



HERBERT
SMITH
FREEHILLS

Deed

Deed of company arrangement

Stephen Longley, Craig Crosbie and Rebecca Gill in
their capacity as joint and several administrators of
Dixon Advisory and Superannuation Services Pty
Ltd (ACN 103 071 665) (Administrators Appointed)

Dixon Advisory and Superannuation Services Pty
Ltd (ACN 103 071 665) (Administrators Appointed)

E&P Financial Group Limited (ACN 609 913 457)

E&P Operations Pty Limited (ACN 080 207 076)



Contents

Table of contents

1	Definitions and interpretation	3
1.1	Definitions	3
1.2	Interpretation	13
1.3	Inconsistency with Act or Regulations	14
1.4	Other inconsistencies	14
1.5	Business Days	15
1.6	Bar to Claims	15
1.7	Exclusion of Prescribed Provisions	15
1.8	Required Provisions	15
1.9	Section 553B	15
1.10	Deed components	15
2	Operation	15
2.1	Commencement Date	15
2.2	Interim Effect	15
2.3	Termination	16
3	Conditions to commencement of Deed	16
4	Use of Deposit	16
5	The Officers and Members	16
5.1	Effect of the Deed on Officers of the Deed Company	16
5.2	Effect of this Deed on Members	17
6	Moratorium and Releases	17
6.1	Binding Effect	17
6.2	No Limitation	18
6.3	Effect of Deed on Claims	18
6.4	Release and extinguishment of Claims	18
6.5	Moratorium	18
6.6	Execution of all necessary documents	19
6.7	Bar to Claims	19
6.8	No action with respect to Intercompany Debt	19
7	Owners of Property in the possession of the Deed Company	19
8	Payment obligations and conditions to Completion	19
8.1	Payment of Tranche A Payment and releases	19
8.2	Settlement of Representative Proceedings	20
8.3	Payment of Tranche B Payment	20
8.4	Payment of tax receivables	20
9	Deed Fund	20
9.1	Establishing the Deed Fund	20
9.2	Distributing the Deed Fund	21
9.3	Unclaimed monies	21
9.4	Consistency with the Corporations Act	21



Contents

10	Claims	22
	10.1 Deed Administrators' discretion	22
	10.2 Determination of Claims	22
	10.3 Adjudication of Former Client Claims	22
	10.4 Access to CSLR.....	23
	10.5 Excluded Superannuation Debts not admissible	23
	10.6 Non-Participating Claims not admissible	23
	10.7 Creditors' costs and expenses.....	23
	10.8 Abandonment of Claims	23
11	Deed Administrators' Appointment	24
	11.1 Appointment.....	24
	11.2 Acceptance of Appointment.....	24
	11.3 Deed Administrators are agents	24
	11.4 Management	24
	11.5 Joint and several.....	24
	11.6 Deed Administrators' resignation.....	24
	11.7 Committee of inspection	24
12	Powers of the Deed Administrators	25
	12.1 General Powers	25
	12.2 Solicitors and Consultants	25
	12.3 No Personal Liability	25
13	Reporting	26
14	Administrators' and Deed Administrators' remuneration and indemnity	26
	14.1 Remuneration	26
	14.2 Indemnity	27
	14.3 Continuing Indemnity	27
	14.4 Indemnity not to be affected or prejudiced	27
	14.5 Administrators' and Deed Administrators' lien.....	27
	14.6 Priority.....	28
15	Creditors' Meetings	28
16	Application to Court	28
17	Termination of the Deed	28
	17.1 Termination on effectuation of Deed.....	28
	17.2 Termination on failure of Deed	28
	17.3 Notice of Effectuation of Deed	29
	17.4 Effect of Termination.....	29
	17.5 Severance.....	29
	17.6 Consequences of Termination of the Deed for non-performance	29
	17.7 Survival of clauses	30
18	General	30
	18.1 Variation.....	30
	18.2 Assignment	30
	18.3 Power of Attorney	30
	18.4 Further Assurances.....	30
	18.5 Governing Law.....	31



Contents

18.6	Waiver.....	31
18.7	Counterparts.....	31
18.8	Execution.....	31
19	Notices	31
19.1	Notice to be in writing.....	31
19.2	Signing of Notice.....	31
19.3	How notice must be given and when notice is received.....	31
19.4	Notice must not be given by electronic communication.....	32
20	GST	32
20.1	Interpretation.....	32
20.2	Reimbursements and similar payments.....	33
20.3	GST payable.....	33
20.4	Tax Invoice/Adjustment Notes.....	33
20.5	Variation to GST payable.....	33
20.6	Survival.....	33

Annexure A

Annexure B

Signing page

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Deed of Company Arrangement

Date ► 16 December 2022

Between the parties

Deed Administrators	<p>Stephen Longley, Craig Crosbie and Rebecca Gill each in their capacity as joint and several administrators of the Deed Company</p> <p>c/- PricewaterhouseCoopers 2 Riverside Quay, Southbank Victoria 3006</p> <p>Email: au_dass_queries@pwc.com</p> <p>Attention: Stephen Longley, Craig Crosbie and Rebecca Gill</p>
Deed Company	<p>Dixon Advisory and Superannuation Services Pty Ltd (Administrators Appointed)</p> <p>ACN 103 071 665</p> <p>c/- PricewaterhouseCoopers 2 Riverside Quay, Southbank Victoria 3006</p> <p>Email: au_dass_queries@pwc.com</p> <p>Attention: Stephen Longley, Craig Crosbie and Rebecca Gill</p>
Deed Proponent	<p>E&P Financial Group Limited</p> <p>ACN 609 913 457</p> <p>Level 32, 1 O'Connell Street, Sydney, NSW 2000</p> <p>Email: mike.adams@eap.com.au</p> <p>Attention: Mike Adams, Joint Company Secretary, EP1</p>
E&PO	<p>E&P Operations Pty Limited</p> <p>ACN 080 207 076</p> <p>Level 32, 1 O'Connell Street, Sydney, NSW 2000</p> <p>Email: mike.adams@eap.com.au</p> <p>Attention: Mike Adams, Joint Company Secretary, EP1</p>



Recitals

- 1 On 19 January 2022, Stephen Longley and Craig Crosbie were appointed as administrators of the Deed Company pursuant to Part 5.3A of the Corporations Act.
- 2 At the meeting of Creditors of the Deed Company held on 16 December 2022 (originally held on 7 December 2022 and then adjourned pursuant to IPR), and convened pursuant to section 439A of the Corporations Act, the Creditors of the Deed Company resolved that the Deed Company execute the deed of company arrangement proposed by the Deed Proponent under section 444B(2)(b) of the Corporations Act.
- 3 The Deed Company, the Deed Administrators, the Deed Proponent and E&PO have agreed to execute this Deed to give effect to the resolution referred to in recital 2.
- 4 The Deed Administrators have consented to be the administrators of this Deed.
- 5 Subject to the terms of this Deed, this Deed binds all creditors of the Deed Company, in accordance with section 444D of the Corporations Act and also binds the Deed Company, and its Officers and Members in accordance with section 444G of the Corporations Act.
- 6 The intention of the parties is for the Former Clients to maintain and not release their Claims against the Deed Company, save to the extent that the Former Clients receive Dividends under this Deed in respect of their Claims.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this Deed are set out below.

Term	Meaning
2022 Tax Receivable	any tax receivable payable by the Deed Proponent (or a Related Entity of the Deed Proponent) for the financial year ended 30 June 2022 to the Deed Company pursuant to the EP1 Tax Funding Agreement.
2023 Tax Receivable	any tax receivable payable by the Deed Proponent (or a Related Entity of the Deed Proponent) for the financial year ended 30 June 2023 to the Deed Company pursuant to the EP1 Tax Funding Agreement.
Administration Debt	any: <ol style="list-style-type: none">1 debt referred to in section 443A(1) of the Corporations Act which was incurred by the Administrators during the Administration Period;2 liability to the Commissioner of Taxation referred to in section 443BA(1); and3 other debts or liabilities referred to in section 443D(aa) of the Corporations Act, in respect of which the Administrators are entitled to be indemnified under section 443D of the Corporations Act.
Administration Period	the period of time commencing on the Appointment Date and concluding on the Commencement Date.
Administrators	jointly and severally, Stephen Longley and Craig Crosbie in their capacity as administrators of the Deed Company and any successor to that office appointed pursuant to the Corporations Act.



Term	Meaning
Admitted Claim	a Claim that is admitted to proof by the Deed Administrators in accordance with the terms of this Deed, and for the avoidance of doubt does not include a Non-Participating Claim.
AFCA	the Australian Financial Complaints Authority.
Appointment Date	19 January 2022.
Approved Legal Costs	any amount agreed to be paid to the plaintiffs as part of the Settlement of the Representative Proceedings, and approved by the Federal Court of Australia, in respect of legal or funding costs.
ASIC	the Australian Securities and Investments Commission.
Assets	all the existing, contingent or future assets of the Deed Company, including any insurance proceeds paid, or payable, to the Deed Company under the Insurance Policies.
Business Day	a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in the capital city of the State of Victoria.
Claim	a debt payable by, and all claims against, the Deed Company (present or future, certain or contingent, ascertained or sounding only in damages), being a debt or claim that would be admissible to proof against the Deed Company in accordance with Division 6 of Part 5.6 of the Corporations Act, if the Deed Company had been wound up and the winding up is taken to have commenced on the Appointment Date.



Term	Meaning
Commencement Date	the date that this Deed is executed by the Deed Administrators, the Deed Company, E&PO, and the Deed Proponent.
Committee of Inspection	the committee of inspection formed: <ol style="list-style-type: none">1 in accordance with Divisions 75 and 80 of the IPS and Division 75 of the IPR; and2 by resolution of Creditors, including those Creditors who join or leave the committee from time to time.
Completion	the performance or fulfillment of the following: <ol style="list-style-type: none">1 clauses 8.1, 8.3 and 8.4 of this Deed; and2 the distribution of the Deed Fund in accordance with clause 9.2.
Completion End Date	31 January 2025
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Costs	Includes: <ol style="list-style-type: none">1 all costs, expenses and disbursements incurred by the Administrators from the Appointment Date to the Commencement Date in connection with the administration of the Deed Company, the implementation of this Deed and the performance of the Administrators' duties including, but not limited to, all legal costs incurred by the Administrators in respect of the foregoing plus any GST payable thereon;2 all costs, expenses and disbursements incurred by the Deed Administrators in connection with the implementation or performance or administration of this Deed, or as a result of any actual or attempted execution or exercise, or failure to execute or exercise, any power or duty in relation to this Deed or arising from being the administrators of this Deed, including liability for any GST or tax arising under the Income Tax Law or other tax



Term	Meaning
	legislation, any money borrowed for the purposes of this Deed, any interest on borrowed money, and any contracts adopted or otherwise agreed by the Deed Administrators, including, but not limited to, all legal costs incurred by the Deed Administrators in respect of the foregoing plus any GST payable thereon;
	3 costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers, contractors or delegates, incurred in connection with the preparation, approval and implementation of this Deed, and of the preparation and implementation of any documents necessary as prerequisites to the approval of this Deed and the performance of the Administrators' and Deed Administrators' duties, obligations and responsibilities under the Corporations Act and the Deed during the Administration Period and the Deed Period and includes any Administration Debt; and
	4 all liabilities incurred by the Deed Administrators as a result of any action, suit, proceeding, account, claim or demand arising out of or relating to this Deed which may be commenced, incurred by or made on them by any person, including all liabilities incurred by them in defending any civil or criminal proceedings.
Court	the Supreme Court of Victoria or the Federal Court of Australia.
Creditor	any person who has a Claim against the Deed Company.
CSLR	the financial compensation scheme of last resort as established by the CSLR Legislation.
CSLR Legislation	the <i>Financial Sector Reform Act 2022</i> (Cth), and any such variation or substitution passed as legislation.
CSLR Operator	has the meaning given to that term in the CSLR Legislation.



Term	Meaning
Deed	this deed of company arrangement as amended from time to time.
Deed Administrators	jointly and severally, Stephen Longley, Craig Crosbie and Rebecca Gill in their capacity as administrators of the Deed and any successor to that office appointed pursuant to the Corporations Act.
Deed Company	Dixon Advisory and Superannuation Services Pty Ltd (ACN 103 071 665) (Administrators Appointed).
Deed Company Account	to be nominated by the Deed Administrators
Deed Fund	the fund comprising the assets and other items described in clause 9.1 of this Deed.
Deed Period	the period commencing on the Commencement Date and ending on the Termination Date.
Deed Proponent	E&P Financial Group Limited (ACN 609 913 457).
Deposit	\$1,000,000.
Directors	the directors of the Deed Company from time to time.
Dividend	any amount paid to a Participating Creditor in respect of that Creditor's Admitted Claim.
E&PO	E&P Operations Pty Limited (ACN 080 207 076)



Term	Meaning
Employee	any person who was an employee of the Deed Company as at or prior to the Appointment Date and any person who made an advance of money to the Deed Company for which section 560 of the Corporations Act would apply if the Deed Company was taken to be in liquidation as at the Appointment Date.
Encumbrance	any: <ol style="list-style-type: none">1 security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement and any 'security interest' as defined in sections 12(1) or (2) of the PPSA; or2 right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or3 right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or4 third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist.
Enforcement Process	has the meaning given to that term in the Corporations Act.
EP1 Tax Funding Agreement	the Tax Funding Agreement between the Deed Proponent (as head entity of the income tax consolidated group) and its various wholly owned subsidiaries, one of which being the Deed Company, dated 1 February 2017 (as amended).
Excluded Superannuation Debt	a Superannuation Debt (as defined in clause 9.4(b)) in respect of which the Deed Administrators make a determination under clause 9.4(b).



Term	Meaning
Final Dividend	the last Dividend payment to be made by the Deed Administrators to any Participating Creditor under this Deed.
Former Client	a former client of the Deed Company which had engaged the Deed Company to provide financial services, and includes that former client's assigns, executors, administrators, substitutes, successors and any person who exercises, or seeks to exercise, subrogation rights in relation to, or in connection with, the former client
Former Client Agreement	an agreement entered into between a Former Client and the Deed Company before the Appointment Date with respect to a Claim against the Deed Company which contains an amount to be paid by the Deed Company to the Former Client in settlement of an AFCA recommendation and which has not been paid.
Former Client Claim	a Claim made by a Former Client in connection with the provision of financial services to that client.
Former Client Shortfall	the difference between any amount owing by the Deed Company to the Former Client and the amount paid by the Deed Administrators to the Former Client pursuant to clause 9.2 of this Deed.
Group Members	has the meaning given to that term in the Statement of Claim in each of the Representative Proceedings.
GST	has the meaning given to that term in the GST Act.
GST Act	means <i>A New Tax System (Goods and Services) Tax Act 1999</i> (Cth).



Term	Meaning
Income Tax Law	means any law relating to income tax including but not limited to the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth).
Insurance Policies	<ol style="list-style-type: none">1 the Professional First Asset Manager Liability Insurance policy, Policy Number 47-ZEP-000273-04 issued by Berkshire Hathaway Specialty Insurance and AXA XL for the period 28 June 2018 to 14 June 2019 covering Evans Dixon Limited (since renamed) and the Deed Company as a subsidiary of Evans Dixon Limited; and2 any other relevant insurance policy that the Deed Company may have access to as a beneficiary.
Intercompany Debt	the "Intercompany Debt" as defined in the Deed of Acknowledgement entered into between the Deed Company and E&PO dated 24 December 2021.
IPR	the <i>Insolvency Practice Rules (Corporations) 2016</i> (Cth).
IPS	the <i>Insolvency Practice Schedule (Corporations)</i> set out at Schedule 2 of the Corporations Act.
Legal Personal Representative	a trustee or executor appointed to the Deed Administrators upon death, incapacity, insanity or any combination of them.
Member	has the meaning given to that term in the Corporations Act.
Non-Client Participating Creditor	means a Participating Creditor who is not a Former Client.
Non-Participating Claim	a Claim against the Deed Company:



Term	Meaning
	<ol style="list-style-type: none">1 in respect of which the current Directors and Officers, , including for the avoidance of doubt any relative of the current Director or Officer, or any relative of the spouse of the current Director or Officer, of the Deed Company is the Creditor;2 in respect of which the Deed Proponent, E&PO or their Related Entities is the Creditor;3 in respect of which any former officers of the Deed Company who are a party to the Representative Proceedings, or their Related Entities, including for the avoidance of doubt any relative of the former officer or any relative of the spouse of the former officer, is the Creditor;4 in respect of which a Creditor has agreed with the Administrators not to participate as a Creditor in respect of the Deed Company;5 in relation to the 2022 Tax Receivable and 2023 Tax Receivable; or6 in respect of an Excluded Superannuation Debt.
Officer	has the meaning given to that term in the Corporations Act.
Owner	any person who is the legal or beneficial owner or holder of a leasehold interest (including any lessor) of property in the possession of the Deed Company as at the Appointment Date.
Participating Creditor	a Creditor with an Admitted Claim.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth).
Priority Claim	a Claim of an Employee that would have been entitled to priority over the Claims of other unsecured creditors under section 556(1) of the Corporations Act if the Deed Company had been wound up and the winding up was taken to have commenced on the Appointment Date.



Term	Meaning
Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Related Entity	has the meaning given to that term in the Corporations Act, save to the extent that it also applies as if the reference to "body corporate" includes a natural person.
Remuneration	<p>the remuneration payable to the Administrators and Deed Administrators for work performed by them, their partners, employees or agents with respect to acting in their capacity as Administrators or Deed Administrators of the Company for acting as:</p> <ol style="list-style-type: none">1 the administrators of the Deed Company under Part 5.3A of the Corporations Act; and2 the Deed Administrators of the Deed Company under this Deed.
Representative Proceedings	<p>the following proceedings in the Federal Court of Australia:</p> <ol style="list-style-type: none">1 <i>Kosen-Rufu Pty Ltd & Anor v Dixon Advisory and Superannuation Services & Ltd</i> (Proceeding No. VID640/2021); and2 <i>Watson & Co Superannuation Pty Ltd v Dixon Advisory and Superannuation Services Ltd & Ors</i> (Proceeding No. VID769/2021).
Section 439C Resolution	the resolution referred to in recital 2.
Settlement Adjustments	<p>the total of:</p> <ol style="list-style-type: none">1 expenses incurred by E&PO, on behalf of the Deed Company, agreed as being \$2,900,000;2 less revenue held by E&PO for the benefit of the Deed Company, being \$63,147.
Settlement Deed	a deed of settlement and release, substantially in the draft form attached as Annexure A, being a deed between the Deed Proponent, E&PO and the Deed Company in respect



Term	Meaning
	of any claims by the Deed Company in respect of the Intercompany Debt, and which also includes releases for the benefit of the current and former directors of the Deed Company, the Deed Proponent, E&PO and Related Entities in respect of the Intercompany Debt.
Settlement of the Representative Proceedings	comprehensive settlement and final resolution of the Representative Proceedings, which includes any necessary court approval and resolution of any and all appeals, and, if a settlement, a release of all claims against all respondents to the Representative Proceedings.
Sunset Date	30 June 2023.
Termination Date	the date upon which the Deed is terminated.
Tranche A Payment	\$17,662,489 less the Settlement Adjustments.
Tranche B Payment	the total of: <ol style="list-style-type: none">1 \$4,000,000, part of which can be comprised of any portion of the Deposit which has not been used, during the Deed Period, by the Deed Administrators under clauses 4(a) and (b) of the Deed;2 plus the balance of any insurance proceeds recovered by the Deed Proponent from the insurer under the Insurance Policies, as part of the Settlement of the Representative Proceedings.

1.2 Interpretation

In the Deed, unless the subject or context otherwise requires:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;



- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Melbourne;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (p) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Inconsistency with Act or Regulations

If there is any inconsistency between the provisions of this Deed and the Corporations Act or Regulations, this Deed prevails to the extent permitted by law.

1.4 Other inconsistencies

- (a) If there is any inconsistency between the provisions of this Deed and the constitution of the Deed Company and any other obligation binding on the Deed Company, the provisions of this Deed prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which will be borne by the Deed Company.



- (b) This Deed is not intended to nor will vary the terms or operation of the Insurance Policies.

1.5 Business Days

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, that act, matter or thing will be done on the immediately succeeding Business Day.

1.6 Bar to Claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded and tendered by:

- (a) the Deed Company or the Deed Administrators against any person having or asserting a Claim released, discharged and extinguished by clause 6.4; and

- (b) the recipient of any release or covenant contained in this Deed,

as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.

1.7 Exclusion of Prescribed Provisions

Subject to clauses 12.1 and 11.7, the prescribed provisions contained in Schedule 8A of the Regulations do not apply to this Deed.

1.8 Required Provisions

To the extent that the Corporations Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed.

1.9 Section 553B

Section 553B of the Corporations Act applies to this Deed.

1.10 Deed components

This Deed includes any Schedule.

2 Operation

2.1 Commencement Date

This Deed will commence and take effect on the Commencement Date.

2.2 Interim Effect

To the extent that a person would be bound by this Deed if it had already been executed, the person must not, at any time after the Section 439C Resolution is passed but before this Deed is executed, do anything inconsistent with the terms of this Deed, except with the leave of the Court.



2.3 Termination

This Deed continues until it is terminated in accordance with clause 17 of this Deed.

3 Conditions to commencement of Deed

- (a) This Deed is subject to and conditional upon the execution of this Deed by each person named as a party to it.
- (b) If as a result of clause 3(a), this Deed has not come into full force and effect on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed, then this Deed will terminate automatically.

4 Use of Deposit

The Deed Administrators may only use the Deposit for the following purposes:

- (a) for costs or disbursements incurred by the Deed Administrators, during the Deed Period, in defending any applications made pursuant to section 445D of the Corporations Act for orders that the DOCA ought be terminated;
- (b) for costs or disbursements incurred by the Deed Administrators, during the Deed Period, in any application made by the Deed Administrators for directions pursuant to section 447A(1) of the Corporations Act or section 90-15 of the IPS in defending the DOCA if a challenge is made pursuant to s 445D of the Corporations Act; and/or
- (c) for applying any unused portion of the Deposit as part of the Tranche B Payment, as referred to in paragraph 1 of that defined term.

5 The Officers and Members

5.1 Effect of the Deed on Officers of the Deed Company

- (a) The Directors of the Deed Company will remain in office throughout the Deed Period unless they resign or are removed by the Deed Administrators.
- (b) During the Deed Period, unless authorised in writing by the Deed Administrators, the Directors and Officers of the Deed Company cannot perform or exercise, and must not purport to perform or exercise, a function or power as an Officer of the Deed Company.
- (c) While they remain Directors, the Directors will not be relieved of their statutory duties as Directors and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.
- (d) During the Deed Period:
 - (1) subject to clause 5.1(e), the Directors and Officers of the Deed Company, together with the Deed Proponent, E&PO and their Related



- Entities (**Assisting Parties**), must provide reasonable cooperation and assistance to the Deed Administrators:
- (A) in the performance by the Deed Administrators of their obligations under this Deed; and
 - (B) to arrange for the payment to the Deed Company of the balance of any insurance proceeds by the relevant insurer under the Insurance Policies;
- (2) the Directors must:
- (A) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
 - (B) must perform their obligations pursuant to the Deed.
- (e) If, in the opinion of the Assisting Party, the request for assistance by the Deed Administrators is unreasonable (for example, complying with the request will require significant costs or resources, or the Assisting Party does not have the knowledge or resources to be able to assist), the Assisting Party can:
- (1) refuse to assist, with an explanation as to why the request is unreasonable; or
 - (2) where complying with the request will require significant costs or resources, provide an estimate of any costs or charges associated with assisting the Deed Administrators to be reimbursed. Any such costs or charges must be agreed by the Deed Administrators before the assistance is provided by the Assisting Party.
- (f) Other than any costs or charges agreed pursuant to clause 5.1(e)(2) or those set out in this Deed, no further costs, charges or adjustments will be levied against the Deed Company from the Deed Proponent, E&PO or their Related Entities.
- (g) For the avoidance of doubt, the following persons shall not and will not prove, or attempt to lodge a proof of debt, under this Deed:
- (1) the current Directors and Officers of the Deed Company;
 - (2) the Deed Proponent, E&PO and their Related Entities;
 - (3) any former Directors or Officers of the Deed Company who are a party to the Representative Proceedings, and their Related Entities.

5.2 Effect of this Deed on Members

Until this Deed terminates any Member of the Deed Company and any Creditor holding any Encumbrance over any shares in the Deed Company must not without the prior written consent of the Deed Administrators deal with any shares in the Deed Company or exercise shareholder rights over any shares in the Deed Company in a way that is contrary to this Deed or the purpose of the Deed.

6 Moratorium and Releases

6.1 Binding Effect

The Deed binds:



- (a) in accordance with section 444D of the Corporations Act, all Creditors; and
- (b) in accordance with section 444G of the Corporations Act, the Deed Company, its Officers and Members and the Deed Administrators.

6.2 No Limitation

Nothing in the Deed limits the rights in law or equity of the Deed Administrators:

- (a) to make an application under section 444F of the Corporations Act; or
- (b) to apply for orders or directions pursuant to the Corporations Act (including, without limitation, section 447A(1) of the Corporations Act or section 90-15 of the IPS), or otherwise.

6.3 Effect of Deed on Claims

Non-Client Participating Creditors must accept their rights and entitlements specified in this Deed (if any) in substitution for all Claims which they have or claim to have against the Deed Company.

6.4 Release and extinguishment of Claims

- (a) Each Admitted Claim of a Non-Client Participating Creditor will be released in full and extinguished upon receipt by that Non-Client Participating Creditor of its distribution from the Deed Fund in respect of that Admitted Claim in accordance with clause 9.
- (b) All Claims of Non-Client Participating Creditors will be released in full and extinguished upon termination of this Deed.
- (c) For the avoidance of doubt, Non-Participating Claims will not be extinguished or released.
- (d) For the avoidance of doubt, Former Client Claims will not be extinguished or released, save to the extent that the Former Clients receive Dividends under this Deed in respect of their Claims.

6.5 Moratorium

- (a) Subject to clause 6.5(b), during the Deed Period a Creditor may not, in relation to that Creditor's Claim:
 - (1) make or proceed with an application for an order to wind up the Deed Company or for the appointment of a provisional liquidator or a court appointed receiver to the Deed Company and their property;
 - (2) institute, revive or continue any action, suit, arbitration, mediation or proceeding against the Deed Company or in relation to the property of the Deed Company;
 - (3) institute, revive or continue with any Enforcement Process against the property of the Deed Company;
 - (4) take any action whatsoever to seek to recover any part of its Claim;
 - (5) exercise any right of set off or defence, cross claim or cross action to which that Creditor would not have been entitled had the Deed Company been wound up on the Appointment Date;



- (6) commence or take any further step in any arbitration against the Deed Company or to which the Deed Company is a party in relation to any matter arising or occurring before the Appointment Date; or
 - (7) otherwise enforce any right it may have or acquire.
- (b) Nothing in clause 6.5(a) is intended to limit or prevent:
- (1) a Former Client from taking any steps to access compensation under the CSLR for any Former Client Shortfall pursuant to clause 10.5;
 - (2) a Group Member or the plaintiffs in the Representative Proceedings from taking any steps necessary to achieve the Settlement of the Representative Proceedings.

6.6 Execution of all necessary documents

Each Creditor must, if required by the Deed Company or the Deed Administrators, execute any document that the Deed Company or a Deed Administrator may require from time to time to give effect to this Deed.

6.7 Bar to Claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Deed Company or the Deed Administrators against any person having a Claim against the Deed Company as an absolute bar and defence to any legal proceeding brought at any time in respect of that Claim.

6.8 No action with respect to Intercompany Debt

During the Deed Period, the Deed Company and the Deed Administrators must not take any action against any person or seek to enforce any right in respect of the Intercompany Debt.

7 Owners of Property in the possession of the Deed Company

Nothing in this deed will restrict a right that an Owner who does not vote in favour of the Section 439C Resolution has in relation to the property of that Owner under section 444D(3) of the Corporations Act.

8 Payment obligations and conditions to Completion

8.1 Payment of Tranche A Payment and releases

- (a) E&PO must pay the Deposit and Tranche A Payment to the Deed Administrators, in cleared funds, within 5 Business Days after being notified that the Creditors voted in favour of this Deed and the execution of this Deed by each person named as a party to it.
- (b) Upon the Deed Administrators' receipt of the Tranche A Payment in cleared funds, the Deed Administrators must immediately cause the Deed Company to execute the Settlement Deed.



8.2 Settlement of Representative Proceedings

- (a) The following are conditions to the Completion of this Deed:
 - (1) the Settlement of the Representative Proceedings; and
 - (2) the number of Group Members in each of the Representative Proceedings that exercise a right to opt-out of the Representative Proceedings under section 33J of the Federal Court of Australia Act 1976 (Cth) is less than 1%.
- (b) The parties acknowledge that the Settlement of the Representative Proceedings is anticipated to require payment of the Approved Legal Costs, and that the Approved Legal Costs will be paid from the insurance proceeds recovered from the insurer under the Insurance Policies.
- (c) The Deed Proponent and E&PO each irrevocably acknowledge and agree that the Deed Proponent and E&PO will not, and that they will procure that their Related Entities (except the Deed Company) will not, make any claim under the insurance policy referred to at item 1 of the definition of "Insurance Policies" after the Settlement of the Representative Proceedings or relating to any cost, expense, loss or damage incurred or arising after the Settlement of the Representative Proceedings.

8.3 Payment of Tranche B Payment

The Deed Proponent must pay the Tranche B Payment to the Deed Administrators, in cleared funds, within 5 Business Days of satisfaction of the conditions referred to at clause 8.2(a) of this Deed.

8.4 Payment of tax receivables

- (a) The Deed Proponent must pay the 2022 Tax Receivable to the Deed Administrators on or before 31 January 2023.
- (b) The Deed Proponent must pay the 2023 Tax Receivable to the Deed Administrators on or before 31 January 2024.

9 Deed Fund

9.1 Establishing the Deed Fund

The property of the Deed Company that is available to pay the Creditors' Claims is the Deed Fund, including:

- (a) any Deposit remaining at the Completion Date;
- (b) the Tranche A Payment;
- (c) the Tranche B Payment;
- (d) the 2022 Tax Receivable;
- (e) the 2023 Tax Receivable;
- (f) all other Assets; and
- (g) any interest accruing from time to time on the Deed Fund.

9.2 Distributing the Deed Fund

- (a) Participating Creditors will be entitled to receive a distribution from the Deed Fund in the manner set out in this clause.
- (b) Subject to clause 9.2(c), the Deed Fund must be distributed by the Deed Administrators as follows:
 - (1) first, to the Administrators and Deed Administrators for any amount which they are entitled to be paid or indemnified for under clause 14 of this Deed (even though they may have ceased to be Administrators or Deed Administrators);
 - (2) next, to each Employee, the amount of any Priority Claim;
 - (3) next, an amount of \$100,000 (or any other amount approved by the Committee of Inspection) to the Deed Company Account to fund the subsequent liquidation contemplated by clause 17.6; and
 - (4) next, to each other Participating Creditor.
- (c) The Deed Administrators will distribute the Deed Fund at such times and in such amounts as it is appropriate and feasible to do so.
- (d) The Deed Administrators may make interim distributions.
- (e) The Deed Administrators may make distributions by electronic funds transfer to an account nominated by the Participating Creditor.
- (f) The Deed Administrators may make a distribution under one of the categories in clause 9.2(b) even though a prior category has not been paid in full, if the Deed Administrators have held back an amount which they consider is reasonably likely to be needed to pay any prior category in full.
- (g) Notwithstanding any other provision of this Deed, the Deed Administrators may withhold some or all of the Deed Fund from distribution if the Administrators or Deed Administrators have made a claim under the indemnity set out in clause 14, or reasonably apprehend that they will need to make such a claim.

9.3 Unclaimed monies

Section 544(1) of the Corporations Act applies to unclaimed moneys under this Deed as if references to 'liquidator' were references to the Deed Administrators.

9.4 Consistency with the Corporations Act

- (a) For the purposes of section 444DA of the Corporations Act, any Priority Claims of an Employee will retain a priority until termination of this Deed in respect of the assets of the Deed Company under the Deed Administrators' control at least equal to that they would have been entitled to if the property of the Deed Company had been applied in accordance with sections 556, 560 and 561 of the Corporations Act.
- (b) For the purposes of section 444DB of the Corporations Act, the Deed Administrators must determine that a debt (or part thereof) by way of superannuation contribution (**Superannuation Debt**) is not admissible to proof as an Admitted Claim if:
 - (1) that debt (or that part of the debt) by way of superannuation guarantee charge:
 - (A) has been paid; or



- (B) is, or is to be admissible against the Deed Company; and
- (2) the Deed Administrators are satisfied that the superannuation guarantee charge is attributable to the Superannuation Debt.
- (c) If the Deed Administrators make a determination in accordance with clause 9.4(b), the Superannuation Debt is to be treated as extinguished as against the Deed Company.

10 Claims

10.1 Deed Administrators' discretion

The Deed Administrators may, in their absolute discretion:

- (a) admit all or part of a Claim;
 - (b) reject all or part of a Claim; or
 - (c) pay any Admitted Claim,
- in accordance with the provisions of this Deed.

10.2 Determination of Claims

- (a) Subdivisions A, B, C, D and E of Division 6 of Part 5.6 of the Corporations Act (other than sections 553(1A), 553B and 556 of the Corporations Act), and Corporations Regulations 5.6.11A, 5.6.37 to 5.6.70A (inclusive) of the Regulations apply to Claims under this Deed and the adjudication and admission to proof of those Claims, as if:
 - (1) references to the liquidator were references to the Deed Administrators and references to winding up were references to the administration of this Deed;
 - (2) and with such other modifications as are necessary to give effect to this Deed; and
 - (3) a reference to a "relevant date" were a reference to the Appointment Date,except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (b) Interest will not accrue or be payable on any Admitted Claim under this Deed.

10.3 Adjudication of Former Client Claims

- (a) Subject to clause 10.3(b) of this Deed, the Deed Administrators will adjudicate on the Former Client Claims for Former Clients in accordance with the methodology outlined in Annexure B.
- (b) For any Former Clients who have entered into a Former Client Agreement, the settlement sum set out in their Former Client Agreement will be deemed to be the amount of the Former Client Claim.



10.4 Access to CSLR

- (a) Notwithstanding clause 6.5(a), a Former Client will be entitled to make a complaint or application to AFCA and any CSLR operator with respect to a Former Client Claim for the purposes of accessing the CSLR for compensation for a Former Client Shortfall.
- (b) The Deed Administrators will provide Former Clients with a document evidencing the Dividend paid to the Former Client in respect of their Claim, which can be provided to AFCA and any CSLR Operator to allow the Former Clients to commence or progress a determination by AFCA or seek compensation from the CSLR.
- (c) The Former Client Shortfall will remain a claim against the Deed Company in favour of the Former Client.

10.5 Excluded Superannuation Debts not admissible

An Excluded Superannuation Debt is not admissible to proof against the Deed Fund.

10.6 Non-Participating Claims not admissible

A Creditor is not entitled to make a Claim against the Deed Fund in respect of a Non-Participating Claim.

10.7 Creditors' costs and expenses

Any costs and expenses incurred by a Participating Creditor in asserting a Claim under this Deed will be borne by that Creditor and will not form part of that Creditor's Claim under this Deed.

10.8 Abandonment of Claims

- (a) A Non-Client Participating Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Deed Fund:
 - (1) which are not the subject of a proof lodged with the Deed Administrators in the form required by the Deed Administrators prior to the declaration of a Final Dividend; or
 - (2) which have been rejected by the Deed Administrators and which are not the subject of any appeal or application to the Court within the time allowed under Regulation 5.6.54.
- (b) A Former Client that does not submit a proof of debt under this Deed will not compromise their Claim against the Deed Company.

For the avoidance of doubt, if a Former Client does not submit a proof of debt in accordance with this Deed, within the time specified by the Deed Administrator for the purposes of this clause in this Deed, then that Former Client has no right to the distribution of the Deed Fund under clause 9.2 of this Deed.



11 Deed Administrators' Appointment

11.1 Appointment

On the Commencement Date, the Deed Administrators are appointed joint and several administrators of the Deed.

11.2 Acceptance of Appointment

The Deed Administrators:

- (a) accept the appointment as administrators of the Deed; and
- (b) agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Corporations Act.

11.3 Deed Administrators are agents

In exercising the powers conferred by the Deed and carrying out the duties arising under the Deed, the Deed Administrators will act as agent for and on behalf of the Deed Company.

11.4 Management

The Deed Administrators will retain day to day management and control of the Deed Company until the Termination Date to the exclusion of the Directors of the Deed Company.

11.5 Joint and several

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

11.6 Deed Administrators' resignation

Any Deed Administrator may resign at any time by giving not less than 28 days' prior written notice to the Deed Company unless that resignation would result in there being no remaining Deed Administrator in which event the Deed Administrator must:

- (a) convene meetings of Creditors of the Deed Company in accordance with clause 15 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 11.6(b).

11.7 Committee of inspection

- (a) The Committee of Inspection, which was formed for the purposes of the administration of the Deed Company will continue to operate for the purposes contemplated by this Deed and to assist the Deed Administrators in respect of the Deed Company, with such modifications as necessary.



- (b) The members of the Committee of Inspection are permitted to continue dealing with the Deed Company on a business as usual basis during the Deed Period.
- (c) The Committee of Inspection may approve the remuneration of the Deed Administrators (and the Administrators) in accordance with Division 60 of the IPS. For the avoidance of doubt, by passing the Section 439C Resolution, the Creditors delegate to and authorise the Committee of Inspection to consider and approve the remuneration of the Administrators for the voluntary administration period.
- (d) Paragraph 11 of Schedule 8A of the Regulations, excluding paragraph 11(a), applies to the Committee of Inspection. For the avoidance of doubt, the Committee of Inspection may comprise more than five (5) members.
- (e) For the avoidance of doubt, the Committee of Inspection will continue to operate for the purposes of the winding up contemplated in clause 17 of this Deed.

12 Powers of the Deed Administrators

12.1 General Powers

During the Deed Period, the Deed Administrators:

- (a) have the powers, functions, duties and discretions conferred on them by this Deed and the Corporations Act, including, at their absolute discretion, all of the powers set out in paragraph 2 of Schedule 8A of the Regulations;
- (b) may perform any function and exercise any power that the Deed Company or any of its Officers could perform or exercise if the Deed Company was not subject to this Deed;
- (c) may retain sole power and control over: (i) all assets of the Deed Company; and (ii) the incurring of any liabilities of the Deed Company;
- (d) may remove a Director or appoint a person as a Director of the Deed Company; and
- (e) may do anything that is incidental to the exercise of a power as described in this clause 12.1.

12.2 Solicitors and Consultants

- (a) The Deed Administrators may engage the services of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants, and the Deed Company will pay all costs associated with such engagement.
- (b) The Deed Administrators may delegate their powers under this clause 12 including by way of appointing agents and authorises such agents to act on behalf of the Deed Administrators or the Deed Company.

12.3 No Personal Liability

- (a) During the Deed Period, the Deed Administrators are acting as the agent of the Deed Company and accept no personal liability for any acts, matters or omissions relating to things done or not done in that capacity.
- (b) Subject to the Corporations Act and to the extent permitted by law, in the performance or exercise, or purported performance or exercise, of any of the



Deed Administrators' functions, powers and duties in the Deed Period, the Deed Administrators will not be personally liable for:

- (a) any debt, liability or other obligation which the Deed Administrators themselves or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates may incur on behalf of the Deed Company; or
- (b) any loss or damage caused by any act, default or omission by or on behalf of the Deed Administrators or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates except where such loss, damage, claim, liability or expense is caused by fraud, unlawful conduct, wilful misconduct or is contrary to the terms of this Deed; or
- (c) any debt payable or liabilities incurred by the Deed Company after Completion including any amounts payable by the Deed Administrators for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of the Deed Company.

13 Reporting

Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators may, in their absolute discretion, report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of the Creditors.

14 Administrators' and Deed Administrators' remuneration and indemnity

14.1 Remuneration

- (a) The Administrators and the Deed Administrators are entitled to:
 - (1) payment of Costs; and
 - (2) receive in accordance with Division 60 of the IPS their Remuneration on the basis of the time spent by the Administrators and Deed Administrators (as the case may be) themselves or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates in the performance of services in connection with or in relation to the administration of the Deed Companies under Part 5.3A of the Corporations Act and this Deed and such time will be charged at the Administrators' and Deed Administrators' standard rates, from time to time, by the firm of which the Administrators and Deed Administrators are partners or employees.



14.2 Indemnity

The Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to be indemnified by the Deed Company until Completion in respect of:

- (a) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration of the Deed Company or their role as Administrators and incurred or sustained in good faith and without negligence;
- (b) any amount which the Administrators are, or but for the transactions contemplated by this Deed would be, entitled to be indemnified out of the assets of the Deed Company for, in accordance with the Corporations Act, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 443BA of the Corporations Act;
- (c) any debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 443D of the Corporations Act applies;
- (d) any amount for which the Administrators and Deed Administrators are entitled to exercise a lien at law or in equity on the property of the Deed Company;
- (e) the Administrators' and Deed Administrators' Remuneration and Costs; and
- (f) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments arising out of or in the course of the Deed and incurred or sustained in good faith and without negligence.

14.3 Continuing Indemnity

The indemnity in the Deed is a continuing indemnity and will endure for the benefit of the Legal Personal Representatives despite the removal of the Deed Administrators and the appointment of new Deed Administrators or the termination of the Deed for any reason whatsoever.

14.4 Indemnity not to be affected or prejudiced

The indemnity under clauses 14.2 and 14.3 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or Deed Administrators and extends to cover any actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or Deed Administrators or defect in the approval or execution of the Deed or otherwise; or
- (b) affect or prejudice all or any rights that the Administrators or Deed Administrators may have against the Deed Company or any other person to be indemnified against the Costs, and any other liabilities incurred by the Administrators or Deed Administrators in the performance of, or incidental to, any of the powers or authorities conferred on the Administrators or Deed Administrators by this Deed or otherwise.

14.5 Administrators' and Deed Administrators' lien

Until Completion, the Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to exercise a lien over the Deed Company's



assets for all amounts in respect of which they are entitled to an indemnity from the Deed Company under this clause 14.

14.6 Priority

The Administrators' and Deed Administrators' right of indemnity under clause 14 and their lien under clause 14.5 have priority over the claims of all Creditors.

15 Creditors' Meetings

The Deed Administrators may convene a meeting or meetings of Creditors at any time, and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the IPR applies, with such modifications as are necessary, to meetings of Creditors held under this Deed as if references to the 'external administrator' or chairperson, as the case may be, were references to the Deed Administrators.

16 Application to Court

- (a) If any unforeseen circumstances arise that are not contemplated by the Deed, the Deed Administrators may, in their absolute discretion, if they think fit, apply to the Court for directions.
- (b) Nothing in this Deed limits the rights in law or equity of the Deed Administrators:
 - (1) to make an application under section 444F of the Corporations Act; or
 - (2) to apply for orders or directions pursuant to the Corporations Act (including, without limitation, section 447A(1) of the Corporations Act or section 90-15 of the IPS), or otherwise.
- (c) No person bound by the Deed (other than the Deed Administrators or the Deed Proponent) may make any application to the Court in relation to any matter arising under the Deed unless at least 5 Business Days' prior notice in writing has been given to the Deed Administrators. The notice must give particulars of the proposed application.
- (d) It is currently proposed that an application to Court may include an approval of the methodology outlined in Annexure B to this Deed.

17 Termination of the Deed

17.1 Termination on effectuation of Deed

The Deed will terminate immediately after Completion.

17.2 Termination on failure of Deed

This Deed automatically terminates in respect of the Deed Company upon the happening of any one of the following events:



- (a) E&PO fails to pay the Deposit or Tranche A Payment to the Deed Administrators in cleared funds within 5 Business Days after being notified that the Creditors voted in favour of this Deed and the execution of this Deed by each person named as a party to it, in accordance with clause 8.1;
- (b) the Settlement of the Representative Proceedings (including the satisfaction of clause 8.2(b)) has not occurred by the Sunset Date, in accordance with clause 8.2 ;
- (c) the Deed Proponent fails to pay the Tranche B Payment, in cleared funds, to the Deed Administrators in accordance with clause 8.3;
- (d) the Deed Proponent fails to pay:
 - (1) the 2022 Tax Receivable to the Deed Administrators on or before 31 January 2023; or
 - (2) the 2023 Tax Receivable to the Deed Administrators on or before 31 January 2024,in accordance with clause 8.4.
- (e) Completion does not occur by Completion End Date;
- (f) the Court makes an order terminating this Deed under section 445D of the Corporations Act; or
- (g) the Creditors of the Deed Company with a Claim pass a resolution terminating this Deed in accordance with sections 445C(b) and 445CA of the Corporations Act.

17.3 Notice of Effectuation of Deed

Upon termination in accordance with the provisions of clause 17.1, the Deed Administrators or one of them must immediately certify, in writing that the terms of this Deed have been fulfilled and, as soon as practicable, must lodge with ASIC a notice substantially in the following form in respect of the Deed Company:

'We, [*name of administrators*] of [*address*] as administrators of the deed of company arrangement executed on [*date*], CERTIFY that the deed has been wholly effectuated in respect to Dixon Advisory and Superannuation Services Pty Ltd.'

and the execution of the notice terminates this Deed.

17.4 Effect of Termination

In accordance with section 445H of the Corporations Act, the termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

17.5 Severance

If any part of this Deed is or becomes illegal, ineffective, invalid or unenforceable, that part will be severed from this Deed and that severance will not affect the effectiveness, validity or enforceability of the remaining part of this Deed.

17.6 Consequences of Termination of the Deed for non-performance

- (a) Upon termination of the Deed under clause 17.1 or 17.2:



- (1) the Deed Company will be taken to have passed special resolutions under section 491 of the Corporations Act that the Deed Company be voluntarily wound up and that the Deed Administrators be the Deed Company's liquidators; and
 - (2) the Deed Company will be wound up.
- (b) If the Deed was terminated under clause 17.2 by reason of the failure to satisfy clause 8.2 within the time stipulated, the Deposit, or any portion of it which has not been used, must be repaid to the Proponent within 5 Business Days of termination.

17.7 Survival of clauses

Despite any other provision of this Deed:

- (a) clauses 1, 8.1, 8.4, 14, 17, 18, 19 and 20 survive the termination of this Deed;
- (b) clause 8.3 survives termination of this Deed if clause 8.2 is satisfied;
- (c) for the avoidance of doubt, the Deed Proponent will not be required or obliged to pay the Tranche B Payment if clauses 8.2(a)(1) and 8.2(a)(2) are not satisfied.

18 General

18.1 Variation

- (a) Subject to the provisions of the Corporations Act, a variation of any term of this Deed must be in writing and signed by all parties to this Deed.
- (b) The parties agree that the Sunset Date and Completion End Date can be varied in accordance with clause 18.1(a) of this Deed.

18.2 Assignment

Rights arising out of or under this Deed are not assignable by a party without the prior written consent of the other parties.

18.3 Power of Attorney

The Deed Company hereby irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to exercise or refrain from exercising (in the Deed Administrators' absolute discretion) any and all of the Deed Company's rights or powers in relation to or in connection with its right, title and interest in the Included Assets and the Deed Company will make, do and provide all things and documents reasonably necessary to give proper effect to this clause.

18.4 Further Assurances

Each party and each person bound by this deed must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.



18.5 Governing Law

This deed is governed by the law in force in the state of Victoria.

18.6 Waiver

No party to this Deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 18.6 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this Deed and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

18.7 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart.
- (d) Counterparts may be exchanged by email or other electronic means.

18.8 Execution

This deed may be signed and witnessed electronically in accordance with the *Electronic Transactions (Victoria) Act 2000 (Vic)*.

19 Notices

19.1 Notice to be in writing

Any notice or document required to be given to or served upon any of the parties pursuant to or in connection with the Deed must be in writing.

19.2 Signing of Notice

Any notice or document may be given or signed on behalf of the party giving or serving the same by a director, secretary or other duly authorised person thereof.

19.3 How notice must be given and when notice is received

- (a) Any notice or document must be given by one of the methods set out in the table below.
- (b) A notice or document is regarded as given and received at the time set out in the table below.

However, if this means the notice or document would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day



(**business hours period**), then the notice or document will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post	When it would have been delivered in the ordinary course of post
By email to the nominated email address (set out in the details for each party to this Deed)	When the email (including any attachment) has been sent to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee)

19.4 Notice must not be given by electronic communication

A notice or document must not be given by electronic means of communication (other than email in accordance with clause 19.3).

20 GST

20.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 20 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 20;
- (c) unless otherwise expressly stated, all consideration to be provided under any other provision of this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 20;
- (d) a reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong;
- (e) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts; and
- (f) if any value added tax, goods and services tax or other similar tax is payable pursuant to a law of another jurisdiction on any supply made under or in connection with this Deed, then the provisions of this clause 20 apply as if



references to a word or expression defined in the GST Act were to the corresponding concepts in the law of that other jurisdiction.

20.2 Reimbursements and similar payments

Any reimbursement or similar payment required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates plus an amount calculated in accordance with clause 20.3 where applicable.

20.3 GST payable

- (a) If GST is payable in relation to a supply made under or in connection with this Deed then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the GST-exclusive consideration for that supply multiplied by the rate of GST prevailing at the time the supply is made.
- (b) The Recipient must make payment of the additional amount in respect of GST at that same time as other consideration is to be first provided for that supply, or if any of the consideration has been already paid or provided, within 5 Business Days of receiving a written demand from the Supplier.

20.4 Tax Invoice/Adjustment Notes

The right of the Supplier to recover any amount in respect of GST under this Deed on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the Recipient, except where the Recipient is required to issue the tax invoice or adjustment note.

20.5 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 20.3 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 20.3.

20.6 Survival

This clause 20 survives termination, completion or expiration of this Deed.



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Annexure A

Deed of Settlement and Release



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Deed

Deed of settlement and release

Dixon Advisory and Superannuation Services
Pty Ltd (ACN 103 071 665) (Administrators
Appointed)

E&P Financial Group Limited (ACN 609 913
457)

E&P Operations Pty Limited (ACN 080 207
076)

Paul Gerard Ryan

Lyle Fagan Meaney

(collectively the **Parties** and each a **Party**)



Contents

Table of contents

Contents	1
1 Acknowledgment	3
2 Release	3
3 Benefit of releases	4
4 Settlement	4
5 No admissions	4
6 Costs and expenses	4
7 Warranty as to capacity and representations	4
8 Binding effect of this deed	5
9 Notices	5
10 General	5
11 Definitions and interpretation	6
Signing pages	9

Deed of settlement and release

Date ►

Deed Company	Dixon Advisory and Superannuation Services Pty Ltd (Administrators Appointed) ACN 103 071 665 c/- PricewaterhouseCoopers 2 Riverside Quay, Southbank Victoria 3006 Email: au_dass_queries@pwc.com Attention: Stephen Longley, Craig Crosbie and Rebecca Gill
EP1	E&P Financial Group Limited ACN 609 913 457 Level 32, 1 O'Connell Street, Sydney, NSW 2000 Email: mike.adams@eap.com.au Attention: Mike Adams, Joint Company Secretary, EP1
E&PO	E&P Operations Pty Limited ACN 080 207 076 Level 32, 1 O'Connell Street, Sydney, NSW 2000 Email: mike.adams@eap.com.au Attention: Mike Adams, Joint Company Secretary, EP1
Paul Ryan	Paul Gerard Ryan 14 Redesdale Road Ivanhoe VIC 3079
Lyle Meaney	Lyle Fagan Meaney 4 Christowel Street Camberwell VIC 3124



Recitals

- 1 On 19 January 2022, Stephen Longley and Craig Crosbie were appointed as administrators of the Deed Company pursuant to Part 5.3A of the Corporations Act.
- 2 At a meeting held on [7] December 2022 and convened pursuant to section 439A of the Corporations Act, the Creditors of the Deed Company resolved that the Deed Company execute the deed of company arrangement proposed by the Deed Proponent under section 444B(2)(b) of the Corporations Act.
- 3 On the Commencement Date, the DOCA was executed by the Deed Administrators, the Deed Company, and the Deed Proponent.
- 4 Pursuant to the terms of the DOCA, the parties agreed, upon the Deed Administrators' receipt of the Tranche A Payment, to execute a deed of settlement and release, substantially in the draft form attached as Annexure A to the DOCA, being a deed between EP1, E&PO and the Deed Company in respect of any claims by the Deed Company in respect of the Intercompany Debt, and which also includes releases for the benefit of the current and former directors of the Deed Company, EP1, E&PO and Related Entities in respect of the Intercompany Debt.
- 5 On [##], E&PO paid the Tranche A Payment to the Deed Administrators.
- 6 This deed gives effect to the agreement between the parties pursuant to clause 8.1 of the DOCA.

This deed witnesses as follows:

1 Acknowledgment

Each of the Parties acknowledge and agree that:

- (a) the Tranche A Payment was paid in [insert date];
- (b) this deed gives effect to the agreement set out in clause 8.1 of the DOCA.

2 Release

- (a) From the date of this deed, the Parties release and discharge each other severally from any claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy that they have or may have against EP1 and/or E&PO or any of its or their Related Parties and/or Paul Ryan and/or Lyle Meaney in respect of:
 - (1) the Intercompany Debt;
 - (2) the Deed of Acknowledgment; or
 - (3) any thing related to the Intercompany Debt or the Deed of Acknowledgment including, without limitation, any alleged breach of duty, any damage, loss, cost or expense suffered as a result of entering into the Deed of Acknowledgment;

wherever and whenever arising, whether known or unknown at the time of execution of this deed, whether presently in contemplation of the Parties or not and whether arising at common law, in equity, or under statute or otherwise (the **Released Matters**).

- (b) In support of the releases in clauses 4(a) each Party covenants with the other Party and each of its Related Parties severally, not to claim, sue or take any action against the other Party, or any of its Related Parties, in respect of the Released Matters; and
- (c) For the avoidance of doubt nothing in clauses 2(a) and 4(b):
 - (1) prevents any Party, or its Related Parties, from commencing proceedings to enforce their rights under this deed or the DOCA;
 - (2) is intended to impact the performance by any Party of their obligations to the other Party pursuant to the DOCA or at law, other than as expressly stated in this deed; or
 - (3) has the effect of releasing or discharging, or in any way limiting or reducing or excluding a Party from any liability in respect of any claim that is made against that Party in either of the following proceedings:
 - (A) Federal Court of Australia proceeding VID640 of 2021 – Kosen-Rufu Pty Ltd & Anor -v- Dixon Advisory & Superannuation Services Pty Ltd & Ors; and
 - (B) Federal Court of Australia proceeding VID769 of 2021 – Watson & Co Superannuation Pty Ltd -v- Dixon Advisory & Superannuation Services Pty Ltd & Ors.



3 Benefit of releases

Without prejudice to the ability of each Party and each of its Related Parties to enforce this deed for its own benefit:

- (a) each Party holds the benefit of each release, discharge, indemnity and covenant not to sue contained in this deed to the extent that it is expressed to apply in favour of its Related Parties on trust for each of its Related Parties; and
- (b) no Party may, without the prior written consent of its Related Parties, agree to vary the terms of any release, discharge, indemnity or covenant not to sue contained in this deed to the extent that it is expressed to apply in favour of its Related Parties.

4 Settlement

- (a) The Parties agree to execute all documents, refrain from performing any act incompatible with and do all acts reasonably necessary to comply with the terms of this deed.
- (b) A Party must not, and must not permit or procure its directors, officers, servants, agents, representatives (including legal representatives) and Related Parties, to make any statements (whether public or otherwise, written or oral) that in any way convey that the other Party or its Related Parties have admitted liability in respect of the Intercompany Debt or the Deed of Acknowledgment.

5 No admissions

The Parties make no admissions, including any admissions as to:

- (1) the Deed Company's entitlement to the Intercompany Debt;
- (2) the validity or enforceability of the Deed of Acknowledgment; or
- (3) the conduct of any persons involved in the negotiation of or entering into the Deed of Acknowledgment.

6 Costs and expenses

Each Party bound by this deed agrees to bear its own costs in relation to the negotiation, preparation and execution of this deed, the performance of any obligations under this deed and the transactions contemplated by this deed.

7 Warranty as to capacity and representations

Each Party warrants that they:

- (a) have the legal capacity and power to enter into this deed and have obtained all necessary consents and approvals to do so; and



- (b) have not entered into this deed in reliance upon any representations by or on behalf of any other person, party or thing which are not set out in this deed.

8 Binding effect of this deed

This deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of any Party.

9 Notices

Clause 19 (*Notices*) of the DOCA applies to this deed.

10 General

10.1 Governing law and jurisdiction

This deed is governed by the law in force in the state of Victoria.

10.2 Invalidity and enforceability

- (a) Subject to clause 10.2(b), the application of any clause of this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Clause 10.2(a) does not apply where the prohibition of the application of any clause of this deed in any jurisdiction would substantially change the nature of the Parties' obligations under this deed.

10.3 Waiver

No Party may rely on the words or Conduct of any other person or party as a Waiver of any Right unless the Waiver is in writing and signed by the Party granting the Waiver.

The meanings of the terms used in this clause 10.3 are set out below.

Term	Meaning
Conduct	includes delay in the exercise of a right.
Right	any right arising under or in connection with this deed and includes the right to rely on this clause.
Waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

10.4 Variation



A variation of any term of this deed must be in writing and signed by each Party to this deed.

10.5 Assignment of rights

- (a) Rights arising out of or under this deed are not assignable by a Party without the prior written consent of the other Party.
- (b) A breach of clause 10.5(a) by a Party entitles the other Party to terminate this deed.
- (c) Clause 10.5(b) does not affect the construction of any other part of this deed.

10.6 Entire agreement

- (a) This deed and its schedules contain all the express terms agreed by the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
- (b) To avoid doubt, each Party warrants that it has not relied on any statement by another Party not expressly included in this deed.

10.7 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) A Party may execute this deed by signing any counterpart.
- (c) Such counterparts may be provided to the Parties, and exchanged between the Parties, via email.
- (d) All counterparts, taken together, constitute one instrument.

10.8 Execution

This deed may be signed and witnessed electronically in accordance with the *Electronic Transactions (Victoria) Act 2000 (Vic)*.

10.9 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of revocation of the power of attorney appointing that attorney.

11 Definitions and interpretation

11.1 Definitions

Subject to clause 11.3, the meanings of the terms used in this deed are set out below.

Term	Meaning
Deed Administrators	Stephen Longley, Craig Crosbie and Rebecca Gill in their capacity as joint and several deed administrators of the DOCA (being the deed of company arrangement regarding Dixon Advisory and Superannuation Services Pty Ltd (ACN 103 071 665) (Administrators Appointed))



Term	Meaning
Deed of Acknowledgment	the Deed of Acknowledgment between the Deed Company and E&PO dated 24 December 2021.
DOCA	the deed of company arrangement entered into between the Deed Administrators, the Deed Company, EP1 and E&PO dated [insert] 2022.
EP1	E&P Financial Group Limited (ACN 609 913 457).
Related Parties	the Related Bodies Corporate and Related Entities of a Party as defined in the <i>Corporations Act 2001</i> (Cth) and the present and former directors, officers, partners, servants, contractors and agents of each Party.

11.2 Interpretation

In this deed:

- (a) headings, the labels given to definitions and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (e) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed and a reference to this deed includes any schedule, attachment and exhibit;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a party to a document includes that party's successors and permitted assignees;
- (i) a promise on the part of 2 or more persons binds them jointly and severally;
- (j) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to a payment or \$ is a reference to AUD dollars;
- (l) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.



11.3 Incorporated definitions

Words defined in the DOCA have the same meaning in this deed, unless otherwise defined or varied in this deed.

11.4 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

11.5 Business Day

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

11.6 Deed components

This deed includes any schedules.



Signing pages

Executed as a deed

Signed sealed and delivered by
Dixon Advisory and Superannuation Services Pty Ltd (ACN 103 071 665)
(administrators appointed)
by its joint and several administrator

sign here ► _____
Administrator

print name _____

in the presence of

sign here ► _____
Witness

print name _____

**Executed by E&P Financial Group Limited
(ACN 609 913 457)** in accordance with
section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of above signatory

Signature of company secretary/director

Full name of above signatory



HERBERT
SMITH
FREEHILLS

**Executed by E&P Operations Pty Ltd
(ACN 080 207 076) in accordance with
section 127 of the Corporations Act 2001 (Cth):**

Signature of director

Signature of company secretary/director

Full name of above signatory

Full name of above signatory

Signed sealed and delivered by
Lyle Fagan Meaney

sign here ► _____
Authorised Signatory

print name _____

Signed sealed and delivered by
Paul Gerard Ryan

sign here ► _____
Authorised Signatory

print name _____



Annexure B

Methodology

Loss Quantification Methodology

Unless defined in this Schedule, a capitalised term is taken to have the meaning described in the Deed.

Various claims have been made by Former Clients in respect of alleged losses suffered as a result of financial advice received from the Deed Company to acquire investment products that had a financial connection to the Deed Company (Related Party Investment Products).

The Administrators have formulated a methodology (Loss Quantification Methodology) to determine which Former Clients will be considered as creditors of the Deed Company, and to quantify the loss suffered by those Former Clients for the purposes of the Deed.

As part of formulating the Loss Quantification Methodology, the Administrators undertook a review of the complaints made to AFCA by Former Clients and found that:

- of the nine Related Party Investment Products that were still active on the date of the Administrators' appointment, complaints were made in respect of four funds, being:
 - US Masters Residential Property Fund (**URF**);
 - New Energy Solar;
 - CD Private Equity Fund I-IV; and
 - Fort Street Real Estate Capital.
- the vast majority of complaints were made in respect of the URF, specifically the ASX listed URF Equities (**the URF Equities**); and
- of the four funds, only the URF Equities significantly underperformed against relevant benchmarks (being the Standard & Poor's United States Real Estate Investment Trust Index).

The Administrators therefore determine for adjudication purposes under the Deed that only Former Clients with investments in the URF Equities will be classed as Participating Creditors when calculating the losses of Former Clients (**Loss Calculation**).

Loss Calculation

The Administrators consider that there are two generally accepted methods of loss calculation for the URF Equities, being:

- the loss of invested capital / actual loss calculation; and
- loss of profit that could have been earned on invested capital / loss of opportunity calculation.

Given the relatively modest pool of funds available to creditors, it was decided that the *loss of profit that could have been earned on invested capital / loss of opportunity* calculation was complex, and it would not be reasonable for the Administrators to spend time / money assessing the detailed aspects of each and every claim.

Accordingly, the Administrators have adopted the *loss of invested capital / actual loss* calculation.

This calculation is based on the actual net position, as at the date of appointment, of the Former Clients who invested in the URF Equities at the date of appointment, based on the records of the Deed Company.



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For each Former Client, a net capital loss position is determined by calculating the amount of capital invested and the amount of capital returned, via dividends, sale of units and remaining value of the investment in the URF Equities at the date of appointment. The calculation used is outlined below:

Actual Loss = Capital Invested – Capital Returned (via dividends) – Value of Units Sold – Value of Investment at Appointment Date

Accordingly, only those Former Clients who recorded an Actual Loss when utilising the above calculation will be considered as creditors with an “Admitted Claim” under the Deed.

Further details on the Administrators’ Loss Quantification Methodology is contained in the Voluntary Administrators’ Report to Creditors dated 29 November 2022.



Signing page

Executed as a deed

Deed Administrator

Signed sealed and delivered by
Stephen Longley

sign here ▶ 

print name STEPHEN LONGLEY

in the presence of

sign here ▶ 
Witness

print name PAUL JAMES

Deed Administrator

Signed sealed and delivered by
Rebecca Gill

sign here ▶ 

print name REBECCA GILL

in the presence of

sign here ▶ 
Witness

print name PAUL JAMES.



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FREEHILLS

Deed Administrator

Signed sealed and delivered by
Craig Crosbie

sign here ▶

print name

Craig Crosbie

in the presence of

sign here ▶

Witness

print name

PAUL JAMES

Signed sealed and delivered by
Dixon Advisory and Superannuation Services Pty Ltd (ACN 103 071 665)
(administrators appointed)
by its joint and several administrators

sign here ▶

Administrator

print name

Craig Crosbie

in the presence of

sign here ▶

Witness

print name

PAUL JAMES

Executed by **E&P Financial Group Limited**
(ACN 609 913 457) in accordance with
section 127 of the Corporations Act 2001 (Cth):



HERBERT
SMITH
FREEHILLS

Signature of director

ANTHONY JOHN JOHNSON

Full name of above signatory

**Executed by E&P Operations Pty Ltd
(ACN 080 207 076) in accordance with
section 127 of the Corporations Act 2001 (Cth):**

Signature of director

Full name of above signatory

Signature of ~~company secretary~~/director

Peter McKenzie Anderson

Full name of above signatory

Signature of company secretary/director

Full name of above signatory



HERBERT
SMITH
FREEHILLS

Signature of director

Full name of above signatory

**Executed by E&P Operations Pty Ltd
(ACN 080 207 076) in accordance with
section 127 of the Corporations Act 2001 (Cth):**



Signature of director

FRANCIS ARAULLO

Full name of above signatory

Signature of company secretary/director

Full name of above signatory



Signature of company secretary/director

STEPHEN ANTHONY HILL

Full name of above signatory