

THIS DEED made

2004

BETWEEN: [] (the "**Director**") and

AND: **RIMCAPITAL LIMITED ACN 064 874 620** of Suite 505, Kindersley House, 33 Bligh Street, Sydney, NSW, 2000 ("**RIMCapital**").

RECITALS:

- A. The Director is a director of a company or companies in the RIMCapital Group.
- B. RIMCapital wishes to ensure that the Director continues to act in such office(s).
- C. RIMCapital has agreed to grant the Director rights of access to all Records.
- D. RIMCapital has agreed to indemnify the Director against liabilities incurred as a director of RIMCapital.
- E. RIMCapital has agreed to use its best endeavours to take out and maintain an insurance policy in favour of the Director.

THIS DEED WITNESSES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the content otherwise requires:

"Access Period" or **"Coverage Period"** means the period during which the Director is a director of RIMCapital and for the longer of:

- a) the period of 7 (seven) years after he ceases to be a director of RIMCapital; and
- b) during the currency of any threatened or commenced administrative or legal proceedings relating to a Director, which proceedings arise whilst the Director is a director of RIMCapital or during the period of 7 (seven) years after which he ceases to be a Director of RIMCapital;

"ASIC" means the Australian Securities & Investments Commission;

"Board" means the Board of directors of RIMCapital as constituted from time to time;

"RIMCapital Group" means any subsidiary of RIMCapital and any entity otherwise controlled by RIMCapital (as those terms are defined in the *Corporations Act 2001*);

"Confidential Information" includes Privileged Documents and also means information contained in Records which, at the time of disclosure or communication to, or acquisition by the Director or RIMCapital, was:

- (a) clearly labelled as confidential;
- (b) communicated to the Director in circumstances giving rise to an obligation of confidence between RIMCapital and the Director; or
- (c) communicated to RIMCapital in circumstances giving rise to an obligation of confidence between a third party and RIMCapital;

"Privileged Documents" means documents over which RIMCapital claims or is entitled to claim client legal privilege;

"Records", means all the books and records of RIMCapital (where procuring access is within the power of the RIMCapital), and includes, without limitation, all Board papers, submissions, minutes, correspondence, agreements, memoranda, and which directly or indirectly relate to the affairs of RIMCapital during the period in which the Director is a director of RIMCapital, whether kept in physical, electronic or any other form;

"Related Body Corporate" has the same meaning given in the *Corporations Act 2001*; and

"Relevant Company" means each company in the RIMCapital Group of which the Director is or has been a director at any time.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) a reference to a clause, party or schedule is a reference to a clause, party or schedule to this Deed;
- (e) a reference to a person includes a natural person or corporation;
- (f) a reference to legislation includes all legislation varying, consolidating or replacing that legislation and a reference to legislation includes all delegated legislation made under that legislation;

- (g) a reference to Court and law is a reference to the appropriate courts and law, respectively, applicable in the circumstances to RIMCapital.

2. ACCESS TO RECORDS

2.1 Maintenance and Storage of Records

RIMCapital shall maintain during the Access Period a complete set of Records and ensure the safe keeping and custody of the Records in a storage place or places nominated by the company secretary during the Access Period. RIMCapital shall during the Access Period notify the Director of the storage place or places of the Records.

2.2 Rights of Access to Records

Subject to the provisions of this Deed, the Director (and if deceased, mentally ill or bankrupt, his legal representative and also his authorised representatives who need access to provide advice or assistance to him) shall, if a request is made in writing addressed to the company secretary of RIMCapital during the Access Period, be entitled to inspect the Records at the nominated storage place or places.

2.3 Right to make or receive copies

Subject to clause 4.3, the Director shall be entitled, at the cost of RIMCapital, to make or receive copies and/or extracts of the Records to which he is entitled to access under clause 2.2.

2.4 Cumulative Rights

The rights of the Director pursuant to clause 2.2 do not exclude, limit or restrict any right, power or remedy available to the Director by virtue of his position as a director or former director of RIMCapital provided by law independently of this Deed.

3. PERMITTED PURPOSE OF ACCESS

3.1 Permitted Purpose

RIMCapital will give access to the Records in accordance with clause 2.2 only for purposes which are properly referable to the Director's present or former office as a director or other officer of RIMCapital, including but not limited to the defence or prosecution of administrative or legal proceedings involving the Director, and/or RIMCapital.

3.2 Director's Covenants

In consideration of RIMCapital giving the Director access to the Records in accordance with clause 2.2 and for the purposes stated in clause 3.1, the Director shall not disclose to a person (other than to a company in the RIMCapital Group, an officer of such company or the Director's legal, financial or other professional adviser) any information contained in the Records except to the extent:

- (a) the information is already in the public domain (other than as a result of disclosure by the Director in breach of this Deed);
or
- (b) the Director is compelled by law to do so (including in legal or administrative proceedings of any nature threatened or brought against the Director).

3.3 Cumulative Obligations of Director

The obligations of the Director pursuant to clause 3.2 do not exclude, limit or restrict any obligations imposed on the Director by virtue of his position as a director or former director of RIMCapital provided by law independently of this Deed.

4. CONFIDENTIAL INFORMATION

4.1 Access to Confidential Information

RIMCapital shall give the Director access to Records that contain Confidential Information, in accordance with clause 2.2 and for the purposes stated in clause 3.1, but subject to this clause 4.

4.2 Director's Undertaking as to Confidentiality

In consideration of RIMCapital giving the Director access to the Confidential Information, the Director shall treat the Confidential Information as confidential and shall not disclose, publish or communicate or permit the disclosure, publication or communication of the Confidential Information to or by any person except:

- (a) with the prior written consent of RIMCapital;
- (b) as required by law, including in legal or administrative proceedings brought against the Director;
- (c) to another company in the RIMCapital Group; or
- (d) to the Director's legal, financial or other professional adviser, provided that such advisers agree to maintain the Confidential Information as confidential on similar terms to this clause.

4.3 Copying Confidential Information

The Director may only make copies of Records containing Confidential Information with the prior written consent of RIMCapital or for the purposes of legal proceedings:

- (a) to which the Director is a party;
- (b) that the Director proposes in good faith to bring; or

- (c) that the Director has reason to believe will be brought against him.

5. PRIVILEGED DOCUMENTS

5.1 Access to Privileged Documents

RIMCapital shall give the Director access to Records that contain Privileged Documents in accordance with clause 2.2 and for the purposes stated in clause 3.1, but subject to this clause 5.

5.2 Non-Waiver of Privilege

RIMCapital and the Director acknowledge that the granting of access to the Director by RIMCapital to Privileged Documents does not amount to an express or implied waiver by RIMCapital or any other Relevant Company of its claim to client legal privilege.

5.3 Joint Privilege

Where the Records consist of documents that entitle the Director and RIMCapital (or another Relevant Company) to claim joint client legal privilege, the Director shall not waive, either by express or implied conduct, the joint client legal privilege, except in proceedings to which RIMCapital or another Relevant Company is not a party.

5.4 Restriction on access to Privileged Documents

Except to the extent required by law, RIMCapital shall not be required to give the Director access to Privileged Documents that relate to legal proceedings:

- (a) brought by RIMCapital or another Relevant Company against the Director; or
- (b) brought by the Director against a company in the RIMCapital Group.

6. DIRECTOR'S INDEMNITY AND DEFENCE COSTS

6.1 Indemnity – other than for legal costs

RIMCapital indemnifies the Director out of the property of RIMCapital, to the extent and for the amount that the Director is not otherwise entitled to be indemnified and is not actually indemnified, against any liability (except for legal costs) incurred either before or after the date of this Deed, by the Director, as a director of RIMCapital, to another person provided that the liability is not:

- (a) owed to RIMCapital or a Related Body Corporate of RIMCapital; or
- (b) for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the *Corporations Act 2001*; or

- (c) owed to someone other than RIMCapital or a Related Body Corporate of RIMCapital and did not arise out of conduct in good faith.

6.2 Indemnity for legal costs

RIMCapital indemnifies the Director out of the property of RIMCapital, to the extent and for the amount that the Director is not otherwise entitled to be indemnified and is not actually indemnified, against any liability for legal costs incurred by the Director in defending an action for a liability incurred as a director of RIMCapital, provided that the costs are not incurred:

- (a) in defending or resisting proceedings in which the Director is found to have a liability for which he could not be indemnified under clause 6.1; or
- (b) in defending or resisting criminal proceedings in which the Director is found guilty; or
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to be established (except to the extent the liability for legal costs was incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the Director under the *Corporations Act 2001* in which the Court denies the relief.

6.3 Advance for legal costs

- (a) To the extent that the Director is not presently entitled to be indemnified against a liability for legal costs pursuant to clause 6.2 (each a "**Liability**") and is not actually indemnified, RIMCapital shall, upon written request from the Director, advance to the Director amounts expended or to be expended by the Director in relation to that Liability provided:
 - (i) that the Director's request is supported by a written opinion from Queen's or Senior Counsel that the Director has good prospects of being entitled to an indemnity for such costs pursuant to clause 6.2; and
 - (ii) at the absolute discretion of RIMCapital, the Director grants RIMCapital a mortgage, charge or other encumbrance over property or rights agreed between the Director and RIMCapital to fully secure all such advances, together with interest and enforcement and other costs.

- (b) Each advance under this clause 6.3 shall accrue daily interest, which shall be capitalised, at the rate per cent per annum equal to RIMCapital's overdraft interest rate from time to time or, in the absence of such a rate, the Westpac Indicator Rate from time to time plus one per cent, but which shall be waived if the advance shall be used to satisfy a Liability in respect of which the indemnity under clause 6.1 or 6.2 shall operate.
- (c) Within 30 days of written demand from RIMCapital, the Director shall repay to RIMCapital any amount advanced to the Director under this clause 6.3 in relation to a Liability:
 - (i) which is not used by the Director to satisfy that Liability; or
 - (ii) in respect of which the Director has not become entitled to be indemnified under clause 6.2, having exhausted or abandoned all rights of appeal in respect of the relevant proceedings.

6.4 **Payment by RIMCapital where Director entitled to indemnity**

- (a) Subject to clause 6.5(a), if the Director becomes liable to pay any amount in respect of which the Director is entitled to be indemnified under this Deed, RIMCapital must indemnify the Director by paying that amount to the person to which the amount is due within 30 days from the date that the Director provides satisfactory evidence to RIMCapital that the Director is liable to pay the amount.
- (b) It is not necessary for the Director to incur expense or make payment before enforcing the Director's right of indemnity under this Deed.

6.5 **Application of indemnities**

- (a) Clauses 6.1, 6.2 and 6.3 have effect only to the extent their provisions are not avoided by law.
- (b) Subject to paragraph (a) of this clause, the indemnities provided by clause 6.1, 6.2 and 6.3:
 - (i) are irrevocable;
 - (ii) are in addition to any indemnity contained in RIMCapital's Constitution;
 - (iii) continue irrespective of one or more previous applications of the clause; and
 - (iv) continue in full force and effect without limit in relation to any claim in respect of the matters the subject of this indemnity whether arising during or

after the period which the Director was acting as a director of RIMCapital.

6.6 Relief from duty to indemnify and advance money

- (a) It is not necessary for the Director to disprove any claimed application of the exception in clause 6.5(a) in order to enforce immediately any indemnity given by this Deed.
- (b) If it is established in relation to a claim that the Director is not entitled to be indemnified under clause 6.1 or 6.2, or to be advanced moneys under clause 6.3 because of the operation of clause 6.5(a):
 - (i) RIMCapital is relieved to that extent from each and every obligation under clauses 6.1, 6.2 and 6.3 in respect of that claim; and
 - (ii) the Director must refund to RIMCapital all, or the relevant part of, amounts (as applicable) incurred by RIMCapital under this Deed in respect of that claim within 30 days of RIMCapital providing to the Director details of such amounts.
- (c) If RIMCapital has pursuant to clause 6.1 or 6.2 paid a liability incurred by the Director and the Director is not subsequently entitled to an indemnity in relation to that liability, the Director must pay RIMCapital an amount equal to the liability paid by RIMCapital, the payment to be made within 30 days of RIMCapital providing to the Director details of the liability and payment of it by RIMCapital.

6.7 Indemnity not affected

Subject to clause 6.5(a), the liability of RIMCapital under this clause 6 and the rights of the Director under this clause 6 shall not be affected by any of the following:

- (a) any amendment to the Constitution of RIMCapital;
- (b) any intermediate payments, settlement of accounts or payments;
- (c) laches, acquiescence or delays on the part of the Director;
- (d) the death, bankruptcy, insolvency or liquidation of any person or corporation; or
- (e) any other act, matter or thing which might otherwise affect this clause 6 whether at law or in equity.

7. DIRECTOR'S INSURANCE

7.1 Ongoing Insurance

- (a) To the extent permitted by law, during the Coverage Period RIMCapital may at its sole discretion take out and maintain an insurance policy in favour of the Director with a reputable insurance company to cover any liability incurred by the Director as a director of RIMCapital at least up to \$5 million, but excluding coverage for:
- (i) criminal liability;
 - (ii) liability which arises out of conduct involving a wilful breach of duty in relation to RIMCapital or a Related Body Corporate of RIMCapital;
 - (iii) liability arising out of a contravention of s 182 of the *Corporations Act 2001* (improper use of position); or
 - (iv) liability arising out of a contravention of s 183 of the *Corporations Act 2001* (improper use of information).
- (b) Where permitted by law, RIMCapital shall use its best endeavours to ensure that any insurance policy taken out pursuant to clause 7.1(a) covers any liability for legal costs and expenses incurred by the Director in defending proceedings, whether civil or criminal and whatever the outcome.
- (c) Where permitted by law, RIMCapital shall use its best endeavours to ensure that any insurance policy taken out pursuant to clause 7.1(a) is on terms no less favourable to the Director than any similar insurance policy taken out by RIMCapital at the time immediately before the Director ceased to be a director of RIMCapital.
- (d) Where an insurance policy has been taken out pursuant to clause 7.1(a), and RIMCapital determines not to renew or to cancel such policy, it shall notify the Director in writing of its determination prior to such cancellation or non-renewal.

7.2 Payment of Insurance Premium

RIMCapital shall, as appropriate, pay on or before the date when due each premium payable on each insurance policy referred to in clause 7.1.

7.3 Renewal of Insurance

RIMCapital shall, as appropriate, provide the Director with a copy of the certificate of currency and any renewal thereof as soon as each insurance policy is renewed each year during the Coverage Period.

8. UNDERTAKING AS TO OTHER RIMCAPITAL GROUP COMPANIES

Should the Director become a director of another company in the RIMCapital Group, or as the nominee of any Relevant Company, RIMCapital undertakes to use its best endeavours to procure that that company enters into a Deed with the Director granting rights of access, insurance and indemnity substantially in accordance with this Deed.

9. GENERAL

9.1 Counterparts

This Deed may be executed in a number of counterparts and, if so executed, the counterparts taken together constitute one Deed.

9.2 Stamp Duty

RIMCapital will pay any stamp duty payable in connection with this Deed.

9.3 Governing Law and Jurisdiction

- (a) This Deed is governed by and must be construed in accordance with the laws of the State of New South Wales.
- (b) Each party:
 - (i) irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales and all courts which have jurisdiction to hear appeals from those courts; and
 - (ii) waives any right to object to proceedings being brought in those courts for any reason.

9.4 Variation

A variation of any term of this Deed must be in writing and signed by the parties.

9.5 Assignment

No party may transfer any of its rights and/or obligations under this Deed except with the prior written consent of all other parties.

9.6 Entire Deed

This Deed supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

9.7 **Severability**

In the event of any provision or part of any provision of this Deed being invalid, unenforceable or illegal for any reason, then such provision or part thereof will be deemed to be deleted from this Deed and this Deed will otherwise remain in full force and effect.

9.8 **Cumulative Rights**

The rights and powers of a party under this Deed do not exclude any right, power or remedy provided by law independently of this Deed.

9.9 **Service of Notices**

Each of the parties undertakes to appoint a person or agent to accept service of any notices, demands or other communications required or permitted to be given or made under this Deed.

9.10 **Further Assurances**

RIMCapital will do all things, including execute all further documents necessary to give full effect to the terms of this Deed.

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