

**Form 603**  
Corporations Act 2001  
Section 671B

**Notice of initial substantial holder**

To: Company Name/Scheme VICULUS LIMITED

ACN/ARSN ACN 074 976 828

**1. Details of substantial holder (1)**

Name M&M DRISCOLL NOMINEES PTY LTD (ACN 073 019 315) & A.R. ROBLEX PTY. LTD. (ACN 005 591 373)

ACN/ARSN (if applicable)

The holder became a substantial holder on 25 / 11 / 2010

**2. Details of voting power**

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary	3,072,985	3,072,985	60.39%

**3. Details of relevant interests**

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Mathieson Nominees Pty Ltd M&M Driscoll Nominees Pty Ltd A.R. Roblex Pty. Ltd. Ian Gordon Mathieson Alan Ross Mathieson Matthew Driscoll Robert Kipp	Power to control voting and/or disposal of securities	Ordinary 3,072,985

**4. Details of present registered holders**

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holders of relevant interest	Registered holder of Securities	Person entitled to be registered as a holder (8)	Class and number of securities
Mathieson Nominees Pty Ltd M&M Driscoll Nominees Pty Ltd A.R. Roblex Pty. Ltd. Ian Gordon Mathieson Alan Ross Mathieson Matthew Driscoll Robert Kipp	Mathieson Nominees Pty Ltd		Ordinary 1,546,493
As above	M&M Driscoll Nominees Pty Ltd		Ordinary 762,246
As above	A.R. Roblex Pty. Ltd.		Ordinary 762,246

**5. Consideration**

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)	Class and number of securities
Mathieson Nominees Pty Ltd M&M Driscoll Nominees Pty Ltd A.R. Roblex Pty. Ltd. Ian Gordon Mathieson Alan Ross Mathieson Matthew Driscoll Robert Kipp	29 September 2010	Pursuant to Deed of Company Arrangement (see "Annexure A")	Ordinary 1,546,493

As above	25 November 2010	As above	Ordinary 762,246
As above	25 November 2010	As above	Ordinary 762,246

### 6. Associates

The reasons the person named in paragraph 3 above are associates of the substantial holder are as follows:


Name and ACN/ARSN (if applicable)	Nature of association
Mathieson Nominees Pty Ltd ACN 005 328 012 Ian Gordon Mathieson Alan Ross Mathieson Robert Kipp Matthew Driscoll	These persons and entities are associated with the substantial holders because of the Deed of Company Arrangement (see "Annexure A")
Matthew Driscoll Robert Kipp	s11(a) - Matthew Driscoll is a director of M&M Driscoll Nominees Pty Ltd s11(a) - Robert Kipp is a director of A.R. Roblex Pty. Ltd

### 7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Mathieson Nominees Pty Ltd Ian Gordon Mathieson Alan Ross Mathieson	10 Hinton Road, GLEN HUNTLY VIC 3163
M&M Driscoll Nominees Pty Ltd Matthew Driscoll	PO BOX 269 CASTLEMAINE VIC 3450
A.R. Roblex Pty. Ltd. Robert Kipp	C/O Level 39,55 Collins Street Melbourne VIC 3000

### Signature

print name MATTHEW DRISCOLL capacity 'Director'  
 sign here  date 25 11 2010

  
 ROBERT KIPP

25/11/2010

# ANNEXURE A

Deed of Company Arrangement dated 27 July 2009

# DEED OF COMPANY ARRANGEMENT

**FRANK LO PILATO**

- AND -

**VICULUS LIMITED (Administrator Appointed)**  
ACN 074 976 828

- AND -

**M & M DRISCOLL NOMINEES PTY LTD**  
ACN 073 019 315

- AND -

**MATHIESON NOMINEES PTY LTD**  
ACN 005 328 012

- AND -

*C.S.M. KIPP Pty Ltd*  
ACN 063 765

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PARTIES

Made on 27 July 2009

**FRANK LO PILATO**

Level 1, 103-105 Northborne Avenue, Canberra  
(the **Administrator**)

**VICULUS LIMITED** ACN 074 976 828

Level 10, 224-228 Queen Street, Melbourne, Victoria  
(**VCL**)

Those persons listed and whose details are set out in Schedule 1 (the **Proponent**)

**INTRODUCTION**

- A. On 23 March 2009 the board of VCL resolved that, in the opinion of each director voting for the resolution, VCL, was likely to become insolvent at some future time, and an administrator of VCL should be appointed pursuant to section 436A of the *Corporations Act 2001*.
- B. On 27 March 2009, the Administrator having consented in writing to an appointment as administrator of VCL and consent not having been withdrawn, the Company pursuant to section 436A of the *Corporations Act 2001* appointed the Administrator as administrator of VCL by writing under its common seal.
- C. The first meeting of the Creditors pursuant to section 436E of the *Corporations Act 2001* was held on 2 April 2009.
- D. The Administrator convened the second meeting of the Company's Creditors pursuant to section 439A of the *Corporations Act 2001*, held on 6 May 2009, at which the Creditors resolved that, pursuant to section 439B(2) of the *Corporations Act 2001*, the meeting be adjourned for a period of not more than 45 days.
- E. The second meeting of the Creditors pursuant to section 439A of the *Corporations Act 2001* was reconvened on 7 July 2009.
- F. At the second meeting of the Creditors on 7 July 2009 the Creditors resolved pursuant to section 439C(a) of the *Corporations Act 2001* that VCL execute a deed of company arrangement on terms and conditions contained in the Second Administrator's Report and referred to as the proposed deed by M&M Driscoll Nominees Pty Ltd, Mathieson Nominees Pty Ltd and A. R. Roblex Pty Ltd.
- G. By section 444A(2) of the *Corporations Act 2001* the Administrator is required to accept appointment as administrator of this Deed in so far as the Creditors did not, by resolution passed at the reconvened second meeting, appoint someone else to be the administrator of the deed of company arrangement.
- H. The Deed Administrator has consented in writing to an appointment as

administrator of this Deed and the Deed Administrator's consent has not been withdrawn.

- I. This Deed has been prepared by the Proponent and agreed to by the Deed Administrator in accordance with section 444A(3) of the *Corporations Act 2001* as the instrument setting out the terms of the deed of company arrangement which the Creditors resolved that VCL execute.

## IT IS AGREED

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed:

- (1) **Administrator** means Frank Lo Pilato of as administrator of VCL pursuant to Part 5.3A of the Corporations Act 2001;
- (2) **Admitted Claim** means a Claim of a Creditor whose proof of debt has been assessed positively by the Deed Administrator in accordance with Clause 8 of this Deed or by a Court
- (3) **ASX** means the Australian Securities Exchange Limited;
- (4) **ASIC** means the Australian Securities and Investments Commission;
- (5) **Available Property** means the property that is to be available to paid to the Trustee under this Deed as set out in clause 4;
- (6) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (7) **Claim** includes, as against VCL, a claim, demand, debt, action, proceeding, suit, cost, charge, expense, damage, loss and other liability whether present or future, certain or contingent, ascertained or sounding only in damages or equity, the circumstances giving rise to which occurred on or before the Relevant Date;
- (8) **Cleanup Activities** means providing VCL with assistance:
  - a. lodging financial statements and other regulatory documents required to be lodged by VCL under the *Corporations Act 2001* and the *ASX Listing Rules* for reporting periods prior to the Relevant Date; and
  - b. holding annual general meetings as required under the *Corporations Act 2001* in so far as these meetings are required in connection with the outstanding reporting periods referred to in subparagraph (a).
- (9) **Court** has the meaning set out in section 58AA of the *Corporations Act 2001*;
- (10) **Creditor** means a person who has Claim;
- (11) **Creditor's Claim** means, in relation to a Creditor, the Claim by the Creditor;
- (12) **Creditors' Trust** means a trust that will be created in accordance with this Deed and the Creditors' Trust Deed once the conditions precedent recorded in clause 9.1(b) of this Deed are satisfied;
- (13) **Creditors' Money** means \$75,000;



- (14) **Creditor's Trust Deed** means a deed that will be created in accordance with this Deed and be executed by the Trustee in contemplation of this Deed terminating imminently under clause 9.1(b);
- (15) **Deed** means this document, including any schedule or annexure to it;
- (16) **Deed Administrator** means Frank Lo Pilato as deed administrator of VCL pursuant to Part 5.3A of the *Corporations Act 2001*;
- (17) **Fund** means the bank account established by the Deed Administrator in accordance with Clause 4.2 and includes the proceeds for the time being of the account;
- (18) **GST** means the tax imposed by the GST Law; *A New Tax System (Goods and Services Tax) Act 1999*
- (19) **GST Law** means, all written laws associated with that Act and all rulings associated with that Act which are binding upon the Federal Commissioner of Taxation;
- (20) **Loan Facility Deed** means a deed entered into between VCL and the Proponent which provides for, amongst other things, the Proponent to incur expenditure which shall form a debt owed by VCL to the Proponent under a loan facility.
- (21) **Participating Creditor** means:
- a. a Creditor that is not a Secured Creditor; or
  - b. the Secured Creditor but only to the extent that:
    - i. the Secured Creditor has a Creditor's Claim that is not a Secured Creditor's Claim; or
    - ii. the Secured Creditor would have been entitled to prove for the Secured Creditor's Claim without surrendering the Security had VCL been wound up as an insolvent company with the Relevant Date being the day on which the winding up was taken to have begun;
- (22) **Participating Creditor's Claim** means, in relation to a Participating Creditor, the Claim by the Participating Creditor but for the purpose of distribution of dividends to Participating Creditors, excludes any part of that Claim that constitutes a Priority Creditor's Claim;
- (23) **Prescribed Provisions** means those provisions which are prescribed for the purposes of section 444A(5) of the *Corporations Act 2001*, namely, the provisions set out in Schedule 8A of the *Corporations Regulations 2001*;
- (24) **Priority Creditor** means:
- a. a Participating Creditor with a Claim as at the Relevant Date which, had VCL been wound up with the Relevant Date being the day on which the winding up was taken to have begun, would have been a debt or claim which must be paid in priority to all other unsecured debts or claims in accordance with section 556 or section 560 of the *Corporations Act 2001*; and

- b. the Administrator, the Deed Administrator and any person with a debt payable by or claim against VCL properly incurred by the Administrator or the Deed Administrator;
- (25) **Priority Creditor's Claim** means:
- a. in relation to a Priority Creditor within subparagraph (24)a– the Priority Creditor's debt payable by or claim against VCL and as at the Relevant Date which, had VCL been wound up with the Relevant Date being the day on which the winding up was taken to have begun, would have been a debt or claim which must be paid in priority to all other unsecured debts or claims in accordance with section 556 or section 560 of the *Corporations Act 2001*;
  - b. in relation to a Priority Creditor within subparagraph (24)b - the Priority Creditor's debt payable by or claim against VCL which, had VCL been wound up with the Relevant Date being the day on which the winding up was taken to have begun, would have been a debt or claim within section 556(1)(a), (c), (dd) or (de) of the *Corporations Act 2001* which must be paid in priority to all other unsecured debts or claims in accordance with section 556 of the *Corporations Act 2001*;
- (26) **Relevant Date** means 23 March 2009;
- (27) **Security** means Debenture Charge Number 1751912;
- (28) **Secured Creditor** means the owner of the Security.
- (29) **Secured Creditor's Claim** means such Claim of the Secured Creditor as is secured by the Security.
- (30) **Shareholders' Resolutions** means the resolutions passed by a meeting of members of VCL in the form annexed as Schedule 2;
- (31) **Trustee** means Frank Lo Pilato in capacity as trustee of the Creditors' Trust.
- (32) **VCL Causes of Action** means any cause of action of VCL that arises directly or indirectly from any and all of,
- a. any breach prior to the Relevant Date by any director of VCL in their capacity as a director of VCL of any fiduciary or other duties owed by that director to VCL; or
  - b. any breach prior to the Relevant Date by any auditor of VCL of any fiduciary or other duties owed by that auditor to VCL;
  - c. any other cause of action against any person or entity the facts and circumstances which arose prior to the Relevant Date;

## 1.2 Interpretation

- (1) Reference to:
- a. one gender includes the others;
  - b. the singular includes the plural and the plural includes the singular;

- c. a person includes a body corporate;
- d. a party includes the party's executors, administrators,
- e. successors and permitted assigns;
- f. a statute, regulation or provision of a statute or regulation
- g. (Statutory Provision) includes:
  - i. that Statutory Provision as amended or re-enacted from time to time;
  - ii. a statute, regulation or provision enacted in replacement of that Statutory Provision; and
  - iii. another regulation or other statutory instrument made or issued under that Statutory Provision;
- h. money is to Australian dollars, unless otherwise stated; and
- i. the Administrator or the Deed Administrator, if that party consists of more than 1 person, is to each of them separately and any 2 or more of them jointly.

- (2) Including and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.
- (6) If an act must be done on a specified day, which is not a Business Day, it must be done instead on the next Business Day.

### **1.3 Parties**

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party that is a trustee is bound both personally and in its capacity as a trustee.

### **1.4 Incorporation of definitions**

Unless the contrary intention appears, where a word or expression is defined or given meaning in the *Corporations Act 2001* or the *Corporations Regulations 2001*, the word or expression has the same meaning when used in this Deed.

### **1.5 Application of *Corporations Act 2001* and *Corporations Regulations 2001* provisions**

Where any provision of the *Corporations Act 2001* or the *Corporations Regulations 2001* is incorporated into or is said to apply to this Deed, that provision is incorporated into or applies to this Deed with all modifications as are necessary to give effect to Part 5.3A of the *Corporations Act 2001* and this Deed, and as if references to the liquidator were references to the Deed Administrators, references to the relevant date were references to the Relevant Date, and references to winding up were references to the arrangement effected by this Deed.

#### **1.6 Goods and services tax**

Unless the contrary intention appears, except in relation to a dividend to be distributed under this Deed, where for the purposes of the GST Law an amount payable under this Deed is consideration for a taxable supply made after the Relevant Date in respect of which GST will be payable, the amount payable under this Deed is adjusted to the amount calculated in accordance with the following formula:

Adjusted Amount = Original Amount x GST Uplift

where:

- (1) Original Amount is the amount that would be payable under this Deed but for this clause 1.6; and
- (2) GST Uplift is the proportion that the price of a taxable supply bears to the value of the taxable supply as provided under the GST Law (at present 11/10).

### **2. CONDITIONS FOR OPERATION AND CONTINUED OPERATION**

The operation of this Deed commences from the time when this Deed becomes a deed of company arrangement pursuant to section 444B(6) of the *Corporations Act 2001*.

### **3. APPOINTMENT OF DEED ADMINISTRATOR**

3.1 VCL appoint the Deed Administrator, and the Deed Administrator accepts an appointment, as the administrator of this Deed.

3.2 The Deed Administrator is and acts as the agent of VCL.

3.3 Despite Clause 3.2:

- (a) where under this Deed there is any obligation owed to VCL the Deed Administrators may enforce the obligation:
  - (i) in the Deed Administrator's name; and
  - (ii) as a separate and distinct obligation owed to the Deed Administrator to which any defences or Claims that would have been available had VCL or any other person been pursuing the Claim (including any claim of reimbursement, indemnity, contribution or set off) will not be available; and

- (b) where under this Deed there is any guarantee or indemnity in respect of any obligation (including, for the avoidance of doubt, a guarantee or indemnity in respect of a principal obligation owed by VCL) the Deed Administrator may nevertheless enforce the guarantee or indemnity:
    - (i) in the Deed Administrator's name;
    - (ii) as a separate and distinct obligation owed to the Deed Administrators to which any defences or Claims that would have been available had VCL or any other person been pursuing the Claim (including any claim of reimbursement, indemnity, contribution or set off) will not be available; and
  - (c) to the extent that the guarantee or indemnity is not in respect of a principal obligation owed to the Deed Administrators, the Deed Administrators may enforce the guarantee and indemnity on behalf of the principal obligee as if the Deed Administrators were the principal obligee.
- 3.4 For the purpose of administering this Deed the Deed Administrator has all the powers specified in clause 2 of the Prescribed Provisions.
- 3.5 Any debts payable by or Claims against VCL the circumstances giving rise to which occur after the execution of this Deed are not liabilities of the Deed Administrator.
- 4. AVAILABLE PROPERTY AND FUND**
- 4.1 The Available Property comprises:
- (a) all of the property and assets of VCL;
  - (b) the VCL Causes of Action; and
  - (c) the Fund.
- 4.2 The Deed Administrator is to open and conduct a bank account in the name of VCL. This forms the Fund.
- 4.3 Within 7 day of executing this Deed, the Proponent must procure the Creditors Money to be paid into the trust account of Goodman Law Trust Account (BSB: 633 000, A/C no. 130632995) on terms that include an irrevocable direction that upon this Deed terminating under Clause 9.1(b) the Creditors Money be paid into the Fund.
- 4.4 Subject to this Deed, all money received by the Deed Administrator in connection with VCL must be paid into the Fund.
- 4.5 The Fund is not an asset of VCL and may only be applied in accordance with this Deed. However, if the termination of this Deed is followed by the winding up of VCL the Fund is to be applied in payment of unsecured debts and claims against VCL observing the priorities provided for in Subdivision D of Division 6 of Part 5.6 of the *Corporations Act 2001*.

**5. MORATORIUM**

5.1 Until this Deed terminates, a Creditor must not:

- (a) begin or proceed with any application for an order to wind up VCL;
- (b) subject to clause 10, without the leave of the Court, and then, only in accordance with such terms as the Court imposes:
  - (i) begin or proceed with a proceeding against VCL or in relation to any of VCL's property or property used or occupied by, or in the possession of, VCL in a court or in an arbitration; or
  - (ii) begin or proceed with any enforcement process in relation to the property of VCL, or property used or occupied by, or in the possession of, VCL; or
- (c) exercise any right of set off that the Creditor would not have been entitled to exercise had VCL been wound up with the Relevant Date being the day on which the winding up was taken to have begun. For the avoidance of doubt, nothing in this Deed prevents a person exercising any right of set off against VCL to which the person would have been entitled had VCL been wound up with the Relevant Date being the day on which the winding up was taken to have begun.

5.2 Until this Deed terminates, VCL may plead this Deed in bar to any action, proceeding or suit brought by a Creditor in respect of that Creditor's Claim.

5.3 Until this Deed terminates, VCL, the members of VCL, and the officers of VCL must not begin or proceed with any application for an order to wind up VCL.

5.4 Nothing in this clause 5 limits the operation of section 444D(2) or section 444D(3) of the Corporations Act 2001.

5.5 This clause 5 has effect in addition to, and not in derogation of, section 444E of the *Corporations Act 2001*.

**6. THE SECURITY**

6.1 As at the date of this Deed, the Administrator has resolved that the Security is void against the Administrator and the Secured Creditor's Claim shall be treated as an unsecured claim.

6.2 If after the date of this Deed:

- (a) the Secured Creditor establishes that the Security is valid and enforceable as against the Administrator; or
- (b) The Administrator for any reason after consultation with the Proponent elect not to contest a challenge by the Secured Creditor to the position of the Administrator described in Clause 6.1;

then:

- (c) subject to Clause 6.4, the distribution of Available Property to the Creditors'

Trust pursuant to this Deed shall be on terms that the Secured Creditor has a priority entitlement to all distributions made from the Creditors' Trust to the extent of Secured Creditor's Claim; and

- (d) in consideration for the right of the Secured Creditor contained in sub-clause (c), the Secured Creditor agrees to immediately deliver to the Deed Administrator a Form 312 releasing the Security.

6.3 The Secured Creditor voted in favour of VCL entering into this Deed and agrees to be bound by this Deed.

6.4 For avoidance of doubt, the priority entitlement of the Secured Creditor under Clause 6.2(c) shall rank:

- (a) after the entitlement of the Trustee, Deed Administrator and Administrator to their respective remuneration;
- (b) after the entitlement of Priority Creditors (if any); and
- (c) before unsecured creditors.

## 7. CORPORATE CLEANUP

7.1 Subject to Clauses 7.2:

- (a) the Proponent shall perform the Cleanup Activities; and
- (b) VCL shall be indebted to the Proponent for the cost incurred by the Proponent in performing the Cleanup Activities.

7.2 Within seven days of the date of this Deed, VCL shall enter into the Loan Facility Deed and grant a first ranking charge in favour of the Proponent to secure:

- (a) the indebtedness of VCL to the Proponent under Clause 7.1(b) up to \$50,000; and
- (b) any further expenditure up to \$50,000 which the Proponent in its discretion may expend for the benefit of VCL in respect of upkeep and maintenance of VCL prior to termination of this Deed.

7.3 For avoidance of doubt, the Deed Administrator shall not be liable in respect of any default or failure by VCL to repay the Proponents under the loan agreement referred to in Clause 7.2

## 8. ADMISSIBILITY OF CREDITORS' CLAIMS

8.1 Creditors' Claims are admissible to proof under this Deed.

8.2 For avoidance of doubt, a claim against VCL is not admissible to proof under this Deed unless it is a claim the circumstances giving rise to which occurred on or before the Relevant Date.

8.3 The Deed Administrator is to determine:

- (a) the Priority Creditors' Claims;

- (b) the Participating Creditors' Claims; and
- (c) the Secured Creditor's Claims; and
- (d) the Creditors Claims.

which are admissible to proof under this Deed.

8.4 For the purpose of determining the Secured Creditor's Claim, the Priority Creditors' Claims, the Participating Creditors' Claims, and the Creditors' Claims which are admissible to proof under this Deed, the following provisions apply to this Deed:

- (a) Section 560 and Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Corporations Act 2001; and
- (b) Regulation 5.6.37, regulations 5.6.39 to 5.6.57 inclusive and regulation 5.6.70A of the Corporations Regulations 2001.

## 9. TERMINATION OF THIS DEED

9.1 This Deed terminates if:

- (a) a resolution terminating this Deed and winding up VCL is passed at a meeting of Creditors in accordance with clause 13; or
- (b) all of the following happen:
  - (i) the Shareholder Resolutions are passed;
  - (ii) the Creditors' Trust is settled;
  - (iii) The Proponent notifies the Deed Administrator in writing that the Proponent:
    - (A) has obtained conditional approval from the ASX (on terms satisfactory to Proponent and the Deed Administrator) that the ASX will permit VCL to retain its ASX listing;
    - (B) is satisfied that:
      - (1) the Security has been removed or has been released or is otherwise ineffective;
      - (2) the Secured Creditor's Claim, the Priority Creditors' Claims, the Participating Creditors' Claims, and the Creditors' Claims have been or will be released upon termination of this Deed; and
  - (iv) the engagement of all employees and contractors who were engaged by VCL at the Relevant Date have been terminated.

9.2 Immediately, or as soon as practicable, upon termination of this Deed under clause 9.1(b), the Deed Administrator must lodge a written notice with the Australian Securities and Investments Commission in the following form:



Viculus Limited  
ACN 074 976 828

I, Frank Lo Pilato of [ ], deed administrator of the deed of company arrangement executed by Viculus Limited ACN 074 976 828 on [ ] 2009 hereby certify that the deed has been wholly effectuated and is terminated upon lodgment of this notice with the Australian Securities and Investments Commission.

- 9.3 On termination of this Deed under clause 9.1(b), the Deed Administrator must deliver to VCL:
- (a) all of the books and records of VCL in the possession of the Deed Administrator other than:
    - (i) those books and records created after the Relevant Date which the Deed Administrator wishes to retain; and
    - (ii) copies of the books and records necessary for the Trustees to perform their functions under the Creditors' Trust;
  - (b) the notice from the Deed Administrator signed pursuant to clause 9.2.
- 9.4 After the termination of this Deed under clause 9.1(b), the Deed Administrator must not withhold access by VCL to any information or source document in the possession of the Administrator or the Deed Administrator which is reasonably required by VCL to comply with the *Corporations Act 2001* or any Australian regulatory body.
- 9.5 The termination of this Deed does not affect:
- (a) the previous operation of this Deed; or
  - (b) the enforceability of any accrued obligations under this Deed. For that purpose where the termination of this Deed is followed by the winding up of VCL:
    - (i) the liquidator may enforce any obligation under this Deed owed to the Deed Administrator; and
    - (ii) may do so as if the liquidator had been a party to the Deed at the execution of the Deed in the place of the Deed Administrator.

## 10. RELEASE OF CREDITORS' CLAIMS

- 10.1 Only if this Deed terminates under Clause 9.1(b):
- (a) VCL is released from every Secured Creditor's Claim, Priority Creditor's Claim, Participating Creditor's Claim and Creditor's Claim; and
  - (b) every Secured Creditor, Priority Creditor, Participating Creditor and Creditor is entitled to become a beneficiary of the Creditors' Trust for the amount of their respective Admitted Claim under the terms of the Creditors' Trust.
- 10.2 There is no consideration payable in respect of the releases under Clause 10.1.

- 10.3 On termination of this Deed under Clause 9.1(b), VCL may plead this Deed in bar to any action, proceeding or suit brought by a Secured Creditor, Priority Creditor, Participating Creditor or Creditor in respect of that Secured Creditor's Claim, Priority Creditors' Claim, Participating Creditors' Claim or Creditors' Claims, respectively.

## 11. DISTRIBUTION OF FUND AND AVAILABLE PROPERTY

- 11.1 Only if this Deed terminates under clause 9.1(b) the Deed Administrator must immediately assign and transfer to the Trustee absolutely free of all encumbrances all of the right, title and interest of whatsoever nature of VCL in and to the VCL Causes of Action and the Available Property to be held by the Trustee under the terms of the Creditors' Trust.

- 11.2 Upon receipt of an appropriate indemnity VCL consents to the Trustee:

- (a) commencing and controlling a proceeding or claim or issuing a demand of whatsoever nature in the name of VCL with respect to the VCL Causes of Action;
- (b) entering into and executing documents or agreements on behalf of VCL in relation to or in connection with the VCL Causes of Action;
- (c) having access to the books and records of VCL (including taking copies where appropriate) for the purpose of a proceeding or claim or issuing a demand of whatsoever nature with respect to the VCL Causes of Action; and
- (d) making or accepting any arrangement or compromise in relation to or in connection with the VCL Causes of Action.

- 11.3 This clause survives termination of this Deed to the extent necessary to give effect to clauses 11.1 and 11.2.

## 12. PROPONENT'S OBLIGATIONS

- 12.1 Before the Shareholders' Resolutions are put to the members of VCL, the Proponent must:

- (a) prepare the shareholder meeting documents (including the provision of an expert report if it is considered necessary by the Deed Administrator) as required by and to the satisfaction of the Deed Administrator;
- (b) submit the shareholder meeting documents referred to in clause 12.1(a) of this Deed to the ASX and the ASIC for approval;
- (c) issue the shareholder meeting documents referred to in clause 12.1(a) of this Deed to the members of VCL; and
- (d) convene a meeting of shareholders of VCL to vote on the Shareholders Resolutions.

- 12.2 The costs associated with clause 12.1 are costs of Proponent and are not recoverable from the Deed Administrator or VCL under this Deed but are recoverable from VCL following the termination of this Deed under clause 9.1(b).

12.3 The Deed Administrator must provide Proponent with reasonable assistance so that Proponent can perform its obligations under clause 12.1.

12.4 No obligation of the Proponent under this Deed operates until the Administrator / Deed Administrator has, on behalf of VCL, executed the loan agreement and granted the charge referred to in Clause 7.2.

### 13. MEETING TO CONSIDER TERMINATION

13.1 This clause does not limit the operation of section 445C, section 445E or section 445F of the *Corporations Act 2001*.

13.2 If the Deed Administrator considers that it is no longer practicable or desirable to implement the administration of this Deed, the Deed Administrator may convene a meeting of the Creditors to consider a resolution under section 445E of the *Corporations Act 2001* terminating the Deed and winding up VCL.

13.3 At the same time as giving the Creditors notice in writing of a meeting convened in accordance with 13.2 the Deed Administrator must give the Creditors:

- (a) a current report of the position of VCL accompanied by such financial statements as the Deed Administrator considers fit; and
- (b) a recommendation that the Deed Administrator consider that
  - (i) the Creditors terminate this Deed and wind up VCL; or
  - (ii) the Creditors should accept the proposal for an amendment to this Deed.

### 14. REMUNERATION OF DEED ADMINISTRATOR

14.1 Subject to clause 14.2, the Deed Administrators' remuneration for the Deed Administrators' services as administrators of this Deed is fixed at the amount calculated as follows:

Remuneration = Time x Firm Rates

where:

- (a) Time means the time actually spent by the Deed Administrators and any of the Deed Administrators' partners or employees in performance of the services (to be calculated in 6 minute units or part of them); and
- (b) Firm Rates means the following hourly rates for persons having the job description of the Deed Administrators and the Deed Administrators' partners and employees performing the services:

Partner	\$480
Manager	\$290
Supervisor	\$210

Senior	\$210
Intermediate	\$135
Graduate	\$120
Data Entry Clerk	\$85
Undergraduate	\$85

and includes any periodical amendments to the rates as deemed appropriate by the Deed Administrators from time to time.

- 14.2 The Deed Administrator's remuneration and reimbursement for the Deed Administrator's services as administrator of this Deed is not to exceed \$30,000 or such greater amount as is approved from time to time under section 449E of the *Corporations Act 2001*.
- 14.3 The Deed Administrator may draw the Deed Administrator's remuneration from the Fund, or, if the Fund is insufficient, from the Available Property or any other property of VCL.
- 14.4 Subject to Clause 14.2, the Deed Administrator is entitled to be reimbursed by VCL from the Fund, or, if the Fund is insufficient, from the Available Property, for the whole of the costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the Deed Administrators' administration of this Deed.
- 14.5 The Deed Administrator may draw the Deed Administrator's remuneration and reimbursement at the end of each month.

#### 15. DEED ADMINISTRATORS'/ADMINISTRATORS' INDEMNITY

- 15.1 Subject to clause 15.3, the Deed Administrator is entitled to be indemnified out of the Fund and the Available Property for:
- (a) the Deed Administrator's remuneration and reimbursement under this Deed;
  - (b) all Claims arising out of, in connection with or incidental to any debts incurred by VCL, the Deed Administrators or the Deed Administrators' partners or employees in the course of the administration of this Deed; and
  - (c) all Claims, other than a Claim by against the Deed Administrator or the Deed Administrator's partners or employees, arising out of, in connection with or incidental to the Deed Administrators' administration of this Deed.
- 15.2 The Administrator is entitled to be indemnified out of the Fund and the Available Property subject to clause 15.3 for:
- (a) the Administrator's remuneration and reimbursement of \$31,884.50 plus GST (of which \$8,000 has been paid at the date of this Deed) as administrator of VCL pursuant to Part 5.3A of the *Corporations Act 2001*;
  - (b) all Claims arising out of, in connection with or incidental to any debts

incurred by VCL, the Administrator or the Administrator's partners or employees in the course of the administration of VCL pursuant to Part 5.3A of the *Corporations Act 2001*; and

- (c) all Claims, other than a Claim by VCL against the Administrator or the Administrator's partners or employees, arising out of, in connection with or incidental to the Administrator's administration of the Company pursuant to Part 5.3A of the *Corporations Act 2001*.

15.3 Despite clauses 15.1 and 15.2, the Deed Administrator and the Administrator are not entitled to an indemnity out of the Fund or the Available Property against any Claims arising out of, in connection with or incidental to:

- (a) any fraudulent or negligent act or omission by the Deed Administrator or the Deed Administrator's partners or employees and the Administrator or the Administrator's partners or employees;
- (b) any act or omission done or omitted to be done by the Deed Administrator or the Deed Administrator's partners or employees and the Administrator or the Administrator's partners or employees:
  - (i) in breach of good faith; or
  - (ii) in contravention of any provision of sections 180 to 184 inclusive of the *Corporations Act 2001*; or
- (c) any act done by the Deed Administrator or the Deed Administrator's partners or employees and the Administrator or the Administrator's partners or employees outside the powers of the Deed Administrator and the Administrator under this Deed or the *Corporations Act 2001*.

15.4 The Deed Administrator's and Administrator's right of indemnity conferred by this clause 15 has priority as a Priority Creditor's Claim.

15.5 The Deed Administrator and the Administrator are entitled to exercise the Deed Administrator's and Administrator's right of indemnity conferred by this clause 15 whether or not the Deed Administrator or the Administrator have paid or satisfied the Claims.

15.6 The Deed Administrator is entitled to exercise a lien on the Fund and the Available Property to secure the Deed Administrator's right of indemnity conferred by this clause 15.

15.7 The Administrator is entitled to exercise a lien on the Fund and the Available Property to secure the Administrator's right of indemnity conferred by this clause 15.

15.8 Nothing in this Deed, including this clause 15, affects or limits the operation of Subdivision B of Division 9 of Part 5.3A of the *Corporations Act 2001*.

## 16. OFFICERS TO ASSIST

16.1 As soon as practicable after the date of this Deed, each officer of VCL, except those officers appointed pursuant to clause 16.4(b)(ii) must, if the officer has not done so before the date of this Deed:

- (a) deliver to the Deed Administrator all books and records in the officer's possession that relate to VCL; and
  - (b) if the officer knows where other books and records relating to VCL are located, tell the Deed Administrator where those books and records are located.
- 16.2 Each officer of VCL, except those officers appointed pursuant to clause 16.4(b)(ii), must:
- (a) attend on the Deed Administrator at all times;
  - (b) give the Deed Administrators all information about the business of, property, affairs and financial circumstances of VCL; and
  - (c) attend all meetings of the Creditors;
- as the Deed Administrators reasonably require.
- 16.3 Each officer of VCL must do what the Deed Administrator reasonably requires the officer to do to assist the Deed Administrator in administering this Deed or to fulfill the arrangement effected by this Deed.
- 16.4 Until this Deed terminates:
- (a) an officer being a director of VCL or either of them must not, without the prior written consent of the Deed Administrator, resign as a director of VCL; and
  - (b) the Deed Administrator will, upon written request of the Proponent:
    - (i) remove from the office of director of VCL all of those directors who were directors at the Relevant Date;
    - (ii) appoint as directors of VCL those persons nominated by Proponent to be directors of VCL; and
    - (iii) delegate to the directors of VCL appointed in accordance with clause 16.4(b)(ii) the power to do anything that is necessary or convenient to prepare the shareholder meeting documents, convene the shareholder meeting and chair the shareholder meeting referred to in clause 12.1(a)10 of this Deed.
- 16.5 Until the events in clauses 16.4(b) occur the Deed Administrators are to remain in control of VCL and, except as otherwise provided in this Deed, the powers of each director who was a director at the Relevant Date are suspended.
- 17. COMMITTEE OF INSPECTION**
- 17.1 In order to advise and assist the Deed Administrator the creditors resolved at the meeting of creditors held on 16 April 2009 to form a committee of inspection. Membership of the committee and the number of members will be decided by resolution of creditors from time to time.
- 17.2 For the purpose of the conduct of proceedings of the committee of inspection, the

following provisions apply to this Deed:

- (a) sections 549 to 551 inclusive of the *Corporations Act 2001*; and
- (b) regulations 5.6.12 to 5.6.36A inclusive of the *Corporations Regulations 2001*.

**18. EXCLUSION OF PRESCRIBED PROVISIONS**

- 18.1 Except where expressly included in this Deed the Prescribed Provisions are excluded from this Deed.

**19. FURTHER ASSURANCE**

- 19.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

**20. SEVERABILITY**

- 20.1 If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

**21. COSTS AND OUTLAYS**

- 21.1 VCL must pay equally all stamp duty and other government imposts payable in connection with this Deed and all other documents and matters referred to in this Deed when due or earlier if requested in writing by the Deed Administrators.

**22. GOVERNING LAW AND JURISDICTION**

- 22.1 The law of Victoria governs this Deed.
- 22.2 The parties submit to the exclusive jurisdiction of the Court and agree that any lawsuit must be heard, if at all, in the Court.

**23. NOTICES**

The provisions of Schedule 3 apply to Notices.

EXECUTED AS A DEED AND DELIVERED ON:

M&M Driscoll Nominees Pty Ltd )

In the presence of: )

\_\_\_\_\_  
Print Name of Witness below

\_\_\_\_\_  
Director: (Print Name below)

\_\_\_\_\_  
Director: (Print Name below)

Mathieson Nominees Pty Ltd )

In the presence of: )

\_\_\_\_\_  
Print Name of Witness below

\_\_\_\_\_  
Director: (Print Name below)

\_\_\_\_\_  
Director: (Print Name below)

C.S.M. KIPP Pty. Ltd. )

In the presence of: )

\_\_\_\_\_  
Print Name of Witness below

\_\_\_\_\_  
Director: (Print Name below)

\_\_\_\_\_  
Director: (Print Name below)

Signed, sealed and delivered by FRANK LO PILATO )

Deed Administrator of )  
Viculus Limited (Administrator Appointed) )

In the presence of. )

  
\_\_\_\_\_  
Mitchell Herrett

Print Name of Witness below





**SCHEDULED 1**

**M & M DRISCOLL NOMINEES PTY LTD**  
ACN 073 019 315

- AND -

**MATHIESON NOMINEES PTY LTD**  
ACN 005 328 012

- AND -

*C.S.M. Kipp Pty Ltd*  
*ACN.063765 453*

## SCHEDULED 2

### Shareholders Resolutions

1. That 20,353,236 fully paid ordinary shares in Viculus Limited (ACN 074 976 828) (Company) be converted into 2,035,324 fully paid ordinary shares.
2. That the Company approves the issue of 3,052,985 fully paid ordinary shares in the Company at a price of \$0.001 cents per share as follows:
  - (a) M&M Driscoll Nominees Pty Ltd 686,921 shares
  - (b) A.R. Roblex Pty. Ltd. 686,921 shares
  - (c) Mathieson Nominees Pty Ltd 1,373,843 shares
  - (d) TBA TBA *305,300 shares*
3. That the Company approves the issue of 10,176,618 fully paid ordinary shares in the Company at a price of 8 cents per share as part of a fully underwritten rights issue in proportion of two shares for every one share held after the issue referred to in 2 above.
4. That the Company ratifies the appointment of any directors appointed under Clause 16.4(b)(ii) of this Deed.

## SCHEDULED 3

### NOTICES

#### 1. Delivery

A Notice must be in writing and delivered on a Business Day, sent by prepaid mail (airmail if overseas) or by facsimile to the address or facsimile number of the recipient party set out in paragraph 3 or to such other address or facsimile number as that party may from time to time notify the other parties for the purposes of this schedule.

#### 2. Receipt

A Notice given in accordance with paragraph 1 will be treated as having been received:

- i. if it is delivered before 5.00pm on a Business Day, at the time of delivery otherwise at 9.00 am on the next following Business Day;
- ii. on the third Business Day (or seventh Business Day if sent overseas) after posting; and
- iii. if sent by facsimile, upon production of a correct and complete transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purposes of this paragraph (but if the communication is not completed by 5.00pm on a Business Day, at 9.00 am on the next following Business Day).

#### 3. Addresses for Notices

For the purposes of this schedule, the address and facsimile details of each party are as follows:

##### **The Proponent**

Address: C/o Armytage Capital Management Pty Ltd, Level 10,  
224-228 Queen St, Melbourne, Victoria.

Facsimile: (03) 9225 4322

Attention: Sam Armytage

##### **The Administrator**

Address: Level 1, 103-105 Northbourne Avenue Canberra

Facsimile: (02) 6262 8633

Attention: Frank Lo PiLato