from 1 July 2017.

**Money Laundering Laws** means all anti-money laundering laws of all jurisdictions in which ILFML conducts its business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Government Agency, and the United States, and the European Union, including but not limited to the applicable financial recordkeeping and reporting requirements of the U.S. Currency and Foreign Transaction Reporting Act of 1970, the U.S. Money Laundering Control Act of 1986, and Australia's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**Notice of Meeting** means the notice convening the Scheme Meeting, together with the proxy form for the Scheme Meeting.

**Officer** means, in relation to an Entity, any of its directors, agents, officers and employees.

**PCP** means the Prime Credit Property Trust (ARSN 089 849 196).

**PCP Constitution** means the constitution of PCP adopted on 6 December 2011 (as amended).

**PCP Register** means the register of members of PCP maintained by or on behalf of PCP in accordance with section 168(1) of the Corporations Act.

**PCP Scheme Consideration** means the consideration payable for the PCP Units in accordance with the PCP Trust Scheme.

**PCP Scheme Unitholders** means each person who is registered on the PCP Register as a holder of PCP Scheme Units as at the Record Date, other than an Acquirer (if applicable).

**PCP Scheme Units** means the PCP Units on issue as at the Record Date, other than those PCP Units on issue to an Acquirer (if any).

**PCP Supplemental Deed** means the deed poll pursuant to which ILFML will amend the PCP Constitution, to be executed by ILFML in the form of Part B of Schedule 5 (or in such other form as BidTrust and ILFML agree in writing).

**PCP Trust Scheme** means the arrangement in accordance with Guidance Note 15 under which BidTrust acquires all of the PCP Scheme Units, facilitated by amendments to the PCP Constitution as set out in the PCP Supplemental Deed.

**PCP Unit** means a fully paid ordinary unit in PCP.

**Permitted Distribution** has the meaning given in clause 7.3(b)(iii)

**Property** means any real property or any trusts owning real property in which ILFML or its Controlled Entities have an interest including any interest that is owned, leased or licensed and any interest that is legal, equitable, direct or indirect.

**Record Date** means 7pm on the date that is five Business Days after the Effective Date, or such other date as may be agreed in writing between the Acquirer and ILFML or as may be required by ASX.

**Regulator's Draft** means the draft of the Explanatory Memorandum which is provided to ASIC for review for the purposes of Regulatory Guide 74.

**Regulatory Approval** means:

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

It includes the matters referred to in Schedule 3.

**Regulatory Guide 74** means ASIC's "Regulatory Guide 74 (Acquisitions approved by members)".

**Related Body Corporate** has the meaning given in the Corporations Act but as if references to:

- (a) "body corporate" and "body" were to "Entity";
- (b) "subsidiary" include Subsidiaries as defined in this Agreement; and
- (c) "holding company" include Holding Companies as defined in this Agreement.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Representative** means, in relation to a person:

- (a) a Controlled Entity of the person; or
- (b) an Officer of the person or any of the person's Controlled Entities; or
- (c) an Adviser to the person or any of the person's Controlled Entities.

**Sanctioned Jurisdiction** means any country or region that is the subject or target of a comprehensive embargo under Sanctions Laws (including Cuba, Iran, North Korea, Sudan, Syria and the Crimea region of the Ukraine, as may be amended from time to time).

**Sanctioned Person** means any individual, entity or vessel that is the subject or target of sanctions under Sanctions Laws, including:

- (a) any individual, entity or vessel listed on any U.S. or other sanctions-related restricted party list (including the List of Specially Designated Nationals and Blocked Persons by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC")); or
- (b) any entity that is 50% or more owned or otherwise controlled by an individual or entity described in paragraph (a) above.

**Sanctions Law** means all economic or financial sanctions laws, measures or embargoes administered or enforced by Australia, the United States (including the United States Department of the Treasury or the United States Department of State), the European Union, the United Nations, the United Kingdom, or any other relevant sanctions Government Agency.

**Schemes** means the AJO Trust Scheme and the PCP Trust Scheme and **Scheme** means either of them as the case may be, subject to the Scheme Resolutions being approved by the requisite majorities of IOF Unitholders and the granting of Judicial Advice.

**Scheme Consideration** means the consideration to be provided to:

- (a) AJO Scheme Unitholders under the terms of the AJO Trust Scheme for the transfer to Bidco of their AJO Scheme Units; and
- (b) PCP Scheme Unitholders under the terms of the PCP Trust Scheme for the transfer to BidTrust of their PCP Scheme Units,

being an aggregate amount of \$5.25 for each IOF Scheme Unit, subject to any reduction of the total Scheme Consideration required under the terms of clause 7.3 of this Agreement.

**Scheme Meeting** means the meetings of IOF Unitholders to be convened by ILFML pursuant to the AJO Constitution and the PCP Constitution (as applicable) and section 252A of the Corporations Act to consider the Scheme Resolutions, and includes any adjournment of that meeting.

**Scheme Resolutions** means the following resolutions to be put to IOF Unitholders to approve the Schemes:

- (a) a special resolution to approve amendments to each Constitution as set out in each Supplemental Deed and to authorise ILFML to execute and lodge with ASIC each Supplemental Deed to give effect to those amendments;
- (b) a special resolution to approve the Unstapling on the Implementation Date;
- (c) in respect of the AJO Trust Scheme, an ordinary resolution for the purpose of item 7 of section 611 of the Corporations Act to approve the acquisition of all of the AJO Units by BidCo;

- (d) in respect of the PCP Trust Scheme, an ordinary resolution for the purpose of item 7 of section 611 of the Corporations Act to approve the acquisition of all of the PCP Units by BidTrust; and
- (e) any other resolutions that the parties (acting reasonably) may agree.

**Second Court Date** means the first day of hearing of an application made to the Court by ILFML for the Second Judicial Advice or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Second Judicial Advice** means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that, IOF Scheme Unitholders having approved the Scheme Resolutions by the requisite majorities, ILFML would be justified in implementing the Scheme Resolutions, giving effect to the provisions of each Constitution (as amended by clause 3 of the relevant Supplemental Deed) and in doing all things and taking all necessary steps to put the Schemes into effect.

**Subsidiary** has the meaning given in the Corporations Act, but an Entity will also be taken to be a Subsidiary of an Entity if it is Controlled by that Entity and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an Entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) where a trust is a Subsidiary, the trustee of that trust (acting in that capacity) will also be a Subsidiary.

**Superior Proposal** means a bona fide written Competing Proposal that the ILFML Board, acting in good faith and after taking advice from its legal and financial advisors, determines is:

- (a) reasonably capable of being completed, including its conditions; and
- (b) of a higher financial value and is more favourable to IOF Unitholders than the Schemes, in each case, taking into account all aspects of the Competing Proposal, including the terms and conditions of the Competing Proposal, the price and/ or financial value of the Competing Proposal, timing considerations and any other matters relevant to the Competing Proposal being contemplated (including, the identity, expertise, reputation and financial condition of the person making such proposal and legal, regulatory and financial matters).

**Supplemental Deed** means each of the AJO Supplemental Deed and the PCP Supplemental Deed and either of them as the case may be.

**Standard Tax Conditions** means any tax-related conditions which are in the form, or substantially in the form, of those set out in Part A of Attachment A of FIRB Guidance Note 47 on 'Tax Conditions' (in the form released on 24 November 2016).

**Takeovers Panel** means the Takeovers Panel of Australia.

**Third Party** means any of the following:

- (a) a person other than any Acquirer Group Member; or
- (b) a consortium, partnership, limited partnership, syndicate, trust or other group in which no Acquirer Group Member has agreed to be a participant.

**Timetable** means the indicative timetable in relation to the Schemes set out in Schedule 4, or such other indicative timetable as ILFML and the Acquirer may agree in writing or as may be required by ASX.

**Trading Day** has the meaning given in the ASX Listing Rules.

**Transaction Documents** means:

- (a) this Agreement;
- (b) each Supplemental Deed; and
- (c) the Deed Poll.

**Trust Property** means the scheme property of IOF including all of ILFML's rights, property and undertaking the subject of IOF:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

**Unstapling** means the unstapling of AJO Units and PCP Units in accordance with clause 20.5 of each of the Constitutions.

**Voting Power** has the meaning given in section 610 of the Corporations Act.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (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 or Schedule is a reference to a clause of, or Schedule to, this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) 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.
- (h) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (i) 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.
- (j) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form and includes a communication by electronic mail.
- (k) A reference to \$, A\$ or Australian dollars is to the lawful currency of Australia.

- (l) Words and phrases not specifically defined in this Agreement have the same meanings (if any) given to them in the Corporations Act.
- (m) A reference to time is a reference to time in Sydney, New South Wales, Australia.
- (n) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- (o) The meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (p) A reference to a **liability** incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person.
- (q) A reference to a **loss** incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other diminution of value of any description that the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any Claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such Claims.

### 1.3 Consents and approvals

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

### 1.4 Best endeavours

Any provision of this Agreement that requires a party to use best endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs, requires that party to do so as soon as is reasonably practicable, but does not include any obligation:

- (a) to pay any significant sum of money or to provide any significant 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 fees to any professional advisers; or
- (b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens,

except where that provision expressly specifies otherwise.

### 1.5 Joint and Several Obligations

- (a) In this Agreement, any obligation or liability of any one or more of BidTrust and BidCo is deemed to bind them jointly and severally and in particular each representation and warranty given by BidTrust and BidCo is deemed to be given by them jointly and severally and each covenant made by BidTrust and BidCo is made by them jointly and severally.

- (b) For the avoidance of doubt, any approval, consent or notification, or the doing of any act, matter or thing, under this Agreement by ILFML with BidCo or BidTrust will be deemed at all times to have been a dealing with or received by both BidCo and Bidtrust.

## 2 Agreement to Proceed with Schemes

### 2.1 ILFML to propose Schemes

ILFML agrees to propose and implement the Schemes upon and subject to the terms and conditions of this Agreement and otherwise in accordance with the Timetable.

### 2.2 Acquirer to assist

The Acquirer agrees to assist ILFML to implement the Schemes upon and subject to the terms and conditions of this Agreement and otherwise in accordance with the Timetable.

## 3 Conditions Precedent and Pre-Implementation Steps

### 3.1 Conditions Precedent

Subject to this clause 3, the obligations of ILFML under clause 5.1(p) and the Acquirer's obligation to pay, or procure the payment of, the Scheme Consideration in accordance with the Deed Poll, the Supplemental Deeds and clause 5.2(i) are subject to the satisfaction (or waiver in accordance with clause 3.2) of each of the following Conditions Precedent:

- (a) **(FIRB)** before 8am on the Second Court Date, the Treasurer of the Commonwealth of Australia (or his delegate):
- (i) provides written notice that there are no objections under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) to the proposed acquisition of the IOF Scheme Units by the Acquirer (either whether conditionally or unconditionally); or
  - (ii) becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the acquisition of the IOF Scheme Units by the Acquirer;
- (b) **(Regulatory Approvals)** before the relevant time set out in Schedule 3, all Regulatory Approvals required to implement the Schemes are granted or obtained and those Regulatory Approvals are not withdrawn, cancelled or revoked;
- (c) **(IOF Unitholder approval)** IOF Unitholders approve the Scheme Resolutions by the requisite majorities before 8.00am on the Second Court Date;
- (d) **(no restraints)** no judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Governmental Agency of competent jurisdiction, remains in effect as at 8am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Schemes or any Transaction Document;
- (e) **(execution and lodgement of each Supplemental Deed)** ILFML executes the Supplemental Deeds and lodges a copy of the executed Supplemental Deeds with ASIC;
- (f) **(no IOF Prescribed Occurrence)** no IOF Prescribed Occurrence occurs between the date of this Agreement and 8am on the Second Court Date, other than:
- (i) which is required or permitted by this Agreement or the Schemes; and
  - (ii) which has been agreed to in writing by the Acquirer.

- (g) **(no IOF Material Adverse Change)** no IOF Material Adverse Change occurs between the date of this Agreement and 8am on the Second Court Date;
- (h) **(ILFML Board's recommendation)** each member of the ILFML Board has, in the Explanatory Memorandum, stated that they recommend that the IOF Scheme Unitholders vote in favour of the Scheme Resolutions, in the absence of a Superior Proposal, and no member of the ILFML Board has withdrawn, qualified or varied those recommendations before the Scheme Meeting;
- (i) **(Judicial Advice)** the Court provides the Judicial Advice;
- (j) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to ILFML, stating that in its opinion the Scheme is in the best interests of IOF Unitholders before the date on which the Explanatory Memorandum is lodged with ASIC, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to ILFML prior to the Scheme Meeting;
- (k) **(execution of Deed Poll)** between the date of this Agreement and the date of sending the Explanatory Memorandum to IOF Unitholders, the Acquirer signs and delivers the Deed Poll; and
- (l) **(Acquirer funding)** the Acquirers' Representation and Warranty in clause (e) of Schedule 1 is true and correct as if given on the date of this Agreement and on the Second Court Date.

### 3.2 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d) and 3.1(e) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(f), 3.1(g), and 3.1(h) are for the sole benefit of the Acquirer and may only be waived by the Acquirer (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clauses 3.1(i), 3.1(j), 3.1(k) and 3.1(l) are for the sole benefit of ILFML and may only be waived by ILFML (in its absolute discretion) in writing.
- (d) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

### 3.3 Best endeavours and co-operation

Without prejudice to any other obligations of the parties under this Agreement:

- (a) the Acquirer must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(k) and 3.1(l);
- (b) ILFML must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(c), 3.1(d), 3.1(e), 3.1(f), 3.1(g) and 3.1(h);
- (c) each of the Acquirer and ILFML must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(i) and 3.1(j); and
- (d) neither party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or



procured pursuant to, or is otherwise permitted by, the Transaction Documents, or is required by law.

For the purposes of paragraphs (a), (b) and (c), the 'best endeavours' of a party will require that party to (among other things) co-operate with the other party or a Governmental Agency or third party in good faith with a view to satisfying the Conditions Precedent, including providing all information reasonably required by the other party in relation to the Acquirer Group or the IOF Group (as applicable) in order to satisfy the Conditions Precedent and providing all information reasonably required by any Governmental Agency or other third party to such Governmental Agency or third party as appropriate.

### 3.4 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.3).

### 3.5 Failure of Conditions Precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2 before the End Date; or
  - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 3.3 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived),

either party may serve notice on the other party, and the parties must then consult in good faith with a view to determining whether:

- (iii) the Schemes may proceed by way of alternative means or methods;
- (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
- (v) to change the date of the application to be made to the Court for the granting of Judicial Advice or to adjourn such application (as applicable) to another date agreed by the parties; or
- (vi) to extend the End Date,

provided that, notwithstanding anything in this Agreement, each party may make a determination with respect to the matters in clauses 3.5(a)(iii) to 3.5(a)(vi) in its sole, absolute and unfettered discretion.

- (b) If the Acquirer and ILFML are unable to reach agreement under clauses 3.5(a)(iii), 3.5(a)(iv), 3.5(a)(v) or 3.5(a)(vi) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5pm on the day before the Second Court Date, either party may terminate this Agreement by notice in writing to the other party, provided that:

- (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
- (ii) there has been no failure by that party to comply with its obligations under this Agreement, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 13.5 will have effect.

### 3.6 Conditions of Regulatory Approvals

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval, if such conditions are satisfactory to ILFML and the Acquirer (each acting reasonably). For the purposes of clause 3.1(a), the parties acknowledge and agree that the Standard Tax Conditions issued by FIRB are reasonable and acceptable if they are included in any "no objections" notification received in connection with the proposed acquisition.

### 3.7 Certificates in relation to Conditions Precedent

- (a) On the Second Court Date each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8am on the Second Court Date the Conditions Precedent (other than the Condition Precedent in clause 3.1(i)) have been satisfied or waived in accordance with this Agreement.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.7(a) by 5pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## 4 Schemes

### 4.1 Outline of Schemes

The parties agree that:

- (a) ILFML will propose the Schemes to IOF Unitholders on and subject to the terms of this Agreement, and will use reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable; and
- (b) the Acquirer will use reasonable endeavours to assist ILFML in implementing the Schemes on and subject to the terms of this Agreement, and will use reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as is reasonably practicable.

### 4.2 Relationship between the AJO Trust Scheme, the PCP Trust Scheme and the Unstapling

- (a) The AJO Trust Scheme and the PCP Trust Scheme are inter-conditional so that each Scheme must become Effective for the Schemes to proceed.
- (b) The Unstapling and the Schemes are inter-conditional such that the Unstapling may only occur if the Schemes are implemented and the Schemes will only be implemented if the Unstapling occurs.

#### 4.3 Scheme Consideration

- (a) Each IOF Scheme Unitholder is entitled to receive the Scheme Consideration in respect of each IOF Scheme Unit held by that IOF Scheme Unitholder in accordance with the terms and conditions of this Agreement, the Supplemental Deeds and the Schemes.
- (b) The AJO Scheme Consideration to be provided in respect of the AJO Scheme Units is as described in the AJO Supplemental Deed.
- (c) The PCP Scheme Consideration to be provided in respect of the PCP Scheme Units is as described in the PCP Supplemental Deed.

#### 4.4 Payment of Scheme Consideration

The Acquirers jointly and severally undertake and warrant to ILFML (in ILFML's own right and on behalf of each IOF Scheme Unitholder) that, in consideration of the transfer to the Acquirers of each IOF Scheme Unit under the terms of the Schemes, on the Implementation Date, the Acquirers will:

- (a) accept that transfer; and
- (b) provide to each IOF Scheme Unitholder the Scheme Consideration for each IOF Scheme Unit,

in each case in accordance with the terms and conditions of this Agreement, the Schemes and the Deed Poll.

#### 4.5 Timetable

- (a) It is the intention of the parties to conform with the Timetable.
- (b) The parties acknowledge that the circumstances of the parties may change and the parties will consult with each other regularly in relation to:
  - (i) performing their respective obligations within the framework established by the Timetable; and
  - (ii) any need to modify the Timetable.

### 5 Steps for Implementation

#### 5.1 ILFML's obligations in respect of the Schemes

ILFML must take all steps reasonably necessary to propose and implement the Schemes as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular ILFML must:

- (a) **(preparation of Explanatory Memorandum)** prepare and despatch the Explanatory Memorandum in accordance with all applicable laws, the ASX Listing Rules, Guidance Note 15 and, as applicable, ASIC Regulatory Guide 74;
- (b) **(consultation with the Acquirer in relation to Explanatory Memorandum)** consult with the Acquirer as to the content and presentation of the Explanatory Memorandum including:
  - (i) providing to the Acquirer regular drafts of the Explanatory Memorandum and the factual information sections of the Independent Expert's Report, in each case which relate to the Acquirer, for the purpose of enabling the Acquirer to review and comment on those draft documents. In relation to the Independent Expert's Report, the Acquirer's review is to be limited to a factual accuracy review of the information relating to the Acquirer; and

- (ii) considering all reasonable and timely comments made by the Acquirer in good faith when producing a revised draft of the Explanatory Memorandum;
- (c) **(Acquirer Information)** in respect of the Acquirer Information:
  - (i) as soon as practicable after delivery, review drafts of the Acquirer Information and provide comments on those drafts acting reasonably and in good faith;
  - (ii) obtain written approval from the Acquirer in respect of the inclusion of the Acquirer Information in the Explanatory Memorandum in the form and context in which it appears in the Explanatory Memorandum;
  - (iii) implement such changes to those parts of the Explanatory Memorandum relating only to the Acquirer which are provided in accordance with this clause 5.1(c) as reasonably requested by the Acquirer and prior to providing a copy to ASIC; and
  - (iv) during the period until the Acquirer Information (or any information solely derived from, or prepared solely in reliance on, the Acquirer Information) becomes publicly available, only use that information with the prior written consent of the Acquirer (not to be unreasonably withheld);
- (d) **(liaison with ASIC)** as soon as practicable after the date of this Agreement, provide an advanced draft of the Explanatory Memorandum to ASIC for its review and approval and (to the extent reasonably practicable):
  - (i) promptly provide to the Acquirer, and include in a revised draft of the Explanatory Memorandum, any new information not included in the copy of the Explanatory Memorandum which was provided to ASIC and which is required by the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 74 or the ASX Listing Rules, to be included in the Explanatory Memorandum; and
  - (ii) keep the Acquirer informed of any matters raised by ASIC in relation to the Explanatory Memorandum (and of any resolution of those matters) and use reasonable endeavours to resolve those matters in consultation with the Acquirer;
- (e) **(update Explanatory Memorandum)** until the date of the Scheme Meeting, promptly update the Explanatory Memorandum with any information that arises after the Explanatory Memorandum has been despatched that is necessary so that the Explanatory Memorandum does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (f) **(ASIC modifications)** as soon as reasonably practicable after the date of this Agreement apply to ASIC for the modifications set out in paragraphs (a) to (d) of Schedule 3;
- (g) **(ASX confirmation)** seek confirmation from ASX under ASX Listing Rule 15.1 that ASX does not object to the proposed amendments to each Constitution as set out in each Supplemental Deed or the Explanatory Memorandum and paragraph (e) of Schedule 3;
- (h) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Schemes in accordance with all applicable laws, and provide the Acquirer with copies of those documents;
- (i) **(First Judicial Advice)** lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the First Judicial Advice;
- (j) **(Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court, including, as required, despatching the Explanatory Memorandum to IOF Unitholders, convening and holding the Scheme Meeting in accordance with the Court

orders, and putting the Scheme Resolutions to IOF Unitholders at the Scheme Meeting, provided that if this Agreement is terminated under clause 13 it will take all steps reasonably required so that the Scheme Meeting is not held;

- (k) **(Second Judicial Advice)** if IOF Scheme Unitholders approve the Scheme Resolutions by the requisite majorities, lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the Second Judicial Advice;
- (l) **(execution and lodgement of each Supplemental Deed)** if the Court grants the Second Judicial Advice, as soon as practicable after, and in any event by no later than 4.00pm on the first Business Day after the later of the Second Court Date and the date on which all of the Conditions Precedent are satisfied or waived in accordance with this Agreement, execute each Supplemental Deed and lodge with ASIC a copy of each executed Supplemental Deed;
- (m) **(provide IOF Register information)** as soon as reasonably practicable after the Record Date, and in any event at least 2 Business Days before the Implementation Date, give to the Acquirer (or as it directs) details of the names, registered addresses and holdings of IOF Units of every IOF Scheme Unitholder as shown in the IOF Register as at the Record Date;
- (n) **(information)** provide all necessary information, and procure that the IOF Registry provides all necessary information, in each case as reasonably requested by the Acquirer, about the Schemes and IOF Unitholders to the Acquirer;
- (o) **(implementation of the Schemes)** if the Court grants the Second Judicial Advice:
  - (i) use best endeavours so that ASX suspends trading in IOF Units with effect from the close of trading on the Effective Date;
  - (ii) close the IOF Register as at the Record Date (in accordance with clauses 5.4 and 5.8) to determine the identity of IOF Scheme Unitholders and determine their entitlements to the Scheme Consideration in accordance with the Schemes;
  - (iii) promptly execute proper instruments of transfer of, and register all transfers of, the IOF Scheme Units to the Acquirer in accordance with the Schemes; and
  - (iv) promptly do all other things contemplated by or necessary to give effect to the Schemes and the orders of the Court granting the Judicial Advice and to effect the transfer of the IOF Scheme Units to the Acquirer;
- (p) **(Independent Expert)** appoint the Independent Expert and promptly provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum (including any updates to that report) and any other materials to be prepared by the Independent Expert for inclusion in the Explanatory Memorandum (including any updates to it);
- (q) **(compliance with laws)** comply with applicable laws and regulations (including Anti-Corruption Laws, Money Laundering Laws, and Sanctions Laws) in connection with the Schemes;
- (r) **(listing)** not do anything to cause the IOF Units to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Schemes unless the Acquirer has agreed in writing; and

- (s) **(financing)** procure (to the extent within its control) that its Officers and Advisers work in good faith with the Acquirer and its Representatives at the reasonable request of the Acquirer:
- (i) in connection with the debt financing arrangements to be implemented by the Acquirer to assist in funding the Schemes (**Scheme Financing**) including assisting the Acquirer and its Representatives to seek the consents of co-owners to the grant of security over co-owned properties and assisting the Acquirer and its Representatives with the entry by co-owners into tripartite deeds and assisting the Acquirer and its Representatives by providing valuations and similar reports (and, if required, reliance letters in favour of the Acquirer's prospective lenders);
  - (ii) to the extent not provided in the Due Diligence Material, provide the Acquirer and prospective lenders and other financial parties with all information (which is readily available, in existence and is able to be provided by ILFML), in order to carry out all necessary checks under applicable "know your customer" and anti-money laundering legislation; and
  - (iii) on the IOF Group's existing financing arrangements (including under the bilateral facility, bond and USPP financing arrangements) in connection with the Schemes' effect on such arrangements, including:
    - (A) liaising with counterparties (including seeking all relevant consent and waivers) in respect of aligning the timeframe for prepayment of existing financing arrangements on the Implementation Date and delivering required prepayment and other notices;
    - (B) cooperating in the Acquirer's efforts to prepay, and to minimise the cost of prepaying, bonds issued by the IOF Group;
    - (C) obtaining payoff letters and releases and discharges; and
    - (D) managing withdrawal of ratings issued by any relevant ratings agency.

## 5.2 Acquirer's obligations in respect of the Schemes

The Acquirer must take all steps reasonably necessary to assist ILFML to propose and implement the Schemes as soon as is reasonably practicable after the date of this Agreement and otherwise substantially in accordance with the Timetable, and in particular the Acquirer must:

- (a) **(Acquirer Information)** as soon as reasonably practicable after the date of this Agreement, prepare and promptly provide to ILFML the Acquirer Information for inclusion in the Explanatory Memorandum (to the extent not already provided as at the date of this Agreement), including all information regarding the Acquirer Group and the Scheme Consideration required by all applicable laws (including the Corporations Act and the Corporations Regulations), ASIC Regulatory Guide 60 and the ASX Listing Rules, and consent to the inclusion of that information in the Explanatory Memorandum, and take into account all reasonable and timely comments from ILFML on those drafts;
- (b) **(review of Explanatory Memorandum)** review the drafts of the Explanatory Memorandum prepared by ILFML and provide comments promptly on those drafts in good faith;
- (c) **(Independent Expert information)** provide all assistance and information reasonably requested by ILFML or by the Independent Expert in connection with the preparation of the Independent Expert's Report;

- (d) **(reasonable assistance)** provide reasonable assistance to ILFML to assist ILFML in applying for the modifications set out in Schedule 3 and provide any necessary consents in relation to such applications;
- (e) **(liaison with ASIC)** provide reasonable assistance to ILFML to assist ILFML to resolve any matter raised by ASIC regarding the Explanatory Memorandum or the Schemes during its review of the Explanatory Memorandum;
- (f) **(keep ILFML informed)** from the First Court Date until the Second Court Date, promptly inform ILFML if it becomes aware that the Acquirer Information contains a statement that, in the form and context in which it appears in the Explanatory Memorandum, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required so that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (g) **(Court representation)** if requested by ILFML, ensure that it is represented by counsel at the Court hearings convened for the purposes of the Judicial Advice in relation to the Schemes, at which, through its counsel and if requested by the Court, the Acquirer will undertake to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this Agreement and the Schemes;
- (h) **(Deed Poll)** before the despatch of the Explanatory Memorandum, execute the Deed Poll;
- (i) **(Scheme Consideration)** if the Schemes become Effective, provide, or procure the provision of, the Scheme Consideration in accordance with the Schemes and the Deed Poll on the Implementation Date;
- (j) **(IOF Provided Information)** during the period until the IOF Provided Information becomes publicly available, only use the IOF Provided Information with the prior written consent of ILFML (not to be unreasonably withheld); and
- (k) **(compliance with laws)** comply with applicable laws and regulations (including Anti-Corruption Laws, Money Laundering Laws, and Sanctions Laws) in connection with the Schemes.

### 5.3 Responsibility statement

ILFML and the Acquirer will have responsibility for preparation of the following information:

- (a) ILFML is responsible for the IOF Provided Information contained in the Explanatory Memorandum;
- (b) the Acquirer is responsible for the Acquirer Information contained in the Explanatory Memorandum; and
- (c) the Independent Expert is responsible for the Independent Expert's Report.

### 5.4 Responsibility for information

- (a) Each of ILFML and the Acquirer will be responsible:
  - (i) generally, for the content of those sections of the Explanatory Memorandum to the extent it provides information to be included in that content; and
  - (ii) in particular, for the information designated in clause 5.3 above.

For the avoidance of doubt:

- (iii) the Acquirer accepts no responsibility for, and no liability in relation to, any information referred to in clause 5.4(a)(i) that is not provided by the Acquirer or IOF Provided Information;
  - (iv) ILFML accepts no responsibility for, and no liability in relation to, any information referred to in clause 5.4(a)(i) that is not provided by ILFML or the Acquirer Information; and
  - (v) the Explanatory Memorandum shall contain statements to the effect of clauses 5.4(a)(iii) and 5.4(a)(iv).
- (b) The parties agree that the Independent Expert is responsible for the Independent Expert's Report.

### 5.5 Verification

Each party must undertake appropriate verification processes for the information supplied by that party for the Explanatory Memorandum.

### 5.6 Disagreement on content

- (a) Subject to clause 5.6(b), if the Acquirer and ILFML disagree on the form or content of the Explanatory Memorandum, they must consult in good faith to try to settle an agreed form of the Explanatory Memorandum. If complete agreement is not reached after reasonable consultation, then:
- (i) if the disagreement relates to the form or content of the Acquirer Information contained in the Explanatory Memorandum, ILFML will make the amendments that the Acquirer reasonably requires; and
  - (ii) if the disagreement relates to the form or content of any other part of the Explanatory Memorandum, the ILFML Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Memorandum.
- (b) At no time shall the form or content of any part of the Explanatory Memorandum cause the Explanatory Memorandum to not comply with all applicable laws, the ASX Listing Rules, Guidance Note 15 and, as applicable, ASIC Regulatory Guide 74.

### 5.7 Dealings in IOF Units

For the purpose of establishing the persons who are IOF Scheme Unitholders, dealings in IOF Units will be recognised by ILFML provided that:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered as the holder of the relevant IOF Units by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the registrar of IOF by 5.00pm on the day which is the Record Date (in which case ILFML must register such transfers or transmission applications before 7.00pm on that day),

and ILFML will not accept for registration, nor recognise for the purpose of establishing the persons who are IOF Scheme Unitholders, any transfer or transmission application in respect of IOF Units received after such times (other than as contemplated by the Schemes in relation to the transfer of the IOF Scheme Units to the Acquirer), or received prior to such times but not in registrable form.



## 5.8 IOF Register

- (a) On and from the Effective Date, ILFML will, until the Scheme Consideration has been provided and the name and address of:
  - (i) BidCo has been entered into the AJO Register as the holder of all of the AJO Scheme Units, maintain, or procure the maintenance of, the AJO Register and the AJO Register in this form and the terms of the AJO Trust Scheme will solely determine entitlements to the AJO Scheme Consideration; and
  - (ii) BidTrust has been entered into the PCP Register as the holder of all of the PCP Scheme Units, maintain, or procure the maintenance of, the PCP Register and the PCP Register in this form and the terms of the PCP Trust Scheme will solely determine entitlements to the PCP Scheme Consideration.
- (b) As from the Record Date (and other than for the Acquirer following the Implementation Date), each entry in the IOF Register as at the Record Date relating to IOF Scheme Units will cease to have any effect other than as evidence of the entitlements of IOF Scheme Unitholders to the Scheme Consideration in respect of those IOF Scheme Units

## 6 Public announcements

- (a) Where a party is required by law, the ASX Listing Rules or a memorandum of understanding with a Regulatory Authority to make any announcement or make any disclosure relating to a matter the subject of the Schemes, it may do so only after it has to the extent legally permissible given the other parties as much notice as practically possible and has consulted to the fullest extent practicably possible in the circumstances with the other parties and their legal advisers. For the avoidance of doubt, nothing in this clause 6(a) prevents ILFML from making any announcement in the ordinary course in relation to its business generally, including leasing transactions and building construction milestones.
- (b) Subject to clause 6(a) and the release of the Agreed Public Announcement in accordance with clause 8.1(a), no party may make any public announcement or disclosure in connection with the Schemes or any other transaction contemplated by this Agreement other than in a form approved in writing by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable and such approval will not be unreasonably withheld, conditioned or delayed.

## 7 Conduct of Business and Requests for Access

### 7.1 Conduct of business

- (a) During the period from the date of this Agreement up to and including the Implementation Date, ILFML must procure that the business and operations of IOF are conducted in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this Agreement, and in any event not undertake an IOF Prescribed Occurrence, do (or omit to do) anything that may reasonably give rise to an IOF Prescribed Occurrence, or commence any litigation, and in compliance in all material respects with all applicable laws (including Anti-Corruption Laws, Money Laundering Laws, and Sanctions Laws), regulations and Regulatory Approvals.
- (b) ILFML must keep the Acquirer informed of any material developments concerning IOF or the Properties.

- (c) Nothing in clause 7.1(a) restricts the ability of ILFML to take any action:
  - (i) which is required or permitted by this Agreement or the Schemes;
  - (ii) which has been agreed to in writing by the Acquirer;
  - (iii) which is Fairly Disclosed in the Due Diligence Material as being actions that IOF may carry out between the date of this Agreement and the Implementation Date (including any transaction, expenditure or other matter disclosed in operating and development budgets of IOF provided to the Acquirer and/or its Representatives prior to the date of this Agreement);
  - (iv) which is Fairly Disclosed in ILFML's announcements to ASX or a document lodged with ASIC, in each case prior to the date of this Agreement;
  - (v) to avoid the occurrence of an IOF Material Adverse Change; or
  - (vi) required by law or by an order of a court or Governmental Agency.
- (d) For the avoidance of doubt, nothing in this clause 7.1 restricts the ability of ILFML to respond to a Competing Proposal in accordance with clause 11.

## 7.2 Access to information and co-operation

- (a) In addition to the assistance provided under clause 5.1(t), during the period from the date of this Agreement up to the Implementation Date, ILFML must (and, where required, must request and instruct IOM in accordance with the Management Deed to):
  - (i) promptly provide the Acquirer and its Representatives with reasonable access to the documents, records and other information relating to IOF (subject to existing confidentiality obligations owed to third parties, or applicable privacy laws), including, providing the Acquirer and its Representatives with reasonable access to officers and employees of IOM or its Related Bodies Corporate, by way of site visits and/or access to the Representatives of IOF as reasonably requested by the Acquirer or its Representatives, which the Acquirer reasonably requires for the purposes of:
    - (A) the implementation and facilitation of the Schemes, including obtaining any Regulatory Approvals and satisfying Conditions Precedent;
    - (B) the refinancing of any IOF Group debt facilities which the Acquirer intends to repay on or following the Effective Date;
    - (C) planning the transition of IOF and other matters relating to the conduct of IOF following the Implementation Date; or
    - (D) any other purpose that is agreed in writing between the parties;
  - (ii) keep the Acquirer reasonably informed of all material developments relating to:
    - (A) IOF (including any events or circumstances reasonably likely to give rise to an IOF Prescribed Occurrence or IOF Material Adverse Change); and
    - (B) the Schemes, including the proxy position in respect of the Scheme Resolutions,subject to the proper performance by the Officers of ILFML of their fiduciary duties; and
  - (iii) promptly notify the Acquirer in writing of any event or action which is carried out under the Delegation Authority and was approved by the CEO of Investa Property Group or the relevant Fund Manager responsible for the IOF Group.

- (b) The parties acknowledge that all information that is provided pursuant to this clause 7.2 will be provided subject to the terms of the Confidentiality Deed.

### 7.3 Distributions

- (a) IOF (acting through ILFML) must not declare, pay, make, or incur a liability to pay or make, a distribution of income, profits, assets or capital, other than in accordance with the terms of this clause 7.3 or by agreement with the Acquirer. For the avoidance of doubt, an IOF Group Member or Co-owned Sub-Trust may declare, pay and make distributions of income, profits, assets or capital to the extent necessary to give effect to this clause 7.3.
- (b) The Acquirer and ILFML agree that IOF (acting through ILFML) must in respect of the Distribution Period ending on 30 June 2018:
  - (i) determine the Distributable Income for that Distribution Period;
  - (ii) fix the record date for determining the Distribution Entitlement which each IOF Unitholder is entitled to receive;
  - (iii) calculate each IOF Unitholder's Distribution Entitlement (the **Permitted Distribution**); and
  - (iv) distribute the Permitted Distribution to each IOF Unitholder on or prior to the Second Court Date.
- (c) The aggregate Scheme Consideration payable by the Acquirer is reduced by the aggregate amount of:
  - (i) the Permitted Distribution; and
  - (ii) any other distribution of income, profits, assets or capital which is declared or paid by IOF (acting through ILFML) on or after 4 May 2018,to the extent actually declared or paid to IOF Scheme Unitholders on or before the Implementation Date.

## 8 ILFML Board Recommendations and Intentions

### 8.1 ILFML Board recommendation

- (a) The Agreed Public Announcement to be issued by ILFML immediately after execution of this Agreement must state (on the basis of written statements or resolutions made by each of the directors of ILFML) that the ILFML Board unanimously recommends that IOF Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of IOF Unitholders.
- (b) ILFML must procure that the ILFML Board:
  - (i) does not change or withdraw its recommendations set out in the Agreed Public Announcement;
  - (ii) in the Explanatory Memorandum, states that the ILFML Board unanimously recommends that IOF Unitholders approve the Scheme Resolutions, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of IOF Unitholders, and does not change or 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 Schemes are no longer so considered or recommended or supported,

unless:

- (iv) either:
  - (A) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of IOF Unitholders; or
  - (B) there is a Superior Proposal; andthe ILFML Board, after considering the matter in good faith and taking advice from its legal and financial advisers determines in good faith and acting reasonably, no longer considers the Schemes to be in the best interests of IOF Unitholders.

## 8.2 ILFML Board intentions

- (a) The Explanatory Memorandum despatched to IOF Unitholders must state (on the basis of written statements or resolutions made by each of the relevant directors of ILFML) that each director of ILFML who holds IOF Units, or who has control over voting rights attaching to IOF Units, intends to vote in favour of the Schemes, or procure that the IOF Units the voting rights of which the director has control over are voted in favour of the Schemes, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of IOF Unitholders.
- (b) ILFML must procure that each director of ILFML who holds IOF Units, or who has control over voting rights attaching to IOF Units:
  - (i) intends to vote in favour of the Scheme Resolutions, or procure that the IOF Units the voting rights of which the director of ILFML has control over are voted in favour of the Scheme Resolutions; and
  - (ii) does not change that voting intention, unless:
  - (iii) either:
    - (A) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of IOF Unitholders; or
    - (B) there is a Superior Proposal; andthe applicable director of ILFML, after considering the matter in good faith and taking advice from their legal and financial advisers determines in good faith and acting reasonably, no longer considers the Schemes to be in the best interests of IOF Unitholders.

## 8.3 ILFML Directors

ILFML represents and warrants to the Acquirer that it has been advised by each director of ILFML in office at the date of this Agreement that he or she will make and maintain the recommendation and voting intention statement in accordance with clauses 8.1 and 8.2.

## 9 Representations and Warranties

### 9.1 Acquirer Representations and Warranties

The Acquirer represents and warrants to ILFML (on its own behalf and separately as trustee for each of the IOF Indemnified Parties), except as consented to in writing by IOF, each of the Acquirer Representations and Warranties.

### 9.2 IOF Representations and Warranties

ILFML represents and warrants to the Acquirer (on its own behalf and separately as trustee for each of the Acquirer Indemnified Parties), except as consented to in writing by the Acquirer, each of the IOF Representations and Warranties.

### 9.3 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this Agreement the other party has relied on the representations and warranties provided by the Representor under this clause 9; and
- (b) it has not entered into this Agreement in reliance on any warranty or representation made by or on behalf of the other party except those warranties and representations set out in this Agreement. This acknowledgment does not prejudice the rights any party may have in relation to the IOF Provided Information, the Acquirer Information or any information filed by the other party with ASX or ASIC.

### 9.4 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

### 9.5 Status of representations and warranties

Each representation and warranty in this clause 9:

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

### 9.6 Timing of representations and warranties

Each representation and warranty made or given under in this clause 9 is given:

- (a) at the date of this Agreement and at 5.00 pm on the Business Day before the Second Court Date; or
- (b) where expressed to be given at a particular time, at that time.

### 9.7 Acquirers' limitation of liability

- (a) Notwithstanding any other provision of this Agreement, the sole and absolute liability of the Acquirer to ILFML in respect of any breach of any term of this Agreement is limited to \$75 million in aggregate (the **Cap**). For the avoidance of doubt, the Cap does not limit the obligation on the Acquirer to pay the Scheme Consideration in accordance with the Schemes and the Deed Poll on the Implementation Date, it being acknowledged by each party that (i) such obligation is conditional on and subject to the Schemes becoming

Effective; and (ii) no liability of the Acquirer arises under the Deed Poll until the Schemes become Effective.

- (b) Subject to and effective on and from payment by the Acquirer of the aggregate Scheme Consideration to the IOF Scheme Unitholders, ILFML irrevocably releases the Acquirer from its obligations and liabilities under this Agreement, the Supplemental Deeds and the Deed Poll and waives its rights to any future Claims in relation to the Acquirer in respect of any actual or potential breach of this Agreement, the Supplemental Deeds or the Deed Poll or the transactions contemplated by them.

#### 9.8 ILFML Directors and Officers

- (a) The Acquirer releases its rights, and agree with ILFML that they will not make a Claim, against any Officer of ILFML as at the date of this Agreement in connection with:
- (i) any breach of any representations, covenants and warranties of ILFML in this Agreement; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission

except where the Officer has not acted in good faith or has engaged in fraud or wilful misconduct.

- (b) ILFML receives and holds the benefit of clause 9.8(a) to the extent it relates to each Officer as trustee for each of them. Nothing in this clause 9.8 limits the Acquirer's rights to terminate this Agreement under clause 13.

#### 9.9 Forecasts and budgets

In connection with this Agreement, the Acquirer acknowledges and agrees that:

- (a) ILFML and its Representatives make no representation or warranty in respect of any future matter, estimate, forecast or budget (**Forward Looking Information**);
- (b) Forward Looking Information is inherently uncertain and may prove to be incorrect;
- (c) the Acquirer has not relied on any Forward Looking Information in determining whether or not to enter into this Agreement;
- (d) to the maximum extent permitted by law, ILFML and its Representatives will not be liable for any Claim by the Acquirer or its Representatives using or acting on any Forward Looking Information:
  - (i) including Claims relating to any terms and warranties expressed or implied by any legislation, the common law, equity, trade, custom or usage; and
  - (ii) irrespective of whether the Claim arises in relation to, in connection with or as a result of:
    - (A) any error, inaccuracy, incompleteness or similar defect; or
    - (B) negligence, default or lack of care on the part of ILFML or any of its Representatives; and
- (e) to the extent permitted by law, the Acquirer waives and must procure that each of its Representatives waive all rights and Claims, that they may otherwise have against ILFML or any of its Representatives in relation to any Forward Looking Information or the Due Diligence Material, except as expressly set out in this Agreement.

## 10 Indemnities

### 10.1 Indemnities by ILFML

Subject to clause 12.6, the ILFML agrees with the Acquirer to indemnify and keep indemnified the Acquirer Indemnified Parties from and against all loss that any of the Acquirer Indemnified Parties may suffer or incur by reason of any breach of this Agreement or any of the representations and warranties of ILFML in clause 9.2.

### 10.2 Indemnities by the Acquirer

Subject to clause 9.7, the Acquirer agrees with ILFML to indemnify and keep indemnified the IOF Indemnified Parties from and against all loss that any of the IOF Indemnified Parties may suffer or incur by reason of any breach of this Agreement or any of the representations and warranties of the Acquirer in clause 9.1.

### 10.3 Survival of indemnities

Each indemnity in clauses 10.1 and 10.2 will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Agreement; and
- (d) survive the termination of this Agreement.

### 10.4 Enforcement of indemnities

- (a) The indemnities in clause 10.1 are given to the Acquirer, for itself and as trustee for each of the other Acquirer Indemnified Parties.
- (b) The indemnities in clause 10.2 are given to ILFML, for itself and as trustee for each of the other IOF Indemnified Parties.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by clause 10.1 or 10.2.

## 11 Exclusivity

### 11.1 No existing discussions

ILFML represents and warrants that as at the date of this Agreement:

- (a) other than the discussions with the Acquirer in respect of the Schemes, it is not currently in negotiations or discussions relating to any actual, proposed or potential Competing Proposal; and
- (b) no confidential information has been provided to any Third Party since 1 January 2018 under a confidentiality agreement in relation to an actual, proposed or potential Competing Proposal.

### 11.2 No-shop

During the Exclusivity Period, ILFML must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or

- (b) communicates any intention to do any of these things, with a view to obtaining, or which may reasonably be expected to lead to, any offer, proposal or expression of interest from any person in relation to a Competing Proposal.

### 11.3 No-talk

Subject to clause 11.5, during the Exclusivity Period, ILFML must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person in relation to, a Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by ILFML or any of its Representatives or the person has publicly announced the Competing Proposal.

### 11.4 Due diligence information

Subject to clause 11.5, during the Exclusivity Period, ILFML must ensure that neither it nor any of its Representatives:

- (a) enables a Third Party to undertake due diligence investigations on any IOF Group Member or any Co-owned Sub Trust or their businesses or operations; or
- (b) makes available to a Third Party, or permits a Third Party to receive, any non-public information relating to IOF Group Member or any Co-owned Sub Trust or their businesses or operations,

in connection with the formulation, development or finalisation of an actual, proposed or potential Competing Proposal (including by way of providing information and access to perform due diligence on the IOF Group or any Co-owned Sub Trust or any part of it).

### 11.5 Exceptions

Clauses 11.3, 11.4 and 11.7 do not apply to the extent that they restrict ILFML or any member of the ILFML Board from taking or refusing to take any action with respect to a Competing Proposal (which was not solicited, invited, encouraged or initiated by ILFML in contravention of clause 11.2) where the ILFML Board has determined, in good faith and acting reasonably that:

- (a) after consultation with its financial advisors, such a Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving legal advice from its external legal advisers, failing to take action or respond to such a Competing Proposal would be likely to constitute a breach of the ILFML directors' fiduciary or statutory obligations.

### 11.6 Further exceptions

Nothing in this clause 11 prevents ILFML from:

- (a) continuing to make normal presentations to, and responding to enquiries from, brokers, portfolio investors, analysts, and IOF Unitholders, in the ordinary course in relation to the Schemes or its business generally; or
- (b) fulfilling its continuous disclosure obligations under the ASX Listing Rules.



### 11.7 Notice of approaches

- (a) Subject to clause 11.5, during the Exclusivity Period, ILFML must promptly notify the Acquirer if it or its Representatives become aware (and in any event within 24 hours of becoming aware) of any:
- (i) bona fide, written Competing Proposal received by ILFML or its Representatives; or
  - (ii) provision by ILFML or its Representatives of any non-public information concerning the business or operations of IOF or the IOF Group or any Co-owned Sub Trust to any person in connection with a bona fide, written Competing Proposal.
- (b) A notification given under clause 11.7(a) must include the identity of the relevant person making or proposing to make the actual, proposed or potential Competing Proposal, together with the material terms and conditions of the actual, proposed or potential Competing Proposal.

### 11.8 Matching right

Without limiting clauses 11.2 and 11.3, during the Exclusivity Period, ILFML:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, ILFML or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
- (b) must procure that none of the ILFML Board change their recommendation in favour of the Schemes to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Schemes or either or them),  
unless:
- (c) the ILFML Board, after considering the matter in good faith and taking advice from their legal and financial advisers, determines in good faith and acting reasonably that the Competing Proposal is a Superior Proposal (or is a Competing Proposal which may reasonably be expected to become a Superior Proposal), provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of this clause 11;
- (d) ILFML has provided the Acquirer with the material terms and conditions of the bona fide, written Competing Proposal, including price and the identity of the Third Party making the bona fide, written Competing Proposal;
- (e) ILFML has given the Acquirer at least 4 Business Days after the date of the provision of the information referred to in clause 11.8(d) to provide a matching or superior proposal to the terms of the bona fide, written Competing Proposal; and
- (f) the Acquirer has not announced or otherwise formally proposed to ILFML a matching or superior proposal to the terms of the bona fide, written Competing Proposal by the expiry of the 4 Business Day period referred to in clause 11.8(e).

Any modification to any Competing Proposal notified to the Acquirer under clause 11.8(d) (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which ILFML must comply with its obligations under this clause 11.8 again.

### 11.9 Provision of Information

During the Exclusivity Period, ILFML must as soon as possible provide the Acquirer with:

- (a) in the case of written materials, a copy of; and
- (b) in any other case, a written statement of,

any non-public information about the business or affairs of IOF or the IOF Group or any Co-owned Sub Trust disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to the Acquirer. For the avoidance of doubt, any such provision of information to a Third Party may only be undertaken if permitted by clause 11.5 and under a separate confidentiality agreement for the benefit of IOF (acting through ILFML).

### 11.10 Compliance with law

- (a) This clause 11 does not impose an obligation on ILFML to the extent that the agreement by the parties under this clause 11 or any part of it:
  - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (ii) is determined to be unenforceable or unlawful (including by virtue of it being a breach of the fiduciary or statutory duties of the members of the ILFML Board) by a court.
- (b) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 11.10.

### 11.11 Legal advice

ILFML acknowledges that it has received legal advice on this Agreement and the operation of this clause 11 from reputable advisers experienced in transactions of this nature.

## 12 Break Fee

### 12.1 Background

This clause 12 has been agreed in circumstances where:

- (a) ILFML believes, having taken advice from its legal advisers and financial advisers, that the Schemes will provide significant benefits to IOF Unitholders, and ILFML acknowledges that, it is appropriate for ILFML to agree to the payments referred to in this clause 12 in order to secure for IOF Unitholders the opportunity to vote on the Schemes;
- (b) the Acquirer has requested that provision be made for the Break Fee, without which the Acquirer would not have entered into this Agreement;
- (c) both ILFML and the Acquirer believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure the Acquirer's participation in the Schemes; and
- (d) both parties have received legal advice on this Agreement and the operation of this clause.

### 12.2 Break Fee triggers

- (a) Subject to clause 12.3, ILFML agrees to pay the Break Fee to the Acquirer without withholding (unless required by law, in which case the amount of the payment due by ILFML shall be increased to an amount which (after making any such withholding) leaves an amount equal to the payment which would have been due if no withholding had been required) or set off if:

- (i) **(Competing Proposal)** a Competing Proposal is notified to the Acquirer pursuant to clause 11.8(d) or announced before the earlier of (A) the Second Judicial Advice; and (B) termination of this Agreement, and within 12 months of the date of this Agreement, the Third Party who announced or made the Competing Proposal (or any of its Associates) completes a Competing Proposal;
- (ii) **(change of recommendation)** during the Exclusivity Period, any ILFML Director fails to recommend the Schemes or withdraws their recommendation, adversely changes or adversely qualifies their recommendation or otherwise makes a public statement indicating that he or she no longer supports the Schemes, except where the change of recommendation or statement is made after:
  - (A) the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not in the best interests of the IOF Unitholders (other than where the conclusion is due wholly or in material part to the existence, announcement or publication of a Competing Proposal); or
  - (B) as a result of any matter or thing giving ILFML or IOF the right to terminate this Agreement pursuant to clauses 13.1(b), 13.1(d) or 13.2(b) and IOF (acting through ILFML) has validly served a written notice on the Acquirer in accordance with the terms of this Agreement; or
- (iii) **(Termination)** the Acquirer validly terminates this Agreement in accordance with clauses 13.1(b), 13.2(a) or 13.3, other than where, at the time of such termination, ILFML or IOF has the right to terminate this Agreement pursuant to clauses 13.1(b) or 13.2(b) and IOF (acting through ILFML) has validly served a written notice on the Acquirer in accordance with the terms of this Agreement.

### 12.3 No amount payable if Schemes become Effective

Notwithstanding the occurrence of any event in clause 12.2, if the Schemes become Effective:

- (a) no amount is payable by IOF (acting through ILFML) under clause 12.2; and
- (b) if any amount has already been paid under clause 12.2 that amount must be refunded by the Acquirer less the incremental costs incurred by the Acquirer as a result of the event giving rise to the obligation to pay the Break Fee.

### 12.4 Timing of payments

- (a) A demand by the Acquirer for payment of the Break Fee under clause 12.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account into which IOF (acting through ILFML) must pay the Break Fee.
- (b) IOF (acting through ILFML) must pay the Break Fee to the Acquirer under clause 12.2 within 5 Business Days of receipt by ILFML of a valid demand for payment from the Acquirer under clause 12.2, which demand may only be made after the occurrence of an event referred to in clause 12.2.
- (c) Without limiting clause 13, this clause 12 survives termination of this Agreement such that the Acquirer may give ILFML a demand for payment of the Break Fee even if this

Agreement has been terminated, provided that the event referred to in clause 12.2 occurred prior to the termination of this Agreement.

### 12.5 Nature of payment

- (a) The Break Fee is an amount to compensate the Acquirer for:
- (i) advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) out-of-pocket expenses;
  - (iv) the distraction of the Acquirer's management from conducting the Acquirer's business as usual caused by pursuing the Schemes;
  - (v) reasonable opportunity costs incurred by the Acquirer in pursuing the Transaction and the Schemes or in not pursuing alternative acquisitions or strategic initiatives which the Acquirer could have developed to further its business and objectives; and
  - (vi) damage to the Acquirer's reputation associated with a failed transaction and the implications of that damage to the Acquirer's business.
- (b) The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 12.2.

### 12.6 IOF limitation of liability

Notwithstanding any other provision of this Agreement:

- (a) the maximum liability of IOF to all other parties under or in connection with this Agreement, the Schemes and each Supplemental Deed, including in respect of any breach of this Agreement, the Schemes or a Supplemental Deed, will be the amount of the Break Fee;
- (b) a payment by IOF in accordance with this clause 12 represents the sole and absolute liability of IOF and any IOF Group Member under or in connection with this Agreement (other than the payment of any interest that may be awarded for the late payment by ILFML or any remedy that takes the form of an order to comply with this Agreement or that prohibits an action that would or may breach this Agreement) and no further damages, fees, expenses or reimbursements of any kind will be payable by IOF in connection with this Agreement; and
- (c) the amount of the Break Fee paid to the Acquirer under this clause 12 shall be reduced by the amount of any loss or damage recovered by the Acquirer in relation to a breach of this Agreement.

### 12.7 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Break Fee (the **Impugned Amount**):

- (a) would, if paid, be unlawful for any reason;
- (b) involves a breach of the fiduciary or statutory duties of the ILFML Board; or
- (c) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,

then

- (d) the requirement to pay the Break Fee does not apply to the extent of the Impugned Amount; and
- (e) if the Acquirer has received the Impugned Amount, it must refund it within 5 days of the final determination being made.

### 12.8 Break Fee payable only once

Notwithstanding any other provision of this Agreement, where the Break Fee becomes payable to the Acquirer under clause 12.2 and is actually paid to the Acquirer, the Acquirer cannot make any Claim against ILFML or IOF for payment of any subsequent Break Fee.

## 13 Termination

### 13.1 Termination by either party

Either party (*terminating party*) may terminate this Agreement by notice to the other:

- (a) in accordance with clause 3.5;
- (b) if at any time before 8am on the Second Court Date the other party is in material breach of any clause of this Agreement, provided that the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this Agreement, and the relevant circumstances have continued to exist for 5 Business Days (or any shorter period ending at 8am on the Second Court Date) from the time such notice is given, such proviso not to apply where the Acquirer is the terminating party in the case of a material breach by ILFML of clause 8 or 11;
- (c) if the Schemes have not become Effective on or before the End Date; or
- (d) if the Scheme Resolutions are not approved by the requisite majority at the Scheme Meeting.

For the avoidance of doubt, clause 13.1(b) does not apply in respect of a breach of either an Acquirer Representation and Warranty or an IOF Representation and Warranty which are dealt with in clause 13.2.

### 13.2 Termination for breach of representation and warranties

- (a) The Acquirer may, at any time prior to 8.00am on the Second Court Date, terminate this Agreement for breach of an IOF Representation and Warranty only if:
  - (i) the Acquirer has given written notice to ILFML setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 7.00am on the Second Court Date) after the date on which the notice is given under clause 13.2(a)(i); and
  - (iii) the loss that would reasonably be expected to follow from such a breach is material in the context of the Schemes taken as a whole.
- (b) ILFML may, at any time before 8.00am on the Second Court Date, terminate this Agreement for breach of an Acquirer Representation and Warranty only if:
  - (i) ILFML has given written notice to the Acquirer setting out the relevant circumstances and stating an intention to terminate or to allow the Schemes to lapse;

- (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 7.00am on the Second Court Date) after the date on which the notice is given under clause 13.2(b)(i); and
- (iii) the loss that would reasonably be expected to follow from such a breach is material in the context of the Schemes taken as a whole.

### 13.3 Termination by the Acquirer

The Acquirer may terminate this Agreement by written notice to ILFML until 8.00am on the Second Court Date if:

- (a) the ILFML Board fails to recommend the Schemes or any director of ILFML withdraws or adversely revises his or her recommendation that IOF Unitholders vote in favour of the Schemes or otherwise makes a public statement that it no longer supports the Schemes; or
- (b) ILFML enters into an agreement to implement a Competing Proposal.

### 13.4 Termination by ILFML

ILFML may terminate this Agreement at any time before 8am on the Second Court Date by notice in writing to the Acquirer if:

- (a) the majority of the ILFML Board publicly (including as permitted under clause 8.1) changes (including by attaching qualifications to) or withdraws its recommendation that IOF Unitholders approve the Schemes or publicly recommends, promotes or otherwise endorses a Superior Proposal; and
- (b) ILFML has complied with its obligations set out in clause 11 and clause 12 (including payment of the Break Fee, if applicable).

### 13.5 Effect of termination

In the event of termination of this Agreement by either the Acquirer or ILFML pursuant to clauses 3.5, 13.1, 13.2, 13.3 or 13.4, this Agreement will have no further force or effect and the parties will have no further obligations under this Agreement, provided that:

- (a) this clause 13 and clauses 1, 9.7, 10, 12, 14, 15 and 17 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this Agreement.

## 14 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed save that the terms of this Agreement will prevail over the Confidentiality Deed to the extent of any inconsistency.

## 15 Withholding tax

### 15.1 Withholding

If the Acquirer is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the ATO in respect of the acquisition of the IOF Scheme Units, the Acquirer is permitted to deduct such amounts from the payment of the Scheme Consideration to those IOF Scheme Unitholders, and remit such amounts to the ATO. The aggregate sum payable to relevant IOF Scheme Unitholders shall not be increased to reflect the deduction and the net aggregate sum payable to those IOF Scheme Unitholders (less the

amounts remitted to the ATO) shall be taken to be in full and final satisfaction of the amounts owing to those IOF Scheme Unitholders.

## 15.2 Clarification

- (a) ILFML agrees that the Acquirer may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Schemes and will provide such information and assistance that the Acquirer reasonably requires in making that approach.
- (b) The Acquirer agrees to provide ILFML a reasonable opportunity to review the form and content of all materials to be provided to the ATO, and to take into account ILFML's comments on those documents and more generally in relation to the Acquirer's engagement with the ATO.

## 15.3 Consultation

- (a) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process mentioned in clause 15.2.
- (b) The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, ensuring that relevant representations are obtained from IOF Scheme Unitholders.

## 16 GST

### 16.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, 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 (the **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.

### 16.2 Liability net of GST

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

### 16.3 Adjustment events

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

### 16.4 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

### 16.5 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

## 16.6 Definitions

Unless the context requires otherwise, words and phrases 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)) will have the same meaning in this clause.

## 17 Limited Liability of ILFML

- (a) ILFML enters into this Agreement in its capacity as responsible entity of AJO and PCP and in no other capacity.
- (b) A liability of ILFML arising under or in connection with this Agreement is limited to the amount ILFML actually receives in the exercise of its right of indemnity from the property of AJO or PCP. This limitation of liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of ILFML in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (c) The Acquirer may not sue ILFML in any capacity other than as the responsible entity of AJO and PCP, including seeking the appointment of a receiver (except in relation to property of AJO or PCP), a liquidator, an administrator or any similar person to ILFML or prove in any liquidation, administration or arrangement of or affecting ILFML (except in relation to property of AJO or PCP).
- (d) The provisions of this clause 17 will not apply to any obligation or liability of ILFML to the extent that it is not satisfied because under each Constitution or by operation of law there is a reduction in the extent of ILFML's indemnification out of the assets of AJO or PCP as a result of ILFML's fraud, negligence or breach of trust.
- (e) ILFML is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless ILFML's liability is limited in the same manner as set out in paragraphs (a) to (d) above.

## 18 Limited liability of BidTrust

- (a) This clause 18 applies in respect of the capacity of Quartz Sub TC Pty Ltd (ACN 626 431 963) as trustee for the Quartz Bid Trust and in this paragraph:
  - (i) **Quartz Trust** means the Quartz Bid Trust; and
  - (ii) **Quartz Trust Deed** means the trust deed under which the Acquirer Trust was constituted.
- (b) Subject to clause 18(d) of this clause, BidTrust enters into this Agreement only in its capacity as trustee for the Quartz Trust constituted under the Quartz Trust Deed and in no other capacity. A liability arising under or in connection with this Agreement is limited to and can be enforced against BidTrust only to the extent to which BidTrust is actually indemnified for that liability out of the assets of the Quartz Trust. This limitation of BidTrust's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of BidTrust in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (c) Subject to clause 18(d), no party to this Agreement or any person claiming through or on behalf of them will be entitled to:
  - (i) claim from or commence proceedings against BidTrust in respect of any liability in any capacity other than as the trustee of the Quartz Trust;



- (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to BidTrust, or prove in any liquidation, administration or arrangement of or affecting BidTrust, except in relation to the assets of the Quartz Trust; or
  - (iii) enforce or seek to enforce any judgment in respect of a liability under this Agreement or otherwise against BidTrust in any capacity other than as trustee of the Quartz Trust.
- (d) This clause 18 does not apply to any obligation or liability of BidTrust to the extent to which there is, in respect of that obligation or liability, whether under the Quartz Trust Deed or by operation of law:
- (i) a reduction in the extent of BidTrust's indemnification as a result of BidTrust acting other than in the proper performance of its duties as trustee of the Quartz Trust;
  - (ii) loss of BidTrust's right of indemnification as a result of BidTrust acting other than in the proper performance of its duties as trustee of the Quartz Trust; or
  - (iii) any failure by BidTrust to exercise its right of indemnity, out of the assets of the Quartz Trust.
- (e) BidTrust is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless BidTrust's liability is limited in the same manner as set out in paragraphs (a) to (d) above.

## 19 Miscellaneous

### 19.1 Notices

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

- (a) must be in writing and signed by the sender or 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 or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:

(i) to ILFML: **Investa Listed Funds Management Ltd**  
c/- Allens, 126 Phillip Street, Sydney NSW 2000  
Email: [rlonges@gmail.com](mailto:rlonges@gmail.com)

**With a copy to: Allens**  
Attention: Vijay Cugati  
Address: 126 Phillip Street, Sydney NSW 2000  
Email: [Vijay.Cugati@allens.com.au](mailto:Vijay.Cugati@allens.com.au)

(ii) to the Acquirer: **The Blackstone Group (Australia) Pty Limited**  
Attention: Chris Tynan  
Address: Suite 3901 Gateway, 1 Macquarie Place, Sydney NSW 2000  
Email: [realestateasianotices@blackstone.com](mailto:realestateasianotices@blackstone.com)  
**With a copy to: Clayton Utz**

Attention: David Wilkie/ Kylie de Oliveira  
Address: 1 Bligh Street, Sydney NSW 2000  
Email: [dwilkie@claytonutz.com](mailto:dwilkie@claytonutz.com);  
[kdeoliveira@claytonutz.com](mailto:kdeoliveira@claytonutz.com)

- (c) subject to clause 19.1(d), 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, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of email, on the earlier of:
    - (A) when the sender receives an automated message from the email system of the intended recipient confirming delivery; and
    - (B) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,
- but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place; and
- (d) In the case of a notice of termination issued by the Acquirer or ILFML under clause 13.2(a)(ii) or 13.2(b)(ii) respectively, notice by email will be conclusively taken to be duly given or made at the time the email is sent (as recorded on the device from which the Acquirer sent the email). Nothing in this clause 19.1(d) limits the manner in which such notice may be sent under this clause 19.1.

## 19.2 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement 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. For the avoidance of doubt, the doctrine of affirmation by election will not apply to any failure by a party to exercise, or delay by a party in exercising, any right, power or remedy under this Agreement.

## 19.3 Remedies cumulative

The rights, powers and remedies provided to each party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

## 19.4 Entire agreement

This Agreement and the Confidentiality Deed contain the entire agreement between the parties with respect to its subject matter. This Agreement and the Confidentiality Deed set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between

the parties in connection with their subject matter. Neither party has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

#### 19.5 **Amendment**

This Agreement may be amended only by another agreement executed by all parties.

#### 19.6 **Assignment**

No party can assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other party.

#### 19.7 **No merger**

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

#### 19.8 **Further assurances**

Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

#### 19.9 **Costs and duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by the Acquirer.

#### 19.10 **Severability of provisions**

Any provision of this Agreement 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 Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

#### 19.11 **Governing law and jurisdiction**

This Agreement 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.

#### 19.12 **Counterparts**

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

**Schedule 1****Acquirer's Representations and Warranties**

The Acquirer represents and warrants to ILFML (on its own behalf and separately as trustee for each of the IOF Indemnified Parties) that, except as consented to in writing by ILFML:

- (a) on each date from the date of this Agreement until (and including) the Second Court Date:
  - (i) the Acquirer is a corporation validly existing under the laws of its place of incorporation;
  - (ii) the Acquirer has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
  - (iii) the Acquirer has taken all necessary corporate action to authorise the entry into this Agreement and the Acquirer has taken or will take all necessary corporate action to authorise the performance of this Agreement;
  - (iv) this Agreement is the Acquirer's valid and binding obligation enforceable in accordance with its terms;
  - (v) the execution and performance by the Acquirer of this Agreement, and each transaction contemplated by this Agreement, did not and will not violate in any respect a provision of:
    - (A) a law, judgment, ruling, order or decree binding on it;
    - (B) its constitution; or
    - (C) any other document or agreement that is binding on it or any of its Subsidiaries; and
  - (vi) the Acquirer is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against the Acquirer for the winding up, dissolution or termination of the Acquirer or for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of the Acquirer's assets;
- (b) on each date from the date of this Agreement until (and including) the Second Court Date, neither the Acquirer or any Acquirer Group Member has entered into any arrangement, agreement or understanding which:
  - (i) restricts or limits in any way any person from seeking to acquire any assets or securities of IOF; or
  - (ii) relates to the assets or securities (including the IOF Securities) of IOF, including of the avoidance of doubt any form of voting or consortium arrangements;
- (c) on the First Court Date and the Second Court Date:
  - (i) the Acquirer Information has been prepared and provided in good faith and on the understanding that ILFML and each of its Officers have relied on that information for the purposes of preparing the Explanatory Memorandum and proposing the Schemes, and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report; and
  - (ii) the Acquirer Information in the form and context in which it appears in the Explanatory Memorandum (as consented to by the Acquirer) is not, as at that

date, misleading or deceptive in any material respect and does not contain any material omission;

- (d) on the date of this Agreement, the date of the Scheme Meeting and the Second Court Date the Acquirer Information has been disclosed in good faith, and the Acquirer is not aware of any material omission having regard to the applicable disclosure requirements;
- (e) as at the date of this Agreement, the Acquirer has a reasonable basis to expect that it will, by the Business Day prior to the Implementation Date, have funds sufficient to perform its obligations, if the Schemes become Effective; and
- (f) this Agreement does not conflict with or result in the breach of or a default under any provision of the constitution of the Acquirer or any writ, order or injunction, judgment, law, rule or regulation to which the Acquirer is part or subject or by which it is bound.

Quartz Sub TC Pty Ltd (ACN 626 431 963) represents and warrants to ILFML (on its own behalf and separately as trustee for each of the IOF Indemnified Parties) that:

- (g) it was validly appointed trustee of Quartz Bid Trust in accordance with the terms of the Quartz Bid Trust Trust Deed dated 5 June 2018 (**Quartz Trust Deed**), it is the sole trustee of the Quartz Bid Trust, and no action has been taken to remove or replace it as the trustee of that trust;
- (h) Quartz Bid Trust was established on the date that the Quartz Trust Deed bears;
- (i) the Quartz Trust Deed was properly executed and appropriately stamped;
- (j) it is not in default under the terms of the Quartz Trust Deed and has no notice of any circumstances which will or are reasonably likely to lead to the removal of BidTrust as trustee of the Quartz Bid Trust;
- (k) it has not been removed from the office of trustee nor ceased to act and no additional trustee has been appointed;
- (l) it has the right to be fully indemnified out of the assets of the Quartz Bid Trust in respect of all its obligations and liabilities under this Agreement other than in the case of BidTrust's fraud, negligence or breach of trust; and
- (m) any amendments since the execution of the Quartz Trust Deed do not affect the other representations and warranties made in this Agreement nor the ability of a party to perform its obligations under this Agreement or the Schemes.

## Schedule 2

### IOF Representations and Warranties

ILFML represents and warrants to the Acquirer (on its own behalf and separately as trustee for each of the Acquirer Indemnified Parties) that, except as consented to in writing by the Acquirer:

- (a) on each date from the date of this Agreement until (and including) the Second Court Date:
  - (i) ILFML is a corporation validly existing under the laws of its place of incorporation;
  - (ii) ILFML has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
  - (iii) ILFML has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement;
  - (iv) this Agreement is ILFML's valid and binding obligation enforceable in accordance with its terms;
  - (v) the execution and performance by ILFML of this Agreement and each transaction contemplated by this Agreement did not and will not violate in any respect a provision of:
    - (A) a law or treaty or a judgment, ruling, order or decree binding on it or any of its Controlled Entities;
    - (B) its constitution; or
    - (C) any other document or agreement that is binding on it or any of its Controlled Entities;
  - (vi) IOF is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against IOF or ILFML for the winding up, dissolution or termination of IOF or for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of IOF's assets;
  - (vii) ILFML is not aware of any material breach of law by itself or IOF of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Governmental Agencies having jurisdiction over it and it and IOF has all material licences, permits and franchises necessary for it to conduct its activities as presently being conducted;
  - (viii) ILFML has conducted its operations at all times in compliance with all applicable Anti-Corruption Laws, Money Laundering Laws, and Sanctions Laws, and no action or proceeding by or before any Government Agency with respect to any alleged violation of Anti-Corruption Laws, Money Laundering Laws, or Sanctions Laws is pending, or, to the knowledge of ILFML, threatened or contemplated;
  - (ix) so far as ILFML is aware, having made reasonable and due inquiry, neither ILFML nor any of its officers, directors, or agents has made, promised to make, or will make, promise to make, or cause to be made, directly or indirectly, any payment:
    - (A) to or for the use or benefit of any Government Official where such payment would violate applicable Anti-Corruption Laws;
    - (B) to any other person either for an advance or reimbursement, if it knows or has reason to know that any part of such payment will be directly or

- indirectly given or paid by such other person, or will reimburse such other person for payments previously made, to any Government Official where such payment would violate applicable Anti-Corruption Laws; or
- (C) to any other person or entity, to obtain or keep business or to secure some other improper advantage, the payment of which would violate applicable Anti-Corruption Laws;
- (x) ILFML has in place effective controls that are sufficient to provide reasonable assurances that violations of applicable Anti-Corruption Laws and Money Laundering Laws will be prevented, detected, and deterred;
- (xi) ILFML is neither a governmental entity nor an instrumentality of a government;
- (xii) other than as disclosed to the Acquirer in writing prior to the date of this Agreement, none of ILFML's principals, officers, directors, or to its knowledge, agents, is currently a Government Official, and no Government Official has any legal or beneficial interest in ILFML except as an ordinary unitholder. If any of ILFML's principals, officers, or directors, becomes a Government Official prior to the Second Court Date, ILFML shall notify the Acquirer immediately so that the Acquirer may, and hereby reserves the right to, take whatever precautions and actions may be appropriate to assure compliance with applicable Anti-Corruption Laws;
- (xiii) so far as ILFML is aware, having made reasonable and due inquiry, neither ILFML nor any of the directors, officers, employees, or agents of ILFML: (A) is a Sanctioned Person; (B) is engaging or has engaged in any operations or dealings in a Sanctioned Jurisdiction or with any Sanctioned Person; (C) is otherwise engaging in any activity or dealing in violation of Sanctions Laws; or (D) has used or will use any proceeds received from Acquirer in violation of any Sanctions Law;
- (xiv) as at the date of this Agreement, IOF has not received notification from either ASIC or ASX (as applicable) of any determination being made against ILFML or IOF for any contravention of the requirements of the Corporations Act or the ASX Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the ASX Listing Rules;
- (xv) so far as ILFML is aware, there has not been any event, change, effect or development that would require a restatement of IOF 's financial statements as disclosed to ASX;
- (xvi) ILFML has collated and prepared the Due Diligence Material in good faith;
- (xvii) subject to receipt of waivers or consents of third parties in respect of applicable confidentiality obligations, ILFML has used reasonable endeavours in good faith to provide to the Acquirer, or its Representatives all material information reasonably requested by the Acquirer or its Representatives to the extent such information is available as at 7pm on 7 June 2018, and ILFML has not intentionally or wilfully omitted anything from that requested information;
- (xviii) ILFML has not, to the best of its knowledge, included or omitted anything in the Due Diligence Material which is materially inaccurate;
- (xix) neither ILFML nor IOF is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute (nor will the entering into by IOF of this Agreement, or the execution of its terms by any of them, constitute (whether

- immediately or following the giving of notice or lapse of time)) an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect, in all cases which results, or is reasonably likely to result, in an IOF Material Adverse Change;
- (xx) IOF has been duly established and has not been terminated and is a registered managed investment scheme;
  - (xxi) ILFML is the only trustee and responsible entity of IOF and no action has been taken or proposed to remove it as trustee or responsible entity of IOF;
  - (xxii) no action has been taken or proposed to, either:
    - (A) terminate IOF; or
    - (B) wind-up IOF whether under Chapter 5C of the Corporations Act or otherwise;
  - (xxiii) subject to the amendments to each Constitution contemplated by this Agreement, true copies of each Constitution (including any amending documents) have been provided to the Acquirer;
  - (xxiv) ILFML has the authorisations necessary for it to enter into the documents to which it is a party, perform obligations under them and allow them to be enforced (including any authorisation required under each Constitution (if any));
  - (xxv) ILFML has not exercised its powers under each Constitution to release, abandon or restrict any power conferred on it by each Constitution;
  - (xxvi) entry into the documents to which ILFML is a party is a valid exercise of ILFML's powers under each Constitution for the benefit of the beneficiaries;
  - (xxvii) ILFML has a right, in accordance with the terms of each Constitution, to be fully indemnified out of the Trust Property in respect of obligations incurred by it under the documents to which it is a party, and, to the best of its knowledge and after reasonable and due enquiry, ILFML is not aware of anything that would prevent ILFML from being fully indemnified out of the Trust Property, in accordance with the terms of each Constitution, for any obligations under or in connection with this Agreement, or any of the transactions contemplated by this Agreement;
  - (xxviii) so far as ILFML is aware, having made reasonable and due inquiry, ILFML and each IOF Group Member is not the subject of any material investigation, audit or dispute with a taxation authority, and has complied in all material respects with all Australian or foreign taxation laws and regulations applicable to it or orders of Government Agencies having jurisdiction over it and there are no matters or transactions undertaken that are or could be subject to an order under any general anti-avoidance provisions relating to Australian or foreign taxation laws;
  - (xxix) ILFML and each IOF Group Member have not approved or taken any action or made any investment that could reasonably result in IOF or any member of the IOF Group commencing to carry on a trading business within the meaning of Division 6C of the *Income Tax Assessment Act 1936* (Cth) or controlling or having the ability to control, directly or indirectly the affairs or operations of another person in respect of the carrying on by that other person of a trading business (within the meaning of that Division);
- (b) as at the date of this Agreement, the total number of IOF Units on issue is 598,418,985 IOF Units and ILFML has not issued (or is actually or contingently required to issue) any



- other securities or instruments that are still outstanding (or may become outstanding) and that may convert into IOF securities;
- (c) on the First Court Date and the Second Court Date:
- (i) the IOF Provided Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that the Acquirer and each of its Officers have relied on that information for the purposes of considering and approving the Acquirer Information in the Explanatory Memorandum, and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
  - (ii) the IOF Provided Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission; and
  - (iii) all information provided by or on behalf of ILFML to the Independent Expert to enable the Independent Expert's Report to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report; and
- (d) following the making by ILFML of the Agreed Public Announcement, IOF is not in breach of its continuous disclosure obligations under ASX Listing Rule 3.1 and is not withholding any information from the Acquirer that is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A.

### Schedule 3

#### Regulatory Approvals

(ASIC and ASX) before 8am on the date of despatch of the Explanatory Memorandum to IOF Unitholders:

- (a) ASIC has either granted a modification of item 7 of section 611 of the Corporations Act, allowing each IOF Unitholder (other than those excluded from voting) to vote in favour of the Schemes for the purpose of item 7 of section 611, or has confirmed in writing that it has agreed in principle to grant such a modification (on terms acceptable by the Acquirer (acting reasonably)) or that such a modification will not be required;
- (b) ASIC has granted a modification or exemption from any requirement for ILFML or the Acquirer to comply with Division 5A of Part 7.9 of the Corporations Act in relation to the proposed offer to purchase IOF Scheme Units under the Schemes, or has confirmed in writing that it has agreed in principle to grant such a modification (on terms acceptable by the Acquirer (acting reasonably)) or that such a modification or exemption will not be required;
- (c) ASIC has granted an exemption from the requirements of Part 7.6 of the Corporations Act in relation to any general financial product advice contained in the Explanatory Memorandum, or has confirmed in writing that it has agreed in principle to grant such an exemption (on terms acceptable by the Acquirer (acting reasonably)) or that such an exemption will not be required;
- (d) ASIC has granted an exemption from the requirement to provide a financial services guide in relation to any general financial product advice by ILFML contained in the Explanatory Memorandum, or has confirmed in writing that it has agreed in principle to grant such an exemption (on terms acceptable by the Acquirer (acting reasonably)) or that such an exemption will not be required; and
- (e) ASX provides confirmation to ILFML that the proposed amendments to each Constitution as set out in each Supplemental Deed are appropriate and that it does not object to those amendments, or the Explanatory Memorandum under ASX Listing Rule 15.1.

**Schedule 4****Timetable**

<b>Event</b>	<b>Date</b>
Submit draft Explanatory Memorandum and Independent Expert's Report with ASIC for review	28 June 2018
First Court Date	16 July 2018
Explanatory Memorandum despatched to IOF Unitholders	20 July 2018
Scheme Meeting Date	13 August 2018
Second Court Date	15 August 2018
Effective Date	15 August 2018
Record Date	22 August 2018
Implementation Date	29 August 2018

**Schedule 5**

**Supplemental Deeds**

**Part A - AJO Supplemental Deed**

Investa Listed Funds Management Limited

## Supplemental Deed Poll

Amending the Constitution for Armstrong Jones Office Fund

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

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This Deed Poll is made on 2018

## Parties

**Investa Listed Funds Management Limited** (ABN 37 149 175 655) of Level 30 , 420 George Street Sydney NSW 2000 (the **Responsible Entity**).

## Recitals

- A The Responsible Entity is the responsible entity of the trust known as the Armstrong Jones Office Fund (ARSN 090 242 229) (**AJO**)(the **Trust**).
- B The Trust has is registered as a managed investment scheme pursuant to section 601EB of the Corporations Act.
- C The Units of the Trust are stapled to the units of Armstrong Jones Office Fund (ARSN 090 242 229) (**AJO**) and are quoted and traded on ASX as stapled securities of Investa Office Fund (ASX: **IOF**).
- D The Responsible Entity and the Acquirer have agreed, by executing the Scheme Implementation Agreement, to propose and implement the Scheme.
- E The Constitution must be amended to facilitate the Scheme.
- F Section 601GC(1)(a) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution by special resolution of the members of the scheme.
- G Under clause 15 of the Constitution, the Responsible Entity may, by deed, replace or amend the Constitution.
- H The Responsible Entity proposes to modify the Constitution, as set out in this Supplemental Deed Poll, to give effect to the resolutions to modify the Constitution that were passed by Unitholders at a meeting held on [insert date] 2018 (**Scheme Resolutions**).

**It is declared** as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context otherwise requires.

**Acquirer** means each of BidCo and BidTrust.

**BidCo** means Quartz Bidco Pty Ltd (ACN 626 431 927).

**BidTrust** means Quartz Sub TC Pty Ltd (ACN 626 431 963) as trustee of the Quartz Bid Trust.

**Constitution** means the trust deed constituting AJO, as approved by Unitholders on 6 December 2011(as amended).

**Effective Time** means the date and time on which a copy of this Supplemental Deed Poll is, or the modifications set out in it are, lodged with ASIC under section 601GC(2) of the Corporations Act.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**IOM** means Investa Office Management Pty Limited ACN 161 354 016.

**Management Deed** means the management deed between the Responsible Entity and IOM dated 25 September 2014, as amended and restated by the amendment and restatement deed dated 1 July 2017.

**Scheme** means the arrangement set out in the Scheme Implementation Agreement and facilitated by the amendments to the Constitution set out in this Supplemental Deed Poll.

**Scheme Implementation Agreement** means the agreement of that name between the Responsible Entity and the Acquirer dated [insert date] 2018, as amended from time to time.

**Scheme Resolutions** has the meaning given in Recital H.

## 1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution, as amended by this Supplemental Deed Poll.
- (b) Clauses 1.1 ('Definitions'), 1.2 ('Interpretation') and 1.6 ('Inconsistency with the Listing Rules') of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

## 1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of the Unitholders jointly and severally.

## 2 Conditions

This Supplemental Deed Poll is conditional upon and will have no force or effect until, the satisfaction of each of the conditions precedent stipulated in clause 3.1 of the Scheme Implementation Agreement.

## 3 Amendment of Constitution

The Responsible Entity amends the Constitution so that the Constitution is amended as set out in the Schedule:

- (a) in respect of paragraphs 1, 2, 3, 4, 5, 6 and 8 of the Schedule, on and from the Implementation Date; and
- (b) in respect of paragraph 7, on and from the Effective Time.

## 4 No Resettlement

The Responsible Entity confirms that it is not by this Supplemental Deed Poll:

- (a) resettling or redeclaring the Trust declared under the Constitution;
- (b) declaring any trust; or
- (c) causing the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

## 5 No merger

Each obligation set out in this Supplemental Deed Poll which is capable of having future operation continues in force after the Effective Time although this Supplemental Deed Poll has otherwise been fully performed.

## **6 Governing Law and Jurisdiction**

This Supplemental Deed Poll 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.



**Executed and delivered as a Deed Poll** in Sydney

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Investa Listed Funds Management Limited** (ABN 37 149 175 655) as responsible entity for the **Armstrong Jones Office Fund (ARSN 090 242 229)**:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## Schedule

### Amendments to the Constitution of Armstrong Jones Office Fund

The Constitution is amended as follows:

#### 1 Clause 1.1 - Definitions

In clause 1.1 of the Constitution:

- (a) a new definition of "Affiliate" is inserted as follows:

means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls directly or indirectly, the person or any entity directly or indirectly under common control with the person or any entity which ordinarily acts under the direction of the person. For this purpose **control** of any entity or person means ownership of a majority of the voting power of the entity or the person.
- (b) a new definition of "Encumbrance" is inserted as follows:

means any mortgage, charge, lien, pledge, trust, power or title retention, flawed deposit arrangement, "security interest" as defined in sections 12(1) or (2) of the Personal Property Securities Act 2009 (Cth), or the interest of a third party of any kind, whether legal or otherwise, or any agreement to create any of them or allowing them to exist.
- (c) a new definition of "Law" is inserted as follows:
  - (a) the Corporations Act and any statute; and
  - (b) any common law rule that applies to the Trust.
- (d) a new definition of "Management Agreement" is inserted as follows:

means any investment management agreement or asset management agreement which may be entered into (with the approval of the Unitholders) between the Trustee and the Manager relating to investment or asset management services provided by the Manager for the benefit of the Trust.
- (e) a new definition of "Manager" is inserted as follows:

means the manager or any replacement or successor appointed by the Trustee to provide investment management services for the benefit of the Trust from time to time.
- (a) a new definition of "Relevant Finance Document" is inserted as follows:

means any facility or loan agreement entered into:

  - (a) by the Trustee; or
  - (b) between a Unitholder and any one or more third party financiers, which has been provided to the Trustee in writing.
- (b) a new definition of "Reserved Matter" is inserted as follows:

any of the following matters or actions in relation to the Trust or Fund:

  - 1 acquiring or disposing of any real or personal property or any other asset of the Fund;
  - 2 borrowing, raising money, incurring any indebtedness or entering into any financial accommodation;
  - 3 creating or permitting to exist any Encumbrance;

- 4 entering into any guarantee, indemnity bond, security deposit, letter of credit or suretyship or any other obligation to pay, purchase or provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of, to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of, obligation of, liability of or the insolvency of any other person;
- 5 issuing any Units or the grant of any Options or issuing any units or granting any options over units in any sub-trust; and
- 6 entering into or amending any contract or commitment (or any series of related contracts or commitments) which involves any Affiliate of the Trustee, including, for so long as Investa Listed Funds Management Limited is the trustee of the Trust, any of the following entities: Investa Office Management Limited, Investa Office Management Holdings Pty Ltd, Investa Asset Management Pty Ltd, Investa Asset Management (QLD) Ltd, Investa Property Group Holdings Pty Ltd or any of their Affiliates.

## 2 **Clause 6 - General powers of Trustee**

- (a) Clause 6.1(b) and clause 6.1(c) of the Constitution are deleted and substituted with the following clauses:
  - (b) Subject to clause 6.1(c), in the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property, borrow or raise money, encumber any asset of the Fund, incur any liability, guarantee any obligations of any person, enter into joint venture arrangements or fetter any power.
  - (c) Notwithstanding any other provision of this constitution, the Trustee:
    - (i) must not exercise any power or discretion or take any action; and
    - (ii) to the extent that it is within the Trustees control, must procure that no sub-trustee exercises any power or discretion or takes any action,
 in connection with a Reserved Matter unless the Trustee has received prior written approval of the exercise or action from all Unitholders.
  - (d) The Trustee must take all such steps as practicable to direct and instruct the Manager under the Management Agreement to act consistently with the Trustee's obligations under this constitution in connection with the provision of services by the Manager under the Management Deed.
  - (e) The Trustee must:
    - (i) at all times, comply with the terms of any Relevant Finance Document; and
    - (ii) not act (or omit to act) in such a manner which would cause it or any Unitholder to be in breach of any Relevant Finance Document (whether or not the Trustee is party to any such document),
 unless taking (or failing to take) any such action would constitute a breach of the Trustee's fiduciary or statutory obligations.
- (b) Clause 6.2(b) of the Constitution is deleted and substituted with the following clause:

- (b) Subject to clause 6.1(c), the Trustee may appoint an agent, custodian or other person, including an associate of the Trustee (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with any asset of the Fund on behalf of the Trustee and perform any necessary incidental or ancillary action or other action approved by the Trustee.
- (c) A new clause 6.5 is to be inserted into the Constitution with the following clause:

**6.5 Sub-Trust Constitutions**

To the extent that the Trust (acting through the Trustee) is the sole unitholder of a trust (**Sub Trust**), the Trustee must, on written direction from the sole unitholder of the Trust:

- (a) consent to, and direct, the trustee of that Sub Trust to:
  - (i) make amendments to the trust deed of that Sub Trust to be consistent with clauses 6, 7.5 and 15 of this constitution (including, where applicable, the inclusion of the relevant definitions) as soon as practicable; and
  - (ii) if, for whatever reason, the trustee of that Sub Trust does not comply with the direction given under clause 6.5(a)(i):
    - (A) immediately call and convene a meeting of the unitholders of that Sub Trust; and
    - (B) pass a special resolution at that meeting to effect the changes set out in clause 6.5(a)(i); and
- (b) where the trustee of a Sub Trust is the sole unitholder in a trust (**Sub Sub Trust**), procure that the trustee of that Sub Sub Trust:
  - (i) make amendments to the trust deed of that Sub Sub Trust to be consistent with clauses 6, 7.5 and 15 (including, where applicable, the inclusion of the relevant definitions) as soon as practicable; and
  - (ii) if, for whatever reason, the trustee of any Sub Sub Trust does not comply with the direction set out in clause 6.5(b)(i):
    - (A) immediately call and convene a meeting of the unitholders of that Sub Sub Trust; and
    - (B) pass a special resolution at that meeting to effect the changes set out in clause 6.5(b)(i).

**3 Clause 7.5**

Clause 7.5 of the Constitution is deleted and substituted with the following clause:

**7.5 Trustee interest in Trust and transaction**

- (a) Despite any other provision of this constitution, no present or future Trustee may hold Units or Options or otherwise become a beneficiary of the Trust.
- (b) Affiliates of the Trustee are not precluded from holding Units or Options or otherwise becoming a beneficiary of the Trust.
- (c) Nothing in this constitution restricts the Trustee or the Trustee's Affiliates from:

- (i) dealing with the Trust or any Holder;
- (ii) being interested in any contract or transaction with the Trust, any Holder, or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
- (iii) entering a contract or transaction in relation to which the Trust may become liable to pay fees, costs, brokerage, commissions or other remuneration to an Affiliate of the Trustee or an Affiliate of any of the directors of the Trustee;
- (iv) acting in the same or a similar capacity in relation to any other trust; or
- (v) dealing with itself in relation to the Fund where in relation to such dealings it is acting in different capacities.

#### **4 Clause 12.3**

A new clause 12.3(d) is inserted as follows:

- (d) Despite any other provision of this Constitution, the Trustee shall not decline to register any transfer of Units where such transfer is:
  - (i) to a person holding a security interest over those Units (the "**Secured Party**") or a nominee of the Secured Party;
  - (ii) delivered to the Trustee for registration by a Secured Party or its nominee in order to perfect its security over the Units; or
  - (iii) executed by a Secured Party or its nominee pursuant to a power of sale or other power or right existing under such security,

and the Trustee shall forthwith register any such transfer of Units upon receipt.

#### **5 Clause 15 - Alterations to Trust**

Clause 15 of the Constitution is deleted and substituted with the following clause:

##### **15 Alterations to Trust**

##### **15.1 Alternations by Trustee**

The Trustee may amend this constitution (including this clause 15) by deed at any time, subject to any approval required by Law.

##### **15.2 Restriction on Amendment**

Subject to Law, the Trustee must not amend this constitution to remove the requirement under clause 7.5(a) that no present or future Trustee may hold Units or Options or otherwise become a beneficiary of the Trust.

#### **6 Clause 16.1 - Term of Trust**

Clause 16.1 of the Constitution is deleted and substituted with the following clause:

##### **16.1 Term of Trust**

The term of the Trust ends on the earlier of:

- (a) a date determined by the Unitholders by special resolution directing the Trustee to terminate the Trust on that date; and
- (b) the date on which the Trust is terminated under this constitution or by Law.

## 7 Clause 23 – Quartz Trust Scheme

A new clause 23 is inserted immediately after clause 22 of the Constitution, as set out below:

### 23 Quartz Trust Scheme

#### 23.1 Definitions

The following definitions apply in this clause 23 unless the context requires otherwise:

**Acquirer** means each of BidCo and BidTrust.

**BidCo** means Quartz Bidco Pty Ltd (ACN 626 431 927).

**BidTrust** means Quartz Sub TC Pty Ltd (ACN 626 431 963) as trustee of the Quartz Bid Trust.

Quartz

**Trust Scheme** means the arrangement by which all of the Scheme Units will be transferred to the Acquirer for the Scheme Consideration, as set out in this clause 23.

**Deed Poll** means the deed poll dated [insert date] 2018 executed by the Acquirer in favour of the Scheme Unitholders.

**Effective** means, in relation to the Quartz Trust Scheme, the supplemental deed poll making amendments to this Constitution to facilitate the Quartz Trust Scheme, including the insertion of clause 23, taking effect pursuant to section 601GC(2) of the Corporations Act.

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

**Implementation Date** means three Scheme Business Days following the Record Date, or such other date as may be agreed in writing between the Acquirer and the Trustee or as may be required by ASX.

**Record Date** means 7.00pm (Sydney time) on the date that is five Business Days after the Effective Date, or such other date (after the Effective Date) as may be agreed in writing between the Acquirer and the Trustee or as may be required by ASX.

**Registry** means such suitably qualified person that is from time to time appointed by the Trustee to operate the Register.

**Scheme Consideration** means the consideration to be provided to Scheme Unitholders in accordance with the terms of the Scheme Implementation Agreement and the Deed Poll.

**Scheme Implementation Agreement** means the agreement of that name between the Trustee and the Acquirer dated [insert date], as amended from time to time.

**Scheme Meeting** means the meeting of Unitholders held on [insert date] 2018 to consider the Scheme Resolutions, and includes any adjournment of that meeting.

**Scheme Resolutions** means the resolutions of the Unitholders to approve the Quartz Trust Scheme, including:

- (c) an ordinary resolution approving for the purpose of item 7 of section 611 of the Corporations Act the acquisition by the Acquirer of all of the Scheme Units; and
- (d) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to this Constitution to facilitate the implementation of the Quartz Trust Scheme.

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

**Scheme Unitholders** means each person who is registered on the Register as a holder of Units as at the Record Date, other than the Acquirer (if applicable).

**Unstapling Time** means [insert date].

### 23.2 Implementation of Quartz Trust Scheme

- (a) The definition of "Proposal" is deleted and substituted with the following new definition:  
a proposal approved by special resolution of Holders, and that for this purpose, the proposal described in the notice of meeting and explanatory memorandum dated [insert date].
- (b) Each Scheme Unitholder and the Trustee must do all things and execute all deeds, instruments, transfers or other documents as the Trustee considers are necessary or desirable to give full effect to the terms of the Quartz Trust Scheme and the transactions contemplated by it.
- (c) Without limiting the Trustee's other powers under this clause 23, the Trustee has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the Quartz Trust Scheme, the Scheme Implementation Agreement and the transactions contemplated by them.
- (d) Subject to the Corporations Act, the Trustee, the Acquirer or any of their directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 23 even if they have an interest (financial or otherwise) in the outcome of such exercise.
- (e) Without limiting the Trustees powers under this clause 23:
  - (i) on the Implementation Date, the Trustee must determine in accordance with clause 20.5(a) that the Stapling provisions of the Constitution will cease to apply at the Unstapling Time and that the Implementation Date is to be the "Unstapling Date" for the purpose of clause 20.5 of the Constitution.
  - (ii) on the Effective Date each Holder is deemed to have irrevocably appointed the Trustee as the Scheme Unitholder's agent and attorney to transfer the Scheme Units on the Implementation Date at the price and on the terms set out in the Scheme Implementation Agreement and the Deed Poll; and
  - (iii) the Trustee must execute on behalf of each Scheme Unitholder a transfer of the Scheme Units in respect of which the Trustee is appointed as agent and attorney under clause 23(e)(i) above in the manner and form which the Trustee considers necessary and the deliver the transfer to the Registry for registration.
- (f) This clause 23:
  - (i) binds the Trustee and all of the Holders from time to time (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolutions); and
  - (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (but, for the avoidance of doubt, remains subject to the Corporations Act and the Listing Rules).

### 23.3 Warranty by Scheme Unitholders

Each Scheme Unitholder warrants to the Acquirer and is deemed to have authorised the Trustee to warrant to the Acquirer as agent and attorney for the Scheme Unitholder by virtue of this clause 23.3, that:

- (a) all their Scheme Units (including any rights and entitlements attaching to those securities) transferred to the Acquirer under the Quartz Trust Scheme, will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Units (including any rights and entitlements attaching to those securities) to the Acquirer under the Quartz Trust Scheme.

#### **23.4 Transfer free of Encumbrances**

To the extent permitted by law, all Scheme Units (including any rights and entitlements attaching to those securities) which are transferred to the Acquirer under the Quartz Trust Scheme will, at the date of the transfer to them to the Acquirer, vest in the Acquirer free from all Encumbrances.

#### **23.5 Appointment of Acquirer as sole proxy**

Subject to the provision of the Scheme Consideration for the Scheme Units, on and from the Implementation Date until the Trustee registers BidCo as the holder of all the Scheme Units in the Register, each Scheme Unitholder:

- (a) irrevocably appoints the Trustee as attorney and agent (and directs the Trustee in such capacity) to appoint BidCo and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable, corporate representative, to attend Unitholder meetings, exercise the votes attaching to Units registered in its name and sign any Unitholder resolution, and no Scheme Unitholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy, or by corporate representative (other than pursuant to this clause 23.5(a); and
- (b) must take all other actions in the capacity of the registered holder of Units as BidCo directs.

The Trustee undertakes in favour of each Scheme Unitholder that it will appoint BidCo and each of its directors from time to time (jointly and each of them individually) as that Scheme Unitholder's proxy or, where applicable, corporate representative, in accordance with clause 23.5(a).

#### **23.6 Unclaimed monies**

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any amount payable to a Scheme Unitholder under the Quartz Trust Scheme which becomes 'unclaimed money' (as defined in section 7 of that Act).
- (b) The Trustee may cancel a cheque issued on account of the Scheme Consideration if the cheque:
  - (i) is returned to the Trustee; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.

#### **23.7 Orders of a court or Government Agency**

- (a) The Trustee may deduct and withhold from any Scheme Consideration which would otherwise be payable to a Scheme Unitholder any amount which BidCo or the Trustee determine is required to be deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency.



- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under the Quartz Trust Scheme as having been paid to the person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate taxing agency.
- (c) If written notice is given to the Trustee (or the Registry) of an order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency that:
  - (i) requires consideration which would otherwise be payable or provided to a Scheme Unitholder under the Quartz Trust Scheme must instead be paid or provided to a Government Agency or other third party (either through payment of a sum or the issuance of a security), then, the Trustee shall be entitled to procure that payment or provision of that consideration is made in accordance with that order, direction or notice (and payment or provision of that consideration in accordance with that order, direction or notice will be treated for all purposes under the Quartz Trust Scheme as having been paid or provided to the Scheme Unitholder); or
  - (ii) prevents the Trustee from providing consideration to any particular Scheme Unitholder under the Quartz Trust Scheme, or the payment or provision of such consideration is otherwise prohibited by applicable law, the Trustee shall be entitled to retain the Scheme Consideration to which that Scheme Unitholder would otherwise be entitled to under the Quartz Trust Scheme, until such time as payment or provision of the Scheme Consideration under the Quartz Trust Scheme is permitted by that order or direction or otherwise by law.

### **23.8 No disposals after the Effective Date**

- (a) If the Quartz Trust Scheme becomes Effective, a holder of Scheme Units (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Units or any interest in them after the Effective Date in any way except as set out in the Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) The Trustee will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Units received after the Record Date (except a transfer to BidCo pursuant to the Scheme or any subsequent transfer by BidCo or its successors in title).

### **23.9 Lapsing**

Clause 23 will lapse and have no further force or effect if the Quartz Trust Scheme lapses in accordance with the Scheme Implementation Agreement.

## **8 Schedule 2 - Meetings**

Paragraph of Schedule 2(b) of the Constitution is deleted and substituted with the following clause:

- (b) The quorum for any Meeting is 1 Holder.



**Part B- PCP Supplemental Deed**

Investa Listed Funds Management Limited

## Supplemental Deed Poll

Amending the Constitution for Prime Credit Property Trust

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

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This Deed Poll is made on 2018

## Parties

**Investa Listed Funds Management Limited** (ABN 37 149 175 655) of Level 30 , 420 George Street Sydney NSW 2000 (the **Responsible Entity**).

## Recitals

- A The Responsible Entity is the responsible entity of the trust known as the Prime Credit Property Trust (ARSN 089 849 196) (**PCP**) (the **Trust**).
- B The Trust has is registered as a managed investment scheme pursuant to section 601EB of the Corporations Act.
- C The Units of the Trust are stapled to the units of Prime Credit Property Trust (ARSN 089 849 196) (**PCP**) and are quoted and traded on ASX as stapled securities of Investa Office Fund (ASX: **IOF**).
- D The Responsible Entity and the Acquirer have agreed, by executing the Scheme Implementation Agreement, to propose and implement the Scheme.
- E The Constitution must be amended to facilitate the Scheme.
- F Section 601GC(1)(a) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution by special resolution of the members of the scheme.
- G Under clause 15 of the Constitution, the Responsible Entity may, by deed, replace or amend the Constitution.
- H The Responsible Entity proposes to modify the Constitution, as set out in this Supplemental Deed Poll, to give effect to the resolutions to modify the Constitution that were passed by Unitholders at a meeting held on [insert date] 2018 (**Scheme Resolutions**).

**It is declared** as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Supplemental Deed Poll including the Recitals, the following definitions apply unless the context otherwise requires.

**Acquirer** means each of BidCo and BidTrust.

**BidCo** means Quartz Bidco Pty Ltd (ACN 626 431 927).

**BidTrust** means Quartz Sub TC Pty Ltd (ACN 626 431 963) as trustee of the Quartz Bid Trust.

**Constitution** means the trust deed constituting PCP, as approved by Unitholders on 6 December 2011(as amended).

**Effective Time** means the date and time on which a copy of this Supplemental Deed Poll is, or the modifications set out in it are, lodged with ASIC under section 601GC(2) of the Corporations Act.

**Entity** includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

**IOM** means Investa Office Management Pty Limited ACN 161 354 016.

**Management Deed** means the management deed between the Responsible Entity and IOM dated 25 September 2014, as amended and restated by the amendment and restatement deed dated 1 July 2017.

**Scheme** means the arrangement set out in the Scheme Implementation Agreement and facilitated by the amendments to the Constitution set out in this Supplemental Deed Poll.

**Scheme Implementation Agreement** means the agreement of that name between the Responsible Entity and the Acquirer dated [insert date] 2018, as amended from time to time.

**Scheme Resolutions** has the meaning given in Recital H.

## 1.2 Interpretation

- (a) Terms used but not defined in this Supplemental Deed Poll have the same meanings given to them in the Constitution, as amended by this Supplemental Deed Poll.
- (b) Clauses 1.1 ('Definitions'), 1.2 ('Interpretation') and 1.6 ('Inconsistency with the Listing Rules') of the Constitution apply to this Supplemental Deed Poll as if set out in this Supplemental Deed Poll.

## 1.3 Benefit of this Supplemental Deed Poll

This Supplemental Deed Poll is made by the Responsible Entity with the intent that the benefit of this Supplemental Deed Poll shall enure to the benefit of the Unitholders jointly and severally.

## 2 Conditions

This Supplemental Deed Poll is conditional upon and will have no force or effect until, the satisfaction of each of the conditions precedent stipulated in clause 3.1 of the Scheme Implementation Agreement.

## 3 Amendment of Constitution

The Responsible Entity amends the Constitution so that the Constitution is amended as set out in the Schedule:

- (a) in respect of paragraphs 1, 2, 3, 4, 5, 6 and 8 of the Schedule, on and from the Implementation Date; and
- (b) in respect of paragraph 7, on and from the Effective Time.

## 4 No Resettlement

The Responsible Entity confirms that it is not by this Supplemental Deed Poll:

- (a) resettling or redeclaring the Trust declared under the Constitution;
- (b) declaring any trust; or
- (c) causing the transfer, vesting or accruing of any property comprising the assets of the Trust in any person.

## 5 No merger

Each obligation set out in this Supplemental Deed Poll which is capable of having future operation continues in force after the Effective Time although this Supplemental Deed Poll has otherwise been fully performed.

## **6 Governing Law and Jurisdiction**

This Supplemental Deed Poll 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.

**Executed and delivered as a Deed Poll** in Sydney

**Executed** in accordance with section 127 of the *Corporations Act 2001* by **Investa Listed Funds Management Limited** (ABN 37 149 175 655) as responsible entity for the **Prime Credit Property Trust (ARSN 089 849 196)**:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name



## Schedule

### Amendments to the Constitution of Prime Credit Property Trust

The Constitution is amended as follows:

#### 1 Clause 1.1 - Definitions

In clause 1.1 of the Constitution:

- (a) a new definition of "Affiliate" is inserted as follows:

means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls directly or indirectly, the person or any entity directly or indirectly under common control with the person or any entity which ordinarily acts under the direction of the person. For this purpose **control** of any entity or person means ownership of a majority of the voting power of the entity or the person.
- (b) a new definition of "Encumbrance" is inserted as follows:

means any mortgage, charge, lien, pledge, trust, power or title retention, flawed deposit arrangement, "security interest" as defined in sections 12(1) or (2) of the Personal Property Securities Act 2009 (Cth), or the interest of a third party of any kind, whether legal or otherwise, or any agreement to create any of them or allowing them to exist.
- (c) a new definition of "Law" is inserted as follows:
  - (a) the Corporations Act and any statute; and
  - (b) any common law rule that applies to the Trust.
- (d) a new definition of "Management Agreement" is inserted as follows:

means any investment management agreement or asset management agreement which may be entered into (with the approval of the Unitholders) between the Trustee and the Manager relating to investment or asset management services provided by the Manager for the benefit of the Trust.
- (e) a new definition of "Manager" is inserted as follows:

means the manager or any replacement or successor appointed by the Trustee to provide investment management services for the benefit of the Trust from time to time.
- (a) a new definition of "Relevant Finance Document" is inserted as follows:

means any facility or loan agreement entered into:

  - (a) by the Trustee; or
  - (b) between a Unitholder and any one or more third party financiers, which has been provided to the Trustee in writing.
- (b) a new definition of "Reserved Matter" is inserted as follows:

any of the following matters or actions in relation to the Trust or Fund:

  - 1 acquiring or disposing of any real or personal property or any other asset of the Fund;
  - 2 borrowing, raising money, incurring any indebtedness or entering into any financial accommodation;
  - 3 creating or permitting to exist any Encumbrance;

- 4 entering into any guarantee, indemnity bond, security deposit, letter of credit or suretyship or any other obligation to pay, purchase or provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of, to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of, obligation of, liability of or the insolvency of any other person;
- 5 issuing any Units or the grant of any Options or issuing any units or granting any options over units in any sub-trust; and
- 6 entering into or amending any contract or commitment (or any series of related contracts or commitments) which involves any Affiliate of the Trustee, including, for so long as Investa Listed Funds Management Limited is the trustee of the Trust, any of the following entities: Investa Office Management Limited, Investa Office Management Holdings Pty Ltd, Investa Asset Management Pty Ltd, Investa Asset Management (QLD) Ltd, Investa Property Group Holdings Pty Ltd or any of their Affiliates.

## 2 Clause 6 - General powers of Trustee

- (a) Clause 6.1(b) and clause 6.1(c) of the Constitution are deleted and substituted with the following clauses:
  - (b) Subject to clause 6.1(c), in the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property, borrow or raise money, encumber any asset of the Fund, incur any liability, guarantee any obligations of any person, enter into joint venture arrangements or fetter any power.
  - (c) Notwithstanding any other provision of this constitution, the Trustee:
    - (i) must not exercise any power or discretion or take any action; and
    - (ii) to the extent that it is within the Trustees control, must procure that no sub-trustee exercises any power or discretion or takes any action,in connection with a Reserved Matter unless the Trustee has received prior written approval of the exercise or action from all Unitholders.
  - (d) The Trustee must take all such steps as practicable to direct and instruct the Manager under the Management Agreement to act consistently with the Trustee's obligations under this constitution in connection with the provision of services by the Manager under the Management Deed.
  - (e) The Trustee must:
    - (i) at all times, comply with the terms of any Relevant Finance Document; and
    - (ii) not act (or omit to act) in such a manner which would cause it or any Unitholder to be in breach of any Relevant Finance Document (whether or not the Trustee is party to any such document),unless taking (or failing to take) any such action would constitute a breach of the Trustee's fiduciary or statutory obligations.
- (b) Clause 6.2(b) of the Constitution is deleted and substituted with the following clause:

- (b) Subject to clause 6.1(c), the Trustee may appoint an agent, custodian or other person, including an associate of the Trustee (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with any asset of the Fund on behalf of the Trustee and perform any necessary incidental or ancillary action or other action approved by the Trustee.
- (c) A new clause 6.5 is to be inserted into the Constitution with the following clause:

#### **6.5 Sub-Trust Constitutions**

To the extent that the Trust (acting through the Trustee) is the sole unitholder of a trust (**Sub Trust**), the Trustee must, on written direction from the sole unitholder of the Trust:

- (a) consent to, and direct, the trustee of that Sub Trust to:
  - (i) make amendments to the trust deed of that Sub Trust to be consistent with clauses 6, 7.5 and 15 of this constitution (including, where applicable, the inclusion of the relevant definitions) as soon as practicable; and
  - (ii) if, for whatever reason, the trustee of that Sub Trust does not comply with the direction given under clause 6.5(a)(i):
    - (A) immediately call and convene a meeting of the unitholders of that Sub Trust; and
    - (B) pass a special resolution at that meeting to effect the changes set out in clause 6.5(a)(i); and
- (b) where the trustee of a Sub Trust is the sole unitholder in a trust (**Sub Sub Trust**), procure that the trustee of that Sub Sub Trust:
  - (i) make amendments to the trust deed of that Sub Sub Trust to be consistent with clauses 6, 7.5 and 15 (including, where applicable, the inclusion of the relevant definitions) as soon as practicable; and
  - (ii) if, for whatever reason, the trustee of any Sub Sub Trust does not comply with the direction set out in clause 6.5(b)(i):
    - (A) immediately call and convene a meeting of the unitholders of that Sub Sub Trust; and
    - (B) pass a special resolution at that meeting to effect the changes set out in clause 6.5(b)(i).

### **3 Clause 7.5**

Clause 7.5 of the Constitution is deleted and substituted with the following clause:

#### **7.5 Trustee interest in Trust and transaction**

- (a) Despite any other provision of this constitution, no present or future Trustee may hold Units or Options or otherwise become a beneficiary of the Trust.
- (b) Affiliates of the Trustee are not precluded from holding Units or Options or otherwise becoming a beneficiary of the Trust.
- (c) Nothing in this constitution restricts the Trustee or the Trustee's Affiliates from:

- (i) dealing with the Trust or any Holder;
- (ii) being interested in any contract or transaction with the Trust, any Holder, or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
- (iii) entering a contract or transaction in relation to which the Trust may become liable to pay fees, costs, brokerage, commissions or other remuneration to an Affiliate of the Trustee or an Affiliate of any of the directors of the Trustee;
- (iv) acting in the same or a similar capacity in relation to any other trust; or
- (v) dealing with itself in relation to the Fund where in relation to such dealings it is acting in different capacities.

#### **4 Clause 12.3**

A new clause 12.3(d) is inserted as follows:

- (d) Despite any other provision of this Constitution, the Trustee shall not decline to register any transfer of Units where such transfer is:
  - (i) to a person holding a security interest over those Units (the "**Secured Party**") or a nominee of the Secured Party;
  - (ii) delivered to the Trustee for registration by a Secured Party or its nominee in order to perfect its security over the Units; or
  - (iii) executed by a Secured Party or its nominee pursuant to a power of sale or other power or right existing under such security,

and the Trustee shall forthwith register any such transfer of Units upon receipt.

#### **5 Clause 15 - Alterations to Trust**

Clause 15 of the Constitution is deleted and substituted with the following clause:

##### **15 Alterations to Trust**

##### **15.1 Alternations by Trustee**

The Trustee may amend this constitution (including this clause 15) by deed at any time, subject to any approval required by Law.

##### **15.2 Restriction on Amendment**

Subject to Law, the Trustee must not amend this constitution to remove the requirement under clause 7.5(a) that no present or future Trustee may hold Units or Options or otherwise become a beneficiary of the Trust.

#### **6 Clause 16.1 - Term of Trust**

Clause 16.1 of the Constitution is deleted and substituted with the following clause:

##### **16.1 Term of Trust**

The term of the Trust ends on the earlier of:

- (a) a date determined by the Unitholders by special resolution directing the Trustee to terminate the Trust on that date; and
- (b) the date on which the Trust is terminated under this constitution or by Law.

## 7 Clause 23 – Quartz Trust Scheme

A new clause 23 is inserted immediately after clause 22 of the Constitution, as set out below:

### 23 Quartz Trust Scheme

#### 23.1 Definitions

The following definitions apply in this clause 23 unless the context requires otherwise:

**Acquirer** means each of BidCo and BidTrust.

**BidCo** means Quartz Bidco Pty Ltd (ACN 626 431 927).

**BidTrust** means Quartz Sub TC Pty Ltd (ACN 626 431 963) as trustee of the Quartz Bid Trust.

Quartz

**Trust Scheme** means the arrangement by which all of the Scheme Units will be transferred to the Acquirer for the Scheme Consideration, as set out in this clause 23.

**Deed Poll** means the deed poll dated [insert date] 2018 executed by the Acquirer in favour of the Scheme Unitholders.

**Effective** means, in relation to the Quartz Trust Scheme, the supplemental deed poll making amendments to this Constitution to facilitate the Quartz Trust Scheme, including the insertion of clause 23, taking effect pursuant to section 601GC(2) of the Corporations Act.

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

**Implementation Date** means three Scheme Business Days following the Record Date, or such other date as may be agreed in writing between the Acquirer and the Trustee or as may be required by ASX.

**Record Date** means 7.00pm (Sydney time) on the date that is five Business Days after the Effective Date, or such other date (after the Effective Date) as may be agreed in writing between the Acquirer and the Trustee or as may be required by ASX.

**Registry** means such suitably qualified person that is from time to time appointed by the Trustee to operate the Register.

**Scheme Consideration** means the consideration to be provided to Scheme Unitholders in accordance with the terms of the Scheme Implementation Agreement and the Deed Poll.

**Scheme Implementation Agreement** means the agreement of that name between the Trustee and the Acquirer dated [insert date], as amended from time to time.

**Scheme Meeting** means the meeting of Unitholders held on [insert date] 2018 to consider the Scheme Resolutions, and includes any adjournment of that meeting.

**Scheme Resolutions** means the resolutions of the Unitholders to approve the Quartz Trust Scheme, including:

- (c) an ordinary resolution approving for the purpose of item 7 of section 611 of the Corporations Act the acquisition by the Acquirer of all of the Scheme Units; and
- (d) a special resolution for the purpose of section 601GC(1) of the Corporations Act to approve amendments to this Constitution to facilitate the implementation of the Quartz Trust Scheme.

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

**Scheme Unitholders** means each person who is registered on the Register as a holder of Units as at the Record Date, other than the Acquirer (if applicable).

**Unstapling Time** means [insert date].

### 23.2 Implementation of Quartz Trust Scheme

- (a) The definition of "Proposal" is deleted and substituted with the following new definition:  
a proposal approved by special resolution of Holders, and that for this purpose, the proposal described in the notice of meeting and explanatory memorandum dated [insert date] is a "Proposal".
- (b) Each Scheme Unitholder and the Trustee must do all things and execute all deeds, instruments, transfers or other documents as the Trustee considers are necessary or desirable to give full effect to the terms of the Quartz Trust Scheme and the transactions contemplated by it.
- (c) Without limiting the Trustee's other powers under this clause 23, the Trustee has power to do all things that it considers necessary, desirable or reasonably incidental to give effect to the Quartz Trust Scheme, the Scheme Implementation Agreement and the transactions contemplated by them.
- (d) Subject to the Corporations Act, the Trustee, the Acquirer or any of their directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 23 even if they have an interest (financial or otherwise) in the outcome of such exercise.
- (e) Without limiting the Trustees powers under this clause 23:
  - (i) on the Implementation Date, the Trustee must determine in accordance with clause 20.5(a) that the Stapling provisions of the Constitution will cease to apply at the Unstapling Time and that the Implementation Date is to be the "Unstapling Date" for the purpose of clause 20.5 of the Constitution.
  - (ii) on the Effective Date each Holder is deemed to have irrevocably appointed the Trustee as the Scheme Unitholder's agent and attorney to transfer the Scheme Units on the Implementation Date at the price and on the terms set out in the Scheme Implementation Agreement and the Deed Poll; and
  - (iii) the Trustee must execute on behalf of each Scheme Unitholder a transfer of the Scheme Units in respect of which the Trustee is appointed as agent and attorney under clause 23(e)(i) above in the manner and form which the Trustee considers necessary and the deliver the transfer to the Registry for registration.
- (f) This clause 23:
  - (i) binds the Trustee and all of the Holders from time to time (including those who do not attend the Scheme Meeting, those who do not vote at the Scheme Meeting and those who vote against the Scheme Resolutions); and
  - (ii) to the extent of any inconsistency, overrides the other provisions of this Constitution (but, for the avoidance of doubt, remains subject to the Corporations Act and the Listing Rules).

### 23.3 Warranty by Scheme Unitholders

Each Scheme Unitholder warrants to the Acquirer and is deemed to have authorised the Trustee to warrant to the Acquirer as agent and attorney for the Scheme Unitholder by virtue of this clause 23.3, that:

- (a) all their Scheme Units (including any rights and entitlements attaching to those securities) transferred to the Acquirer under the Quartz Trust Scheme, will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Units (including any rights and entitlements attaching to those securities) to the Acquirer under the Quartz Trust Scheme.

#### **23.4 Transfer free of Encumbrances**

To the extent permitted by law, all Scheme Units (including any rights and entitlements attaching to those securities) which are transferred to the Acquirer under the Quartz Trust Scheme will, at the date of the transfer to them to the Acquirer, vest in the Acquirer free from all Encumbrances.

#### **23.5 Appointment of Acquirer as sole proxy**

Subject to the provision of the Scheme Consideration for the Scheme Units, on and from the Implementation Date until the Trustee registers BidTrust as the holder of all the Scheme Units in the Register, each Scheme Unitholder:

- (a) irrevocably appoints the Trustee as attorney and agent (and directs the Trustee in such capacity) to appoint BidTrust and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable, corporate representative, to attend Unitholder meetings, exercise the votes attaching to Units registered in its name and sign any Unitholder resolution, and no Scheme Unitholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy, or by corporate representative (other than pursuant to this clause 23.5(a); and
- (b) must take all other actions in the capacity of the registered holder of Units as BidTrust directs.

The Trustee undertakes in favour of each Scheme Unitholder that it will appoint BidTrust and each of its directors from time to time (jointly and each of them individually) as that Scheme Unitholder's proxy or, where applicable, corporate representative, in accordance with clause 23.5(a).

#### **23.6 Unclaimed monies**

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any amount payable to a Scheme Unitholder under the Quartz Trust Scheme which becomes 'unclaimed money' (as defined in section 7 of that Act).
- (b) The Trustee may cancel a cheque issued on account of the Scheme Consideration if the cheque:
  - (i) is returned to the Trustee; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.

#### **23.7 Orders of a court or Government Agency**

- (a) The Trustee may deduct and withhold from any Scheme Consideration which would otherwise be payable to a Scheme Unitholder any amount which BidTrust or the Trustee determine is required to be deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency.

- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under the Quartz Trust Scheme as having been paid to the person in respect of which such deduction or withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate taxing agency.
- (c) If written notice is given to the Trustee (or the Registry) of an order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency that:
  - (i) requires consideration which would otherwise be payable or provided to a Scheme Unitholder under the Quartz Trust Scheme must instead be paid or provided to a Government Agency or other third party (either through payment of a sum or the issuance of a security), then, the Trustee shall be entitled to procure that payment or provision of that consideration is made in accordance with that order, direction or notice (and payment or provision of that consideration in accordance with that order, direction or notice will be treated for all purposes under the Quartz Trust Scheme as having been paid or provided to the Scheme Unitholder); or
  - (ii) prevents the Trustee from providing consideration to any particular Scheme Unitholder under the Quartz Trust Scheme, or the payment or provision of such consideration is otherwise prohibited by applicable law, the Trustee shall be entitled to retain the Scheme Consideration to which that Scheme Unitholder would otherwise be entitled to under the Quartz Trust Scheme, until such time as payment or provision of the Scheme Consideration under the Quartz Trust Scheme is permitted by that order or direction or otherwise by law.

### **23.8 No disposals after the Effective Date**

- (a) If the Quartz Trust Scheme becomes Effective, a holder of Scheme Units (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Units or any interest in them after the Effective Date in any way except as set out in the Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) The Trustee will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Units received after the Record Date (except a transfer to BidTrust pursuant to the Scheme or any subsequent transfer by BidTrust or its successors in title).

### **23.9 Lapsing**

Clause 23 will lapse and have no further force or effect if the Quartz Trust Scheme lapses in accordance with the Scheme Implementation Agreement.

## **8 Schedule 2 - Meetings**

Paragraph of Schedule 2(b) of the Constitution is deleted and substituted with the following clause:

- (b) The quorum for any Meeting is 1 Holder.





**Schedule 6**

**Deed Poll**

Quartz BidCo Ltd

Quartz Sub TC Pty Ltd as trustee of the Quartz Bid Trust

## Deed Poll

In favour of each IOF Scheme Unitholder

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
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F +61 2 9230 5333  
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**This Deed Poll** is made on

## **Parties**

- 1 **Quartz BidCo Ltd** (ACN 626 431 927) of Suite 3901 Gateway, 1 Macquarie Place, Sydney NSW 2000 (the **BidCo**)
- 2 **Quartz Sub TC Pty Ltd** (ACN 626 431 963) **as trustee of the Quartz Bid Trust** of Suite 3901 Gateway, 1 Macquarie Place, Sydney NSW 2000 (the **BidTrust**)

**In favour of**

**each IOF Scheme Unitholder**

## **Recitals**

- A BidCo, BidTrust, and Investa Listed Funds Management Limited (ABN 37 149 175 655) (**ILFML**) as responsible entity for the Armstrong Jones Office Fund (ARSN 090 242 229) (**AJO**) and the Prime Credit Property Trust (ARSN 089 849 196) (**PCP**) (**Target**) have entered into a scheme implementation agreement dated [insert date] 2018 (the **Scheme Implementation Agreement**).
- B Target has agreed in the Scheme Implementation Agreement to propose the Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, BidCo will acquire all the IOF Scheme Units in AJO and BidTrust will acquire all of the IOF Scheme Units in PCP from IOF Scheme Unitholders for the Scheme Consideration.
- C In accordance with the Scheme Implementation Agreement, each of BidCo and BidTrust are entering into this Deed Poll for the purpose of covenanting in favour of the IOF Scheme Unitholders that they will observe and perform the obligations contemplated of them under the Scheme.

**It is agreed** as follows.

## **1 Definitions and Interpretation**

### **1.1 Definitions**

Terms defined in the Scheme Implementation Agreement, a copy of which is set out in the Schedule to this Deed Poll, have the same meaning in this Deed Poll, unless the context requires otherwise.

### **1.2 Interpretation**

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

## **2 Nature of Deed Poll**

Each of BidCo and BidTrust acknowledge that:

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

### 3 Conditions Precedent and Termination

#### 3.1 Conditions precedent

Each of BidCo's and BidTrust's obligations (as relevant) under this Deed Poll are subject to the Scheme becoming Effective.

#### 3.2 Termination

If the Scheme Implementation Agreement is terminated before the Effective Date or the Scheme does not become Effective on or before the End Date, the obligations of BidCo and BidTrust under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless Target and BidCo and BidTrust otherwise agree in accordance with the Scheme Implementation Agreement.

#### 3.3 Consequences of termination

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

- (a) each of BidCo and BidTrust are released from their obligations under this Deed Poll, except those obligations under clause 8.6; and
- (b) each IOF Scheme Unitholder retains any rights, powers or remedies that the IOF Scheme Unitholder has against the BidCo and BidTrust in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

### 4 Compliance with Scheme Obligations

#### 4.1 Obligations of BidCo and BidTrust

Subject to clause 3, in consideration for the transfer to BidCo and BidTrust (respectively) of the Scheme Units in accordance with the Scheme, each of BidCo and BidTrust jointly and severally covenants in favour of each Scheme Unitholder that each will observe and perform all obligations contemplated of them under the Scheme, including in each case the relevant obligations relating to the provision of the Scheme Consideration in accordance with the terms of the Scheme.

#### 4.2 Manner of Payment

- (a) ILFML shall nominate a trust account (**Trust Account**) and provide notice in writing of the trust account details to BidCo and BidTrust at least five business days before the Implementation Date.
- (b) BidCo and BidTrust's obligations to provide, or procure the provision of, the aggregate Scheme Consideration will be satisfied by BidCo and BidTrust procuring that, by no later than 12 noon on the day before the Implementation Date, an amount in Australian currency is deposited into the Trust Account in immediately available funds equal to the aggregate Scheme Consideration payable in respect of the Scheme Units.

### 5 Representations and Warranties

Each of BidCo and BidTrust make the following representations and warranties:

- (a) **(Status)**
  - (i) In relation to BidCo, it is a corporation validly existing under the laws of the place of its incorporation.
  - (ii) In relation to BidTrust, it is duly established and validly subsisting.

- (b) **(Trustee)** Quartz Sub TC Pty Ltd is the trustee of BidTrust, has been validly appointed, and remains as trustee of BidTrust and no action has been taken to or proposed to be taken to remove it as trustee.
- (c) **(Trustee right of indemnity)** Quartz Sub TC Pty Ltd's right of indemnity out of, and lien over the assets of BidTrust has not been limited in any way. Quartz Sub TC Pty Ltd has no liability which may be set off against the right of indemnity.
- (d) **(Power)** It has the power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (e) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll.
- (f) **(Document binding)** This Deed Poll is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (g) **(Transactions permitted)** The execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:
  - (i) a law, judgment, ruling, order or decree binding on it; or
  - (ii) its constitution or other constituent documents.
- (h) **(Solvency)** It is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for the winding up, dissolution or termination of itself or for the appointment of a liquidator, receiver, administrator, or similar officer over any or all of its assets.
- (i) **(No default)** This deed poll does not conflict with or result in the breach of or default under, any provision of its constitution, any material term or provision of any material agreement or any write, order or injunction, judgement, law, rule, regulation or instrument to which it is party or subject or of which it is bound.

## 6 Continuing Obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) each of BidCo and BidTrust having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

## 7 Further Assurances

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

## 8 General

### 8.1 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or 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 below or the address, fax number or email address last notified by the intended recipient to the sender:
- (i) to the Target: **Investa Listed Funds Management Ltd**  
c/- Allens, 126 Phillip Street, Sydney NSW 2000  
Email: [rlonges@gmail.com](mailto:rlonges@gmail.com)
- With a copy to: Allens**  
Attention: Vijay Cugati  
Address: 126 Phillip Street, Sydney NSW 2000  
Email: [Vijay.Cugati@allens.com.au](mailto:Vijay.Cugati@allens.com.au)
- (ii) to BidCo and BidTrust: **The Blackstone Group (Australia) Pty Limited**  
Attention: Chris Tynan  
Address: Suite 3901 Gateway, 1 Macquarie Place, Sydney NSW 2000  
Email: [realestateasianotices@blackstone.com](mailto:realestateasianotices@blackstone.com)
- With a copy to: Clayton Utz**  
Attention: David Wilkie/ Kylie de Oliveira  
Address: 1 Bligh Street, Sydney NSW 2000  
Email: [dwilkie@claytonutz.com](mailto:dwilkie@claytonutz.com);  
[kdeoliveira@claytonutz.com](mailto:kdeoliveira@claytonutz.com)
- (c) will be conclusively taken to be duly given or made and received:
- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by express post, to an address in the same country, two Business Days after the date of posting;
- (iii) in the case of delivery by any other method of post, six Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country);
- (iv) 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
- (v) in the case of email, at the earliest of:
- (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
- (B) the time that the intended recipient confirms receipt of the email by reply email; and
- (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,



but if the result is that a Notice would be taken to be given or made and received:

- (vi) in the case of delivery by hand, post or fax, at a time that is later than 5pm;
- (vii) in the case of delivery by email, at a time that is later than 7pm; or
- (viii) on a day that is not a business day,

in the place specified by the intended recipient as its postal address under clause 8.1(b), it will be conclusively taken to have been duly given or made and received at the start of business on the next business day in that place.

## **8.2 No waiver**

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

## **8.3 Remedies cumulative**

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

## **8.4 Amendment**

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

- (a) either:
  - (i) before the Second Court Date, the amendment or variation is agreed to in writing by Target, BidCo and BidTrust (which such agreement may be given or withheld without reference to or approval by any IOF Scheme Unitholder); or
  - (ii) on or after the Second Court Date, the amendment or variation is agreed to in writing by Target, BidCo and BidTrust (which such agreement may be given or withheld without reference to or approval by any IOF Scheme Unitholder), and is approved by the Court; and
- (b) The BidCo and BidTrust enter into a further deed poll in favour of the IOF Scheme Unitholder giving effect to that amendment or variation.

## **8.5 Assignment**

The rights and obligations of the BidCo and BidTrust and of each IOF Scheme Unitholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of the BidCo and BidTrust and Target.

## **8.6 Costs and duty**

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

### **8.7 Governing law and jurisdiction**

This Deed Poll is governed by the laws of New South Wales. The BidCo and BidTrust submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

Deed Poll

**Schedule**

**Scheme Implementation Agreement**

**Executed and delivered as a Deed**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Quartz BidCo Ltd:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Quartz Sub TC Pty Ltd as trustee of the Quartz Bid Trust:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Schedule 7**

**Agreed Public Announcement**

[Not included]

Executed in Sydney.

Executed in accordance with section 127 of the *Corporations Act 2001* by **Investa Listed Funds Management Limited** (ABN 37 149 175 655) as responsible entity for the **Investa Office Fund**:



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Director Signature

RICHARD LONGES

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Print Name



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Director/Secretary Signature

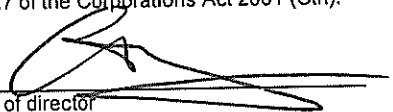
ANDREW MURRAY

---

Print Name

Scheme Implementation Agreement

Executed by Quartz Sub TC Pty Ltd as trustee of the Quartz Bid Trust in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Christopher Tynan

Full name of director

Allens < Linklaters



Signature of company secretary/director

Craig Newman

Full name of company secretary/director

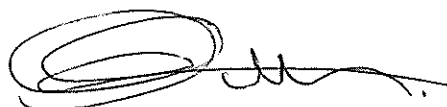
Executed by Quartz BidCo Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Christopher Tynan

Full name of director



Signature of company secretary/director

Craig Newman

Full name of company secretary/director