

Form 603

Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme VIRTUS HEALTH LIMITED ("Virtus")

ACN/ARSN ACN 129 643 492

1. Details of substantial holder (1)

Name VIRTUS HEALTH LIMITED

ACN/ARSN (if applicable) ACN 129 643 492

The holder became a substantial holder on 11 / 06 /2013

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 Shares	16,055,901	16,055,901	20.2 %

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
Virtus	Restriction on disposal of shares under voluntary escrow arrangements disclosed in Virtus' replacement prospectus dated 24 May 2013 gives Virtus a technical "relevant interest" in its own shares under section 608(1)(c) of the Corporations Act. However, Virtus has no right to acquire these shares or to control the voting rights attaching to these shares.	16,055,901 ordinary shares

4. Details of present registered holders

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

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Virtus	Those holders listed in Annexure A	Those holders listed in Annexure A	16,055,901 ordinary shares

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:

No consideration was paid by Virtus. Virtus has no right to acquire the shares that are subject to the escrow agreements.

6. Associates

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

Not applicable

7. Addresses

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

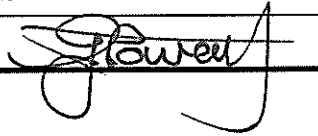
Name	Address
Virtus	Level 3, 176 PACIFIC HIGHWAY GREENWICH , NSW 2065
Holders listed in Annexure A	c/o Level 3, 176 PACIFIC HIGHWAY GREENWICH , NSW 2065

Signature

print name Glenn Powers

Capacity Company Secretary

sign here



date 12/06/2013

Virtus Health Limited (ACN 129 643 492)

Annexure A

This is Annexure A of 3 pages, referred to in Form 603 – Notice of initial substantial holder

	Registered Holder of Securities	Number of Ordinary Shares
1	Simon Moore	86,542
2	Ryletro Pty Ltd as trustee for Simon Moore Family Trust	310,935
3	Timothy and Sara Longworth	48,118
4	Madacin Pty Ltd as trustee for A&N Phillips Family Trust	46,809
5	Graeme Hughes Pty Limited as trustee for G&B Hughes Super Fund	67,521
6	Bridgemyth Pty Ltd as trustee for Chapman Family Trust	208,212
7	Bridgemyth Pty Ltd as trustee for Chapman Superannuation Fund	326,005
8	Kanchong Pty Limited as trustee for Kan Super Fund	221,809
9	Kanchong Pty Limited as trustee for Kan Family Trust	288,889
10	G Sacks Pty Ltd as trustee for G Sacks Family Trust	362,617
11	Raewyn Teirney	224,720
12	Costello Administration Pty Ltd as trustee for Costello Family Trust	87,654
13	Denise Nesbitt Pty Limited as trustee for Denise Nesbitt Superannuation Fund	27,640
14	Anlis Pty Limited as trustee for Hedges Family Trust	130,694
15	Akesh Pty Limited as trustee for Hedges Holding Fund	36,863
16	Arramina Pty Ltd as trustee for Arramina Property Investor Trust	81,796
17	Olivia Martin Pty Ltd as trustee for Martin Family Trust	84,283
18	Gavin Kemball	81,796
19	Ricam Pty Ltd as trustee for Porter Family Trust	316,564
20	Ricam Pty Ltd as trustee for RNP Superannuation Fund	216,904
21	Lily Pily Corporation Pty Ltd	457,079
22	Skeabost Pty Ltd as trustee for Illingworth Family Trust	340,051
23	Francis Quinn as trustee for F&S Quinn Trust	733,569
24	Dr. Tung Ching Doris Lam	52,416
25	Peter Leung	16,889
26	Nalini Gayer as trustee for Rani Superannuation Fund	66,333
27	Dr. Jeffrey Persson Pty Ltd	200,652
28	M Tucker Pty Ltd as trustee for M Tucker Pty Ltd Super Fund	97,861
29	SPW Raymond Pty Ltd as trustee for Raymond Superannuation Fund No 1	97,183
30	SPW Raymond Pty Ltd as trustee for Steve Raymond Family Trust	70,374
31	Iris Wang	81,796
32	Unity Investments (Sydney) P/L as trustee for Unity Family Trust	81,796
33	Professor William Leigh Ledger	81,796
34	Michele Kwik	81,796

	Registered Holder of Securities	Number of Ordinary Shares
35	Fifty Second Celebration Pty Limited as trustee for McBain Family Trust	917,721
36	Michael Gronow Nominees Pty Ltd as trustee for Michael Gronow Family Trust	502,294
37	Swithland Pty Ltd as trustee for Swithland Service Trust	686,412
38	Royal Kapow Pty Ltd as trustee for Stern-Welsh Family Trust	501,359
39	Vlasto Pty Ltd as trustee for Vlasto Trust	486,187
40	Julie Nayleen Whitehead	82,211
41	Cochybondhu Pty Limited as trustee for Karunajeewa Catrall Family Trust	335,595
42	Jaracolipe Pty Limited as trustee for Jaracolipe Family Trust	353,699
43	Mostol Pty Limited as trustee for Mostol Trust	449,124
44	Marie Carmen Pearce as trustee for Pearce Family Trust	112,452
45	X&Y Life Cycles Pty Limited as trustee for Elzeiny Family Trust	86,678
46	KLMH Pty Ltd as trustee for Najjar Family Trust	75,961
47	Chandrika Parmar and Sameer Babbar as trustee for CPB Trust	76,562
48	Alex Polyakov	81,796
49	Shlomi Barak as trustee for Shlomi Barak Trust	109,934
50	Samuel Soo	81,796
51	Peeling Pty Ltd as trustee for Barrington Huang Family Trust	81,796
52	Fayweng Pty Ltd as trustee for Fay Weng Trust	81,796
53	Barbara Ann Hall	201,430
54	Maurice John Hynes	80,931
55	Torlina Pty Limited as trustee for Hynes Family Trust	101,164
56	Warren Peter Joseph De Ambrosis	162,469
57	De Ambrosis Family Pty Ltd as trustee for Warren De Ambrosis Family Trust	387,262
58	Sabarka Pty Ltd as trustee for D&CJ Molloy Family Trust	364,208
59	Dranson Pty Ltd as trustee for Keeping Staff Superannuation Fund	145,641
60	Scott John Salisbury and Paula Maree Salisbury as trustee for Salisbury Family Trust	376,991
61	Andrew Cary	39,462
62	Timothy O'Dowd	21,654
63	Gary Swift	56,637
64	Michael Flynn	56,637
65	David Alan Lingard as trustee for Lingard Family Trust	155,848
66	Shane Rowland Higgins as trustee for Higgins Family Trust	183,378
67	Robert James Watson and Lesla Lyle Townend as trustee for Watson Investment Trust	256,748
68	Merriland Holdings Pty Ltd as trustee for Florin Superannuation Fund	157,779
69	Karen Ann Watson and Michael John Rudd as trustee for Dr Karen Watson Family Trust	167,876
70	Ron Wah Chang and Lisa Wong as trustee for Ron Wah Chang Family Trust	224,524

	Registered Holder of Securities	Number of Ordinary Shares
71	Dendeen Pty Ltd as trustee for Esler Family Trust	278,012
72	Trekron Pty Ltd as trustee for Herron Family Trust	280,176
73	Robert Charles Miller and Marie Denise Miller as trustee for RC & MD Miller Superannuation Fund	255,996
74	Anuschirawan Yazdani and Bridget Sutton as trustee for Sutton Yazdani Trust	123,340
75	Michael & Clare Wynn-Williams as trustee for Wynn-Williams Family Trust	81,796
76	Kenobi Pty Ltd as trustee for Obi Wan Discretionary Trust	81,796
77	Optimum Medical Pty Limited as trustee for Jacobson Sherwood Family Trust	81,796
78	DRK Australia Pty Ltd as trustee for DRK Family Trust	19,604
79	Anne J Ganter as trustee for J + J Ganter Family Trust	19,604
80	Keith Harrison Pty Ltd as trustee for Harrison Family Trust	272,204
81	Melchisedeck Pty Ltd as trustee for Melchisedeck Family Trust	276,731
82	Mytame Pty Ltd	6,896
83	Michael Costello Medical Pty Ltd	9,052
84	Thilee Sivananthan	19,604
85	Louise Fay	19,604
86	Manveen Mangat	19,604
87	D & S James Holdings Pty Ltd as trustee for James Family Trust	19,604
88	Dr Juliette Koch	19,604
89	Melbourne Gynaecology Specialists Pty Ltd as trustee for Melbourne Gynaecology Specialists Trust	19,604
90	Dr Benjamin Muir	19,604
91	Dr Myuran Ponnampalam	19,604
92	Melissa Luckensmeyer and David Luckensmeyer as trustee for Luckensmeyer Family Trust	19,604
93	Leeanda Wilton	21,307
94	David Edgar	26,041
95	Sue Channon	16,649
96	Glenn Powers	68,491
	TOTAL	16,055,901

Virtus Health Limited (ACN 129 643 492)

Annexure B -

Pro forma escrow agreements (relevant agreements by which relevant interest is acquired)

This is Annexure B of 92 pages, referred to in Form 603 – Notice of initial substantial holder

Escrow Deed

Dated May 2013

Virtus Health Limited (ACN 129 643 492) (**Company**)
The **Holder** whose details are set out in the Schedule

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Escrow Deed

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Escrow Deed

Details

Parties	Company and the Holder	
Company	Name	Virtus Health Limited
	ACN	129 643 492
	Address	Level 3, 176 Pacific Highway, Greenwich NSW 2065
	Telephone	02 9425 1722
	Email	info@virtushealth.com.au
	Attention	Company Secretary
Holder	The Holder whose name and address are set out in the Schedule.	
Recitals	A	The Holder is a shareholder of the Company.
	B	The Holder intends to sell a portion of his or her Shares pursuant to the Offer. After Completion of the Offer, the Holder will retain ownership of the Escrow Shares and any other Shares not sold in the Offer.
	C	The Holder undertakes to the Company to hold the Escrow Shares pursuant and subject to the terms of this deed.
Governing law	New South Wales	
Date of deed	See signing page	

Escrow Deed

General terms

1 Definitions and interpretation

1.1 Definitions

ART Services means services related to assisted reproductive technology comprising stimulated cycle in vitro fertilisation procedures, frozen embryo transfers and other assisted reproductive services provided that, if the Holder is engaged by QFG, ART Services excludes intra-uterine insemination procedures and donor insemination procedures.

ASIC means the Australian Securities and Investments Commission.

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

ASX Listing Rules means the listing rules of ASX.

ASX Settlement means ASX Settlement Pty Limited (ABN 49 008 504 532).

ASX Settlement Operating Rules means the operating rules of ASX Settlement.

Board means the board of directors of the Company.

Business Day means a business day as defined in the ASX Listing Rules.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Company Termination Rights means the rights of termination for a Group Company under clause 7(a)(i) of the Doctor Contract (or its equivalent provision in any renewed, amended or replaced Doctor Contract).

Competing Clinic means a clinic, laboratory or consulting room which provides ART Services and which is not owned, operated, occupied or utilised by any Group Company.

Completion of the Offer means the completion of the allotment of Shares pursuant to the Offer.

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

Deal means:

- (a) sell, assign, transfer or otherwise dispose of;
- (b) agree or offer to sell, assign, transfer or otherwise dispose of;
- (c) enter into any option which, if exercised, enables or requires the relevant security holder to sell, assign, transfer or otherwise dispose of; or

- (d) create or agree to offer to create or permit to be created any Security Interest in,

and **Dealing** has a corresponding meaning.

Doctor means a medical practitioner who is contracted to a Group Company to provide ART Services and in-vitro fertilisation services to the Group.

Doctor Contract means each engagement letter, contractor agreement or similar contract for the provision of services entered into between a Doctor and a Group Company from time to time.

Doctor Termination Rights means the rights of termination for a Doctor under clause 7(a)(ii) of the Doctor Contract (or its equivalent provision in any renewed, amended or replaced Doctor Contract).

Escrow Period means the period commencing on the date on which Shares under the Offer are first quoted on the ASX until the date on which all of the Retained Shares cease to be Escrow Shares in accordance with the definition of Escrow Shares.

Escrow Shares means the Retained Shares, provided that:

- (a) unless released earlier in accordance with paragraph (b) of this definition, a number of Retained Shares equal to one-third of the number of Short Term Release Shares will cease to be Escrow Shares on each of the FY14 Release Date and the FY15 Release Date and any remaining Short Term Release Shares will cease to be Escrow Shares on the FY16 Release Date;
- (b) unless released earlier in accordance with paragraph (a) of this definition, a number of Retained Shares equal to the number of Short Term Release Shares will cease to be Escrow Shares on the date, if any, on which the Holder becomes a Good Leaver;
- (c) a number of Retained Shares equal to the number of Long Term Release Shares will cease to be Escrow Shares on the earliest of:
 - (i) whichever of the following dates is applicable:
 - (A) the second anniversary of the Completion of the Offer if the Holder is 63 years old or older as at the date of this deed or will reach the age of 63 years on or before the second anniversary of the Completion of the Offer; or
 - (B) the date on which the Holder reaches the age of 63 years if the Holder is not 63 years old or older as at the date of this deed or will not reach such age on or before the second anniversary of the Completion of the Offer;
 - (ii) the date, if any, on which the Board resolves that such Retained Shares will cease to be Escrow Shares;
 - (iii) the fifth anniversary of the date, if any, on which the Holder becomes a Relocated Leaver; and
 - (iv) the date, if any, on which the Holder ceases to be an employee of, or contractor to, the Group as a result of death, serious disability or permanent incapacity through ill health (as resolved by the Board, acting reasonably); and

- (d) a number of Retained Shares equal to the Long Term Release Shares will cease to be Escrow Shares on the earliest of:
 - (i) the date, if any, on which the Holder becomes a Retiree Leaver;
 - (ii) the date, if any, on which the Holder becomes a Good Leaver or a Relocated Leaver; and
 - (iii) the fifth anniversary of the date, if any, on which the Holder becomes a Leaver, other than a Retiree Leaver, a Relocated Leaver or a Good Leaver.

FY14 Release Date means the first trading day in Shares on the financial market conducted by ASX following the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2014.

FY15 Release Date means the first trading day in Shares on the financial market conducted by ASX following the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2015.

FY16 Release Date means the first trading day in Shares on the financial market conducted by ASX following the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2016.

Group means the Company and all of its Subsidiaries from time to time and **Group Company** means any one of them.

Good Leaver means a Leaver who:

- (a) ceases to be an employee of, or contractor to, the Group as a result of death, serious disability or permanent incapacity through ill health (as resolved by the Board, acting reasonably);
- (b) terminates his or her Doctor Contract in accordance with the Doctor Termination Rights;
- (c) the Group, at any time, ceases to engage, other than through the termination by the Company of the then existing Doctor Contract in accordance with the Company Termination Rights; or
- (d) the Board resolves to treat as a Good Leaver.

Holding Lock has the meaning given in section 2 of the ASX Settlement Operating Rules.

Issuer Sponsored Subregister has the meaning given to that term in the settlement rules of ASX Settlement.

Leaver means, with respect to the Holder, the Holder ceases to be contracted to a Group Company.

Long Term Release Shares means the number of "Long Term Release Shares" listed in the Schedule.

Non-Restricted Area means any place not within a 100km radius of any clinic owned, operated, occupied or utilised by any Group Company.

Offer means the initial public offering of Shares and the admission or quotation of those Shares to the quotation system of ASX.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Security Interest means a "security interest" within the meaning of the PPSA.

QFG means Queensland Fertility Group Pty Ltd (ACN 010 514 397).

Region means any State or Territory of the Commonwealth of Australia or any country outside Australia in which a Group Company operates.

Relocated Leaver means a Leaver who:

- (a) terminates his or her Doctor Contract as a result of his or her intention to:
 - (i) relocate on a genuine and permanent basis (as resolved by the Board) to a Non-Restricted Area as at the date of termination of his or her Doctor Contract; and
 - (ii) provide ART Services in such Non-Restricted Area; and
- (b) uses his or her best endeavours to transfer his or her existing ART Services medical practice to another Doctor to the satisfaction of the Board (as resolved by the Board once it is so satisfied).

Retained Shares means the number of "Retained Shares" listed in the Schedule.

Retiree Leaver means a Leaver who becomes a Leaver as a result of retirement from the ART Services industry on a genuine and permanent basis (as resolved by the Board), provided the Leaver uses his or her best endeavours to transfer his or her ART Services medical practice to another Doctor to the satisfaction of the Board (as resolved by the Board once it is so satisfied).

Securities has the meaning given in the ASX Listing Rules.

Security Interest means an interest or power:

- (a) reserved in or over an interest in any securities including any retention of title; or
- (b) created or otherwise arising in or over any interest in any securities under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, but is not limited to:

- (c) any agreement to grant or create any of the above; and
- (d) a PPSA Security Interest.

Share means a fully paid ordinary share in the capital of the Company.

Share Registry means the share registry engaged by the Company to administer and manage its register of members.

Short Term Release Shares means the number of "Short Term Release Shares" listed in the Schedule.

Subsidiary has the meaning given in the Corporations Act.

Takeover Bid means a takeover bid for all Shares under Chapter 6 of the Corporations Act.

Voluntary Escrow Deed means a voluntary escrow deed entered into in connection with the Offer.

1.2 Interpretation

In this deed, unless the context requires another meaning:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a document (including this deed) is a reference to that document as amended, consolidated, supplemented, novated or replaced;
 - (iv) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) a party means a party to this deed;
 - (vi) an item, Recital, clause, provision, Schedule or Annexure is to an item, Recital, clause, provision, Schedule or Annexure of or to this deed;
 - (vii) a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators;
 - (viii) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
 - (ix) time is to prevailing Sydney time; and
 - (x) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) headings and the Recitals are for convenience only and do not affect interpretation of this deed;
- (d) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day;
- (e) a warranty, representation, covenant or obligation given or entered into by more than one person binds them severally but not jointly;

- (f) unless otherwise expressly provided in this deed, if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day;
- (g) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (h) the word "law" includes common law, principles of equity and legislation, and a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them; and
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions.

1.3 Compliance with ASX Listing Rules

For so long as the Company is listed on the official list of the ASX:

- (a) notwithstanding anything contained in this deed, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the ASX Listing Rules this deed is deemed not to contain that provision to the extent of the inconsistency.

2 Condition Precedent

The undertakings of the Holder pursuant to this deed are conditional upon Completion of the Offer occurring.

3 Escrow

3.1 Holder restrictions

During the Escrow Period the Holder agrees that it will not:

- (a) Deal with;
- (b) Deal in any interest or right in respect of; or

- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Escrow Shares.

3.2 Escrow restrictions

The parties acknowledge and agree that:

- (a) as soon as practicable following the issue or transfer, as applicable, of the Escrow Shares to the Holder or following the Completion of the Offer, as applicable, the Escrow Shares will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company will apply a Holding Lock on the Escrow Shares as soon as practicable after registration of the Escrow Shares on the Issuer Sponsored Subregister and the Holder agrees to the application of the Holding Lock; and
- (c) the Company will do all things necessary to ensure that the Holding Lock is released:
 - (i) to the extent necessary to permit disposals of the Escrow Shares permitted by this deed;
 - (ii) in respect of any Retained Shares that cease to be Escrow Shares in accordance with the definition of Escrow Shares; and
 - (iii) in full at the conclusion of the Escrow Period.

3.3 Notice by Holder

If the Holder becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.1 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.1 during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

3.4 Dividends and voting rights

For the avoidance of doubt, the parties agree that except as provided in clauses 7 and 8, the terms of this deed will have no effect on any rights of the Holder to receive dividends or to exercise voting rights in respect of the Escrow Shares.

3.5 Takeovers, mergers and reorganisations

Clause 3.1 will cease to apply to the extent necessary to allow:

- (a) the Holder to accept an offer made under a Takeover Bid for any of the Escrow Shares, provided that:
 - (i) without limiting clause 3.5(a)(ii), holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have accepted the Takeover Bid; and

- (ii) the Takeover Bid is unconditional or all conditions to the Takeover Bid have been satisfied or waived;
- (b) the Holder to tender any of the Escrow Shares into a bid acceptance facility established in connection with a Takeover Bid, provided that holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have either accepted the Takeover Bid or tendered (and not withdrawn) their Shares into the bid acceptance facility; or
- (c) the Escrow Shares to be transferred or cancelled as part of a Share buyback or other similar reorganisation, a merger being implemented by way of a scheme of arrangement or an acquisition of all Shares which has received all necessary approvals, including all such necessary approvals by shareholders of the Company and courts,

provided that, if for any reason any or all Escrow Shares are not transferred or cancelled in accordance with a Takeover Bid, scheme of arrangement or other transaction described in clause 3.5(a), 3.5(b) or 3.5(c), then the Holder agrees that the restrictions applying to the Escrow Shares under this deed (including under clauses 3.1 and 3.2) will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Escrow Shares not so transferred or cancelled.

3.6 Other exceptions

Clause 3.1 will cease to apply to the extent necessary to allow a Dealing in Escrow Shares:

- (a) with the prior written approval of the Company;
- (b) pursuant to an order of a court of competent jurisdiction compelling any Escrow Shares to be disposed of or a Security Interest granted over them; or
- (c) pursuant to a transfer by the personal representatives of the Holder to whomever the Escrow Shares have been bequeathed, provided that the transferee of the Escrow Shares has agreed to be bound by a deed in substantially the same terms as this deed in respect of the Escrow Shares.

4 Restraint

4.1 Restrained activities

The Holder undertakes to the Company that he or she will not, directly or indirectly, in any capacity and whether alone or with others:

- (a) provide ART Services to a Competing Clinic;
- (b) establish or prepare to establish a Competing Clinic; or
- (c) refer any patient to whom it has provided ART Services at a clinic owned or operated by a Group Company, or with whom it has had dealings at a clinic owned, operated, occupied or utilised by any Group Company, to a Competing Clinic that provides any ART Services which are the same as the ART Services provided at any clinic owned, operated, occupied or utilised by any Group Company, without the Company's prior written consent.

4.2 Non-solicitation

Subject always to the undertakings in clause 4.1:

- (a) the Holder undertakes to the Company that it will not, directly or indirectly, in any capacity and whether alone or with others:
 - (i) solicit, canvass or approach any patient to whom it has provided ART Services at a clinic owned, operated, occupied or utilised by any Group Company, or with whom it has had dealings at a clinic owned or operated by a Group Company, in each case in the 3 year period before the Holder becomes a Leaver, with a view to providing, directly or indirectly, ART Services to that patient; or
 - (ii) induce, help to induce or approach any person who is engaged by a Group Company (whether as an employee or independent contractor or in any other capacity), and with whom the Holder worked in the course of his or her engagement by a Group Company and within the 12 month period prior to the Holder becoming a Leaver, with a view to securing, directly or indirectly, their services in an ART Services business; and
- (b) nothing in this clause 4.2 prevents the Holder from:
 - (i) advertising generally to hire staff or advertising the Holder's services;
 - (ii) dealing with any patient who responds to the advertising referred to in clause 4.2(b)(i); or
 - (iii) dealing with any patient who approaches the Holder, other than as a result of solicitation or encouragement by the Holder.

4.3 Duration of prohibition

The undertakings in clauses 4.1 and 4.2 begin on the date of this deed and end on the earlier of:

- (a) the date on which the Holder becomes a Good Leaver; or
- (b) the date on which the "Restraint Period", as defined in the Holder's Doctor Contract, ends.

4.4 Geographic application of prohibition

The undertakings in clauses 4.1 and 4.2 apply only if the activity prohibited by clause 4.1 or 4.2 occurs within:

- (a) if the Holder is based at a clinic in the greater metropolitan area of a Region's capital city, the greater metropolitan area of that Region's capital city, or otherwise a 100km radius from the clinic owned, operated, occupied or utilised by any Group Company in which the Holder provides ART Services while engaged by a Group Company; or
- (b) a radius of 12 kilometres from each of the clinics owned, operated, occupied or utilised by any Group Company in which the Holder provides ART Services while engaged by a member of the Group.

4.5 Interpretation

Clauses 4.1, 4.2, 4.3 and 4.4 have effect together as if they consisted of separate provisions, each being severable from the other. Each separate provision results from combining each undertaking in clause 4.1 or 4.2, with the relevant period in clause 4.3, and combining each of those combinations with each area in clause 4.4. If any of those separate provisions is invalid or unenforceable for any reason, the invalidity or unenforceability does not affect the validity or enforceability of any of the other separate provisions or other combinations of the separate provisions of clauses 4.1, 4.2, 4.3 and 4.4.

4.6 Exceptions

This clause 4 does not restrict the Holder from:

- (a) performing any employment or consultancy agreement with, or providing any services to, the Group;
- (b) holding an appointment and performing the requirements of that appointment at a public hospital, which may or may not involve providing or performing ART Services;
- (c) performing obstetric and gynaecological services or any other services which are not ART Services;
- (d) continuing to treat Current Patients (as defined in the Holder's Doctor Contract) in accordance with the terms of the Holder's Doctor Contract;
- (e) referring a patient, who has been referred to the Holder for a second opinion or for an intervention, back to the medical practitioner from whom that patient was initially referred;
- (f) referring a patient to a clinician outside the Group for a second opinion, provided the Holder has first used reasonable endeavours, consistent with the Holder's professional obligations, to refer that person to an appropriate clinician within the Group;
- (g) holding less than 5% of the shares of a listed company;
- (h) holding Shares or other securities in the Company; or
- (i) if the Holder is engaged by QFG, performing intra-uterine insemination and donor insemination procedures.

4.7 Acknowledgments

The Holder acknowledges that:

- (a) all the prohibitions and restrictions in this clause 4 are reasonable in the circumstances and necessary to protect the goodwill of the business of the Company and the other Group Companies;
- (b) as a result of his or her association with the Group, including the Holder's holding of Shares, he or she has or will become possessed of secret and confidential information relating to the trade secrets and business and finances of the Group and its clients and customers, and the disclosure of such information could materially harm the Group and he or she therefore agrees that the undertakings contained in this clause 4 are reasonable and necessary for the protection of the business of the Group and its goodwill;

- (c) damages are not an adequate remedy for any breach of this clause 4;
- (d) the Company may apply for injunctive relief if:
 - (i) the Holder breaches or threatens to breach this clause 4; or
 - (ii) the Company believes the Holder is likely to breach this clause 4;
- (e) the Holder's Doctor Contract contains prohibitions and restrictions on the Holder poaching or soliciting patients or staff of the Group and those prohibitions and restrictions are not limited in any way by this clause 4.

4.8 Interaction

For the avoidance of doubt, nothing in clause 3 or in any definition used in clause 3, including any release of any Escrow Shares and whether or not a Doctor is a Good Leaver or a Relocated Leaver, limits this clause 4.

5 Termination

- (a) This deed terminates with immediate effect and without the action of any party upon the later of:
 - (i) the date on which all of the Retained Shares cease to be Escrow Shares; and
 - (ii) the date on which the undertakings in clauses 4.1 and 4.2 cease to have any effect in accordance with clause 4.3,

provided that this deed will terminate with immediate effect and without the action of any party if Completion of the Offer has not occurred by 31 December 2013.

- (b) The Company will procure that the Share Registry releases the Holding Lock in respect of the Escrow Shares, if still in effect, as soon as possible following termination of this deed.

6 Warranties and acknowledgement

6.1 Giving of warranties

Each of the warranties and representations in this clause 6 is given by the Holder in favour of the Company:

- (a) as at the date of this deed, unless a later date is specified in clause 6.2; and
- (b) from the applicable date under clause 6.1(a), at all times until expiry of the Escrow Period.

The warranties and representations in this clause 6 are given in respect of any and all Escrow Shares from time to time during the Escrow Period.

6.2 Holder warranties and representations

The Holder warrants and represents the following:

- (a) prior to the Escrow Period he or she has not done, or omitted to do, any act which would result in a Dealing in Escrow Shares which will take effect during the Escrow Period;
- (b) from the date of Completion of the Offer, the Escrow Shares are free from all Security Interests and other third party interests or rights;
- (c) he or she has full power and authority, without the consent of any other person, to enter into and perform his or her obligations under this deed;
- (d) he or she has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes a legal, valid and binding obligation on him or her and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) the execution, delivery and performance by the Holder of this deed does not and will not violate, breach or result in a contravention of:
 - (i) any applicable law, regulation or authorisation; or
 - (ii) any agreement, undertaking, Security Interest or document which is binding on the Holder.

6.3 Survival of warranties and representations

The warranties and representations in this clause 6 survive the termination of this deed.

7 Consequences of breaching this deed

- (a) Without limiting clause 8, if the Holder breaches this deed or the Company believes that a prospective breach of this deed may occur, each of the following applies:
 - (i) the Company may take the steps necessary to enforce the deed, or to rectify the breach, as soon as practicable after becoming aware of the breach or prospective breach;
 - (ii) except in the case of a breach or prospective breach of clause 4, the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or other Dealing in any Escrow Shares; and
 - (iii) except in the case of a breach or prospective breach of clause 4, the Holder will cease to be entitled to any voting rights attaching to the Escrow Shares while the breach continues or for so long as the Company believes a prospective breach of this deed may occur.
- (b) The parties agree that damages would be an insufficient remedy for a breach or prospective breach of this deed by the Holder and the Holder agrees that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's obligations under this deed, without proof of actual damage and without prejudice to any of the Company's other rights or remedies.

8 Cessation of dividends

- (a) The Holder irrevocably waives all dividends and distributions on all Escrow Shares and acknowledges and agrees that all Escrow Shares will cease to be entitled to any dividends or distributions, if any of the following occur:
- (i) the Holder breaches this deed or the Company believes that a prospective breach of this deed by the Holder is likely to occur, other than a breach or prospective breach of clause 4, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach and for so long as the breach continues or the Company believes a prospective breach of this deed is likely to occur;
 - (ii) the Holder breaches clause 4 of this deed or the Company believes that a prospective breach of clause 4 of this deed is likely to occur, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach until the date on which all of the Retained Shares cease to be Escrow Shares; or
 - (iii) the Holder becomes a Leaver, other than a Retiree Leaver, a Relocated Leaver or a Good Leaver, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date on which the Holder becomes a Leaver until the date on which all of the Retained Shares cease to be Escrow Shares.
- (b) The Holder releases, in advance, the Company from all Claims he or she has, or may have had but for this deed, arising out of, in relation to or in connection with, the failure to declare or pay any dividend or distribution with respect to any Escrow Shares in accordance with clause 8(a).
- (c) The Holder undertakes not to make any Claim, or participate in any Claim, against the Company inconsistent with any obligation, acknowledgement, undertaking or agreement arising under clause 7 or clause 8 of this deed, even if any of those obligations, acknowledgements, undertakings or agreements prove to be ineffective for any reason.
- (d) For the avoidance of doubt and without limiting any other provision of this deed, each party agrees that if any of the circumstances described in clause 8(a) exist, no dividends or distributions will be taken to accrue, have accrued or be payable for any purpose for so long as the Escrow Shares are not entitled to be paid any dividends or distributions in accordance with clause 8(a).

9 Notices and other communications

9.1 Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed by the sender (if an individual) or a person duly authorised by the sender; and
- (d) marked for the attention of the person identified or referred to in the Details or Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

9.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 9.1. However, the email:

- (a) must state the first and last name of the sender; and
- (b) must be in plain text format or, if attached to an email, must be an Adobe Portable Document Format (pdf) file.

Communications sent by email are taken to be signed by the named sender.

9.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details or Schedule; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details or Schedule; or
- (c) sent by email to the address set out or referred to in the Details or Schedule; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or email address, then communications must be to that address or email address.

9.4 When effective

Communications take effect from the time they are received or taken to be received under clause 9.5 (whichever happens first) unless a later time is specified.

9.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or

- (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

9.6 Receipt outside business hours

Despite clauses 9.4 and 9.5, if communications are received or taken to be received under clause 9.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

10 General provisions

10.1 Invalid or unenforceable provisions

If a provision of this deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

10.2 Waiver and exercise of rights

- (a) A waiver by a party of a provision or a right under this deed is binding on the party granting the waiver only if it is given in writing and is signed by the party or an officer of the party granting the waiver.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

10.3 Amendment

This deed may be amended only by a document signed by both parties.

10.4 Further assurances

The Holder undertakes to do all things necessary or desirable to effect the transactions contemplated by this deed as expeditiously as possible, including executing, delivering or completing any form, document or instrument necessary or desirable to give effect to any of the transactions contemplated by this deed.

10.5 PPSA further steps

If the Company determines that this deed results in the creation of a PPSA Security Interest, the Holder agrees to do anything (such as obtaining consents,

signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

10.6 Non-merger

The warranties, other representations and undertakings by the parties in this deed are continuing and will not merge or be extinguished on Completion of the Offer.

10.7 Assignment

The Holder must not transfer, assign, create an interest in, or deal in any other way with, any of his or her rights or obligations under this deed without the prior written consent of the Company.

10.8 Entire agreement

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings or agreements and all other communications.

10.9 Remedies

The rights, remedies and powers of the parties under this deed are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

10.10 Inconsistent agreements

If a provision of this deed is inconsistent with a provision of any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and any other person, the provision of this deed prevails.

10.11 Successors and assigns

This deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns and, in the case of the Holder, his or her personal representatives and any trustee, receiver or other person lawfully acting on his or her behalf.

10.12 Approvals and consents

Except where this deed expressly states otherwise, a party or other person referred to in this deed (including the Board) may, in its absolute discretion, give conditionally or unconditionally or withhold any approval, consent, resolution or determination under this deed.

10.13 Counterparts

This deed may be signed in counterparts and all counterparts taken together constitute one document.

10.14 Fractional calculation

If any calculation required to be undertaken under this deed results in a fractional number of Shares, the fractional number will be rounded up to the nearest whole number of Shares.

10.15 Governing law

This deed is governed by the laws of New South Wales.

10.16 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives any claim or objection based on absence of jurisdiction or inconvenient forum.

EXECUTED as a deed

Escrow Deed

Schedule - Holder Details

Holder

Name: 

Address: 

Email: 

Attention: 

Short Term Release Shares 

Long Term Release Shares 

Retained Shares 

Escrow Deed

Signing page

DATED: _____

[Insert execution clauses]

Escrow Deed

Dated May 2013

Virtus Health Limited (ACN 129 643 492) (**Company**)
The **Holder** whose details are set out in the Schedule
The **Controller** whose details are set out in the Schedule

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Escrow Deed

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Escrow Deed

Details

Parties	Company, the Holder and the Controller	
Company	Name	Virtus Health Limited
	ACN	129 643 492
	Address	Level 3, 176 Pacific Highway, Greenwich NSW 2065
	Telephone	02 9425 1722
	Email	info@virtushealth.com.au
	Attention	Company Secretary
Holder	The Holder whose name and address are set out in the Schedule.	
Controller	The Controller whose name and address are set out in the Schedule.	
Recitals	A	The Holder is a shareholder of the Company and the Controller is the ultimate beneficial owner of all of the equity securities in the Holder.
	B	The Holder intends to sell a portion of its Shares pursuant to the Offer. After Completion of the Offer, the Holder will retain ownership of the Escrow Shares and any other Shares not sold in the Offer.
	C	The Holder undertakes to the Company to hold the Escrow Shares pursuant and subject to the terms of this deed.
	D	The Controller undertakes to the Company to hold the Controller Interests pursuant and subject to the terms of this deed.
Governing law	New South Wales	
Date of deed	See signing page	

Escrow Deed

General terms

1 Definitions and interpretation

1.1 Definitions

ART Services means services related to assisted reproductive technology comprising stimulated cycle in vitro fertilisation procedures, frozen embryo transfers and other assisted reproductive services provided that, if the Controller is engaged by QFG, ART Services excludes intra-uterine insemination procedures and donor insemination procedures.

ASIC means the Australian Securities and Investments Commission.

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

ASX Listing Rules means the listing rules of ASX.

ASX Settlement means ASX Settlement Pty Limited (ABN 49 008 504 532).

ASX Settlement Operating Rules means the operating rules of ASX Settlement.

Board means the board of directors of the Company.

Business Day means a business day as defined in the ASX Listing Rules.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Company Termination Rights means the rights of termination for a Group Company under clause 7(a)(i) of the Doctor Contract (or its equivalent provision in any renewed, amended or replaced Doctor Contract).

Competing Clinic means a clinic, laboratory or consulting room which provides ART Services and which is not owned, operated, occupied or utilised by any Group Company.

Completion of the Offer means the completion of the allotment of Shares pursuant to the Offer.

Control means, in respect of a person, the capacity to determine the outcome of decisions in relation to the financial and operating policies of that person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise (and, without limiting the previous words, a person is deemed to Control another person if it holds, directly or indirectly, together with other persons it Controls, the beneficial interest in more than 50% of the total voting rights in the other person) and **Controlled** and **Controlling** have corresponding meanings.

Controller Interests means all Securities, substantial economic interests or other interests in the Escrow Shares and each intermediate entity through which that interest occurs.

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

Deal means:

- (a) sell, assign, transfer or otherwise dispose of;
- (b) agree or offer to sell, assign, transfer or otherwise dispose of;
- (c) enter into any option which, if exercised, enables or requires the relevant security holder to sell, assign, transfer or otherwise dispose of; or
- (d) create or agree to offer to create or permit to be created any Security Interest in,

and **Dealing** has a corresponding meaning.

Doctor means a medical practitioner who is contracted to a Group Company to provide ART Services and in-vitro fertilisation services to the Group.

Doctor Contract means each engagement letter, contractor agreement or similar contract for the provision of services entered into between a Doctor and a Group Company from time to time.

Doctor Termination Rights means the rights of termination for a Doctor under clause 7(a)(ii) of the Doctor Contract (or its equivalent provision in any renewed, amended or replaced Doctor Contract).

Escrow Period means the period commencing on the date on which Shares under the Offer are first quoted on the ASX until the date on which all of the Retained Shares cease to be Escrow Shares in accordance with the definition of Escrow Shares.

Escrow Shares means the Retained Shares, provided that:

- (a) unless released earlier in accordance with paragraph (b) of this definition, a number of Retained Shares equal to one-third of the number of Short Term Release Shares will cease to be Escrow Shares on each of the FY14 Release Date and the FY15 Release Date and any remaining Short Term Release Shares will cease to be Escrow Shares on the FY16 Release Date;
- (b) unless released earlier in accordance with paragraph (a) of this definition, a number of Retained Shares equal to the number of Short Term Release Shares will cease to be Escrow Shares on the date, if any, on which the Controller becomes a Good Leaver;
- (c) a number of Retained Shares equal to the number of Long Term Release Shares will cease to be Escrow Shares on the earliest of:
 - (i) whichever of the following dates is applicable:
 - (A) the second anniversary of the Completion of the Offer if the Controller is 63 years old or older as at the date of this deed or will reach the age of 63 years on or before the second anniversary of the Completion of the Offer; or

- (B) the date on which the Controller reaches the age of 63 years if the Controller is not 63 years old or older as at the date of this deed or will not reach such age on or before the second anniversary of the Completion of the Offer;
 - (ii) the date, if any, on which the Board resolves that such Retained Shares will cease to be Escrow Shares;
 - (iii) the fifth anniversary of the date, if any, on which the Controller becomes a Relocated Leaver; and
 - (iv) the date, if any, on which the Controller ceases to be an employee of, or contractor to, the Group as a result of death, serious disability or permanent incapacity through ill health (as resolved by the Board, acting reasonably); and
- (d) a number of Retained Shares equal to the Long Term Release Shares will cease to be Escrow Shares on the earliest of:
- (i) the date, if any, on which the Controller becomes a Retiree Leaver;
 - (ii) the date, if any, on which the Controller becomes a Good Leaver or a Relocated Leaver; and
 - (iii) the fifth anniversary of the date, if any, on which the Controller becomes a Leaver, other than a Retiree Leaver, a Relocated Leaver or a Good Leaver.

FY14 Release Date means the first trading day in Shares on the financial market conducted by ASX following the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2014.

FY15 Release Date means the first trading day in Shares on the financial market conducted by ASX following the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2015.

FY16 Release Date means the first trading day in Shares on the financial market conducted by ASX following the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2016.

Group means the Company and all of its Subsidiaries from time to time and **Group Company** means any one of them.

Good Leaver means a Leaver who:

- (a) ceases to be an employee of, or contractor to, the Group as a result of death, serious disability or permanent incapacity through ill health (as resolved by the Board, acting reasonably);
- (b) terminates his or her Doctor Contract in accordance with the Doctor Termination Rights;
- (c) the Group, at any time, ceases to engage, other than through the termination by the Company of the then existing Doctor Contract in accordance with the Company Termination Rights; or
- (d) the Board resolves to treat as a Good Leaver.

Holding Lock has the meaning given in section 2 of the ASX Settlement Operating Rules.

Issuer Sponsored Subregister has the meaning given to that term in the settlement rules of ASX Settlement.

Leaver means, with respect to the Controller, the Controller ceases to be contracted to a Group Company.

Long Term Release Shares means the number of "Long Term Release Shares" listed in the Schedule.

Non-Restricted Area means any place not within a 100km radius of any clinic owned, operated, occupied or utilised by any Group Company.

Offer means the initial public offering of Shares and the admission or quotation of those Shares to the quotation system of ASX.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Security Interest means a "security interest" within the meaning of the PPSA.

QFG means Queensland Fertility Group Pty Ltd (ACN 010 514 397).

Region means any State or Territory of the Commonwealth of Australia or any country outside Australia in which a Group Company operates.

Relocated Leaver means a Leaver who:

- (a) terminates his or her Doctor Contract as a result of his or her intention to:
 - (i) relocate on a genuine and permanent basis (as resolved by the Board) to a Non-Restricted Area as at the date of termination of his or her Doctor Contract; and
 - (ii) provide ART Services in such Non-Restricted Area; and
- (b) uses his or her best endeavours to transfer his or her existing ART Services medical practice to another Doctor to the satisfaction of the Board (as resolved by the Board once it is so satisfied).

Retained Shares means the number of "Retained Shares" listed in the Schedule.

Retiree Leaver means a Leaver who becomes a Leaver as a result of retirement from the ART Services industry on a genuine and permanent basis (as resolved by the Board), provided the Leaver uses his or her best endeavours to transfer his or her ART Services medical practice to another Doctor to the satisfaction of the Board (as resolved by the Board once it is so satisfied).

Securities has the meaning given in the ASX Listing Rules.

Security Interest means an interest or power:

- (a) reserved in or over an interest in any securities including any retention of title; or
- (b) created or otherwise arising in or over any interest in any securities under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, but is not limited to:

- (c) any agreement to grant or create any of the above; and
- (d) a PPSA Security Interest.

Share means a fully paid ordinary share in the capital of the Company.

Share Registry means the share registry engaged by the Company to administer and manage its register of members.

Short Term Release Shares means the number of "Short Term Release Shares" listed in the Schedule.

Subsidiary has the meaning given in the Corporations Act.

Takeover Bid means a takeover bid for all Shares under Chapter 6 of the Corporations Act.

Voluntary Escrow Deed means a voluntary escrow deed entered into in connection with the Offer.

1.2 Interpretation

In this deed, unless the context requires another meaning:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a document (including this deed) is a reference to that document as amended, consolidated, supplemented, novated or replaced;
 - (iv) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) a party means a party to this deed;
 - (vi) an item, Recital, clause, provision, Schedule or Annexure is to an item, Recital, clause, provision, Schedule or Annexure of or to this deed;
 - (vii) a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators;
 - (viii) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;

- (ix) time is to prevailing Sydney time; and
- (x) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) headings and the Recitals are for convenience only and do not affect interpretation of this deed;
- (d) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day;
- (e) a warranty, representation, covenant or obligation given or entered into by more than one person binds them severally but not jointly;
- (f) unless otherwise expressly provided in this deed, if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day;
- (g) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (h) the word "law" includes common law, principles of equity and legislation, and a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them; and
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions.

1.3 Compliance with ASX Listing Rules

For so long as the Company is listed on the official list of the ASX:

- (a) notwithstanding anything contained in this deed, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the ASX Listing Rules this deed is deemed not to contain that provision to the extent of the inconsistency.

2 Condition Precedent

The undertakings of the Holder and the Controller pursuant to this deed are conditional upon Completion of the Offer occurring.

3 Escrow

3.1 Holder restrictions

During the Escrow Period the Holder agrees that it will not:

- (a) Deal with;
- (b) Deal in any interest or right in respect of; or
- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Escrow Shares.

3.2 Controller restrictions

During the Escrow Period the Controller agrees that he or she will not:

- (a) Deal with;
- (b) Deal in any interest or right in respect of; or
- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Controller Interests.

3.3 Escrow restrictions

The parties acknowledge and agree that:

- (a) as soon as practicable following the issue or transfer, as applicable, of the Escrow Shares to the Holder or following the Completion of the Offer, as applicable, the Escrow Shares will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company will apply a Holding Lock on the Escrow Shares as soon as practicable after registration of the Escrow Shares on the Issuer Sponsored Subregister and the Holder agrees to the application of the Holding Lock; and
- (c) the Company will do all things necessary to ensure that the Holding Lock is released:
 - (i) to the extent necessary to permit disposals of the Escrow Shares permitted by this deed;
 - (ii) in respect of any Retained Shares that cease to be Escrow Shares in accordance with the definition of Escrow Shares; and
 - (iii) in full at the conclusion of the Escrow Period.

3.4 Notice by Holder

If the Holder becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.1 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.1 during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

3.5 Notice by Controller

If the Controller becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.2 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.2 during the Escrow Period,

he or she must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

3.6 Dividends and voting rights

For the avoidance of doubt, the parties agree that except as provided in clauses 7 and 8, the terms of this deed will have no effect on any rights of the Holder to receive dividends or to exercise voting rights in respect of the Escrow Shares.

3.7 Takeovers, mergers and reorganisations

Clause 3.1 will cease to apply to the extent necessary to allow:

- (a) the Holder to accept an offer made under a Takeover Bid for any of the Escrow Shares, provided that:
 - (i) without limiting clause 3.7(a)(ii), holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have accepted the Takeover Bid; and
 - (ii) the Takeover Bid is unconditional or all conditions to the Takeover Bid have been satisfied or waived;
- (b) the Holder to tender any of the Escrow Shares into a bid acceptance facility established in connection with a Takeover Bid, provided that holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have either accepted the Takeover Bid or tendered (and not withdrawn) their Shares into the bid acceptance facility; or
- (c) the Escrow Shares to be transferred or cancelled as part of a Share buyback or other similar reorganisation, a merger being implemented by way of a scheme of arrangement or an acquisition of all Shares which has received all necessary approvals, including all such necessary approvals by shareholders of the Company and courts,

provided that, if for any reason any or all Escrow Shares are not transferred or cancelled in accordance with a Takeover Bid, scheme of arrangement or other

transaction described in clause 3.7(a), 3.7(b) or 3.7(c), then the Holder agrees that the restrictions applying to the Escrow Shares under this deed (including under clauses 3.1, 3.2 and 3.3) will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Escrow Shares not so transferred or cancelled.

3.8 Controller reorganisation

Clauses 3.1 and 3.2 will cease to apply to the extent necessary to allow a Dealing in Escrow Shares or Controller Interests to enable the Controller to undertake a reorganisation of his or her affairs, subject to:

- (a) the prior consent of the Company in writing;
- (b) the Controller retaining ultimate control of the Escrow Shares; and
- (c) any new holder of the Escrow Shares or Controller Interests agreeing to be bound by a deed in substantially the same terms as this deed.

3.9 Other exceptions

Clauses 3.1 and 3.2 will cease to apply to the extent necessary to allow a Dealing in Escrow Shares or Controller Interests:

- (a) with the prior written approval of the Company;
- (b) pursuant to an order of a court of competent jurisdiction compelling any Escrow Shares or Controller Interests to be disposed of or a Security Interest granted over them; or
- (c) pursuant to a transfer by the personal representatives of the Controller to whomever the Escrow Shares or Controller Interests have been bequeathed, provided that the transferee of the Escrow Shares or Controller Interests has agreed to be bound by a deed in substantially the same terms as this deed in respect of the Escrow Shares or Controller Interests.

4 Restraint

4.1 Restrained activities

The Holder and the Controller severally undertake to the Company that they will not, directly or indirectly, in any capacity and whether alone or with others:

- (a) provide ART Services to a Competing Clinic;
- (b) establish or prepare to establish a Competing Clinic; or
- (c) refer any patient to whom the Controller has provided ART Services at a clinic owned or operated by a Group Company, or with whom the Controller has had dealings at a clinic owned, operated, occupied or utilised by any Group Company, to a Competing Clinic that provides any ART Services which are the same as the ART Services provided at any clinic owned, operated, occupied or utilised by any Group Company, without the Company's prior written consent.

4.2 Non-solicitation

Subject always to the undertakings in clause 4.1:

- (a) the Holder and the Controller severally undertake to the Company that they will not, directly or indirectly, in any capacity and whether alone or with others:
 - (i) solicit, canvass or approach any patient to whom the Controller has provided ART Services at a clinic owned, operated, occupied or utilised by any Group Company, or with whom the Controller has had dealings at a clinic owned or operated by a Group Company, in each case in the 3 year period before the Controller becomes a Leaver, with a view to providing, directly or indirectly, ART Services to that patient; or
 - (ii) induce, help to induce or approach any person who is engaged by a Group Company (whether as an employee or independent contractor or in any other capacity), and with whom the Controller worked in the course of his or her engagement by a Group Company and within the 12 month period prior to the Controller becoming a Leaver, with a view to securing, directly or indirectly, their services in an ART Services business; and
- (b) nothing in this clause 4.2 prevents the Holder or the Controller from:
 - (i) advertising generally to hire staff or advertising the Holder's or the Controller's services;
 - (ii) dealing with any patient who responds to the advertising referred to in clause 4.2(b)(i); or
 - (iii) dealing with any patient who approaches the Controller, other than as a result of solicitation or encouragement by the Holder or the Controller.

4.3 Duration of prohibition

The undertakings in clauses 4.1 and 4.2 begin on the date of this deed and end on the earlier of:

- (a) the date on which the Controller becomes a Good Leaver; or
- (b) the date on which the "Restraint Period", as defined in the Controller's Doctor Contract, ends.

4.4 Geographic application of prohibition

The undertakings in clauses 4.1 and 4.2 apply only if the activity prohibited by clause 4.1 or 4.2 occurs within:

- (a) if the Controller is based at a clinic in the greater metropolitan area of a Region's capital city, the greater metropolitan area of that Region's capital city, or otherwise a 100km radius from the clinic owned, operated, occupied or utilised by any Group Company in which the Controller provides ART Services while engaged by a Group Company; or
- (b) a radius of 12 kilometres from each of the clinics owned, operated, occupied or utilised by any Group Company in which the Controller provides ART Services while engaged by a member of the Group.

4.5 Interpretation

Clauses 4.1, 4.2, 4.3 and 4.4 have effect together as if they consisted of separate provisions, each being severable from the other. Each separate provision results

from combining each undertaking in clause 4.1 or 4.2, with the relevant period in clause 4.3, and combining each of those combinations with each area in clause 4.4. If any of those separate provisions is invalid or unenforceable for any reason, the invalidity or unenforceability does not affect the validity or enforceability of any of the other separate provisions or other combinations of the separate provisions of clauses 4.1, 4.2, 4.3 and 4.4.

4.6 Exceptions

This clause 4 does not restrict the Holder or the Controller from:

- (a) performing any employment or consultancy agreement with, or providing any services to, the Group;
- (b) holding an appointment and performing the requirements of that appointment at a public hospital, which may or may not involve providing or performing ART Services;
- (c) performing obstetric and gynaecological services or any other services which are not ART Services;
- (d) continuing to treat Current Patients (as defined in the Controller's Doctor Contract) in accordance with the terms of the relevant Doctor Contract;
- (e) referring a patient, who has been referred to the Controller for a second opinion or for an intervention, back to the medical practitioner from whom that patient was initially referred;
- (f) referring a patient to a clinician outside the Group for a second opinion, provided the Controller has first used reasonable endeavours, consistent with the Controller's professional obligations, to refer that person to an appropriate clinician within the Group;
- (g) holding less than 5% of the shares of a listed company;
- (h) holding Shares or other securities in the Company; or
- (i) if the Controller is engaged by QFG, performing intra-uterine insemination and donor insemination procedures.

4.7 Acknowledgments

The Holder and the Controller acknowledge that:

- (a) all the prohibitions and restrictions in this clause 4 are reasonable in the circumstances and necessary to protect the goodwill of the business of the Company and the other Group Companies;
- (b) as a result of their association with the Group, including the Holder's holding of Shares, they have or will become possessed of secret and confidential information relating to the trade secrets and business and finances of the Group and its clients and customers, and the disclosure of such information could materially harm the Group and they therefore agree that the undertakings contained in this clause 4 are reasonable and necessary for the protection of the business of the Group and its goodwill;
- (c) damages are not an adequate remedy for any breach of this clause 4;
- (d) the Company may apply for injunctive relief if:

- (i) the Holder or the Controller breaches or threatens to breach this clause 4; or
- (ii) the Company believes the Holder or the Controller is likely to breach this clause 4;
- (e) the Controller Controls or is otherwise affiliated with the Holder and will be obtaining, or has obtained, a benefit from the Holder's holding of Shares and such benefit is consideration for the Controller's undertakings in this clause 4; and
- (f) the Controller's Doctor Contract contains prohibitions and restrictions on the Controller poaching or soliciting patients or staff of the Group and those prohibitions and restrictions are not limited in any way by this clause 4.

4.8 Interaction

For the avoidance of doubt, nothing in clause 3 or in any definition used in clause 3, including any release of any Escrow Shares and whether or not a Doctor is a Good Leaver or a Relocated Leaver, limits this clause 4.

5 Termination

- (a) This deed terminates with immediate effect and without the action of any party upon the later of:
 - (i) the date on which all of the Retained Shares cease to be Escrow Shares; and
 - (ii) the date on which the undertakings in clauses 4.1 and 4.2 cease to have any effect in accordance with clause 4.3,

provided that this deed will terminate with immediate effect and without the action of any party if Completion of the Offer has not occurred by 31 December 2013.
- (b) The Company will procure that the Share Registry releases the Holding Lock in respect of the Escrow Shares, if still in effect, as soon as possible following termination of this deed.

6 Warranties and acknowledgement

6.1 Giving of warranties

Each of the warranties and representations in this clause 6 is given by the Holder or the Controller, as applicable, in favour of the Company:

- (a) as at the date of this deed, unless a later date is specified in clause 6.2 or 6.3; and
- (b) from the applicable date under clause 6.1(a), at all times until expiry of the Escrow Period.

The warranties and representations in this clause 6 are given in respect of any and all Escrow Shares from time to time during the Escrow Period.

6.2 Holder warranties and representations

The Holder warrants and represents the following:

- (a) prior to the Escrow Period it has not done, or omitted to do, any act which would result in a Dealing in Escrow Shares which will take effect during the Escrow Period;
- (b) from the date of Completion of the Offer, the Escrow Shares are free from all Security Interests and other third party interests or rights;
- (c) it has full power and authority, without the consent of any other person, to enter into and perform its obligations under this deed (including, if the Holder has entered into this deed as a trustee (**Trustee**), under the trust deed for the relevant trust (**Trust**));
- (d) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes a legal, valid and binding obligation on it and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and, to the best of its knowledge and belief, there is no proposal to remove it as trustee of the Trust;
- (g) if the Holder is a Trustee:
 - (i) the Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way;
 - (ii) the assets of the Trust are sufficient to satisfy that right in full and the Holder has not released or disposed of its equitable lien over those Trust assets; and
 - (iii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (h) the execution, delivery and performance by the Holder of this deed does not and will not violate, breach or result in a contravention of:
 - (i) any applicable law, regulation or authorisation;
 - (ii) its constitution or other constituent documents, if any, (and, if the Holder is a Trustee, the trust deed for the Trust); or
 - (iii) any agreement, undertaking, Security Interest or document which is binding on the Holder.

6.3 Controller warranties and representations

The Controller warrants and represents the following:

- (a) prior to the Escrow Period he or she has not done, or omitted to do, any act which would result in a Dealing in any Controller Interests which will take effect during the Escrow Period;

- (b) the Controller Interests are free from all Security Interests and other third party interests or rights;
- (c) he or she has full power and authority, without the consent of any other person, to enter into and perform his or her obligations under this deed;
- (d) he or she has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes legal, valid and binding obligations on him or her and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and there is no proposal to remove the Holder as trustee of the Trust;
- (g) if the Holder is a Trustee:
 - (i) the Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full; and
 - (ii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (h) the execution, delivery and performance by the Controller of this deed does not and will not violate, breach or result in a contravention of:
 - (i) any applicable law, regulation or authorisation; or
 - (ii) any agreement, undertaking, Security Interest or document which is binding on the Controller.

6.4 Survival of warranties and representations

The warranties and representations in this clause 6 survive the termination of this deed.

7 Consequences of breaching this deed

- (a) Without limiting clause 8, if the Holder or the Controller breaches this deed or the Company believes that a prospective breach of this deed may occur, each of the following applies:
 - (i) the Company may take the steps necessary to enforce the deed, or to rectify the breach, as soon as practicable after becoming aware of the breach or prospective breach;
 - (ii) except in the case of a breach or prospective breach of clause 4, the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or other Dealing in any Escrow Shares; and
 - (iii) except in the case of a breach or prospective breach of clause 4, the Holder will cease to be entitled to any voting rights attaching to the Escrow Shares while the breach continues or for so long

as the Company believes a prospective breach of this deed may occur.

- (b) The parties agree that damages would be an insufficient remedy for a breach or prospective breach of this deed by the Holder or the Controller and each of the Holder and Controller agrees that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's or Controller's (as applicable) obligations under this deed, without proof of actual damage and without prejudice to any of the Company's other rights or remedies.

8 Cessation of dividends

- (a) Each of the Holder and the Controller irrevocably waive all dividends and distributions on all Escrow Shares and acknowledge and agree that all Escrow Shares will cease to be entitled to any dividends or distributions, if any of the following occur:
 - (i) the Holder or the Controller breaches this deed or the Company believes that a prospective breach of this deed by the Holder or the Controller is likely to occur, other than a breach or prospective breach of clause 4, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach and for so long as the breach continues or the Company believes a prospective breach of this deed is likely to occur;
 - (ii) the Holder or the Controller breaches clause 4 of this deed or the Company believes that a prospective breach of clause 4 of this deed is likely to occur, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach until the date on which all of the Retained Shares cease to be Escrow Shares; or
 - (iii) the Controller becomes a Leaver, other than a Retiree Leaver, a Relocated Leaver or a Good Leaver, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date on which the Controller becomes a Leaver until the date on which all of the Retained Shares cease to be Escrow Shares.
- (b) The Holder and the Controller release, in advance, the Company from all Claims either of them has, or may have had but for this deed, arising out of, in relation to or in connection with, the failure to declare or pay any dividend or distribution with respect to any Escrow Shares in accordance with clause 8(a).
- (c) The Holder and the Controller undertake not to make any Claim, or participate in any Claim, against the Company inconsistent with any obligation, acknowledgement, undertaking or agreement arising under clause 7 or clause 8 of this deed, even if any of those obligations, acknowledgements, undertakings or agreements prove to be ineffective for any reason.

- (d) For the avoidance of doubt and without limiting any other provision of this deed, each party agrees that if any of the circumstances described in clause 8(a) exist, no dividends or distributions will be taken to accrue, have accrued or be payable for any purpose for so long as the Escrow Shares are not entitled to be paid any dividends or distributions in accordance with clause 8(a).

9 Capacity

If the Holder has entered into this deed as a Trustee:

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 9 but subject to clause 9(c), the Holder enters into this deed only in its capacity as Trustee of the Trust and in no other capacity. A liability arising under or in connection with this deed can be enforced against the Holder only to the extent which it can be satisfied out of the property of the Trust for which the Holder is actually indemnified for the liability. The Holder will exercise its rights of indemnification in order to satisfy its obligations under this deed;
- (b) subject to clause 9(c), a party to this deed may not sue the Holder in any capacity other than as Trustee in respect of the Trust, including seeking the appointment to the Holder of a receiver (except in relation to the property of the Trust), a liquidator, administrator or any similar person; and
- (c) the provisions of this clause 9 will not apply to any obligation or liability of the Holder to the extent that it is not satisfied because under the Trust's relevant trust deed or by operation of law, there is a reduction in the extent, or elimination of, the Holder's right of indemnification out of the assets of the Trust, or the right does not exist at all, as a result of the Holder's fraud, negligence, improper performance of duties or breach of trust.

10 Notices and other communications

10.1 Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed by the sender (if an individual) or a person duly authorised by the sender; and
- (d) marked for the attention of the person identified or referred to in the Details or Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

10.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 10.1. However, the email:

- (a) must state the first and last name of the sender; and
- (b) must be in plain text format or, if attached to an email, must be an Adobe Portable Document Format (pdf) file.

Communications sent by email are taken to be signed by the named sender.

10.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details or Schedule; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details or Schedule; or
- (c) sent by email to the address set out or referred to in the Details or Schedule; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or email address, then communications must be to that address or email address.

10.4 When effective

Communications take effect from the time they are received or taken to be received under clause 10.5 (whichever happens first) unless a later time is specified.

10.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

10.6 Receipt outside business hours

Despite clauses 10.4 and 10.5, if communications are received or taken to be received under clause 10.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

11 General provisions

11.1 Invalid or unenforceable provisions

If a provision of this deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

11.2 Waiver and exercise of rights

- (a) A waiver by a party of a provision or a right under this deed is binding on the party granting the waiver only if it is given in writing and is signed by the party or an officer of the party granting the waiver.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

11.3 Amendment

This deed may be amended only by a document signed by all parties.

11.4 Further assurances

The Holder and the Controller each undertake to, and to procure that all persons under their respective Control, do all things necessary or desirable to effect the transactions contemplated by this deed as expeditiously as possible, including executing, delivering or completing any form, document or instrument necessary or desirable to give effect to any of the transactions contemplated by this deed.

11.5 PPSA further steps

If the Company determines that this deed results in the creation of a PPSA Security Interest, the Holder and the Controller each agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

11.6 Non-merger

The warranties, other representations and undertakings by the parties in this deed are continuing and will not merge or be extinguished on Completion of the Offer.

11.7 Assignment

The Holder and the Controller must not transfer, assign, create an interest in, or deal in any other way with, any of their respective rights or obligations under this deed without the prior written consent of the other parties.

11.8 Entire agreement

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings or agreements and all other communications.

11.9 Remedies

The rights, remedies and powers of the parties under this deed are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

11.10 Inconsistent agreements

If a provision of this deed is inconsistent with a provision of any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and the Controller, or between the Holder or the Controller and any other person, the provision of this deed prevails.

11.11 Successors and assigns

This deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns and, in the case of the Controller, his or her personal representatives and any trustee, receiver or other person lawfully acting on his or her behalf.

11.12 Approvals and consents

Except where this deed expressly states otherwise, a party or other person referred to in this deed (including the Board) may, in its absolute discretion, give conditionally or unconditionally or withhold any approval, consent, resolution or determination under this deed.

11.13 Counterparts

This deed may be signed in counterparts and all counterparts taken together constitute one document.

11.14 Fractional calculation

If any calculation required to be undertaken under this deed results in a fractional number of Shares, the fractional number will be rounded up to the nearest whole number of Shares.

11.15 Governing law

This deed is governed by the laws of New South Wales.

11.16 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives any claim or objection based on absence of jurisdiction or inconvenient forum.

EXECUTED as a deed

Escrow Deed

Schedule - Holder and Controller Details

Holder

Name: 

Address: 

Email: 

Attention: 

Controller

Name: 

Address: 

Email: 

Short Term Release Shares 

Long Term Release Shares 

Retained Shares 

Escrow Deed

Signing page

DATED: _____

[Insert execution clauses]

Escrow Deed

Dated May 2013

Virtus Health Limited (ACN 129 643 492) (**Company**)
The **Holder** whose details are set out in the Schedule

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Escrow Deed

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Escrow Deed

Details

Parties	Company and the Holder	
Company	Name	Virtus Health Limited
	ACN	129 643 492
	Address	Level 3, 176 Pacific Highway, Greenwich NSW 2065
	Telephone	02 9425 1722
	Email	info@virtushealth.com.au
	Attention	Company Secretary
Holder	The Holder whose name and address are set out in the Schedule.	
Recitals	A	The Holder is a shareholder of the Company.
	B	The Holder intends to sell a portion of his or her Shares pursuant to the Offer. After Completion of the Offer, the Holder will retain ownership of the Escrow Shares and any other Shares not sold in the Offer.
	C	The Holder undertakes to the Company to hold the Escrow Shares pursuant and subject to the terms of this deed.
Governing law	New South Wales	
Date of deed	See signing page	

Escrow Deed

General terms

1 Definitions and interpretation

1.1 Definitions

ART Services means services related to assisted reproductive technology comprising stimulated cycle in vitro fertilisation procedures, frozen embryo transfers and other assisted reproductive services.

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

ASX Listing Rules means the listing rules of ASX.

ASX Settlement means ASX Settlement Pty Limited (ABN 49 008 504 532).

ASX Settlement Operating Rules means the operating rules of ASX Settlement.

Board means the board of directors of the Company.

Business Day means a business day as defined in the ASX Listing Rules.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Completion of the Offer means the completion of the allotment of Shares pursuant to the Offer.

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

Deal means:

- (a) sell, assign, transfer or otherwise dispose of;
- (b) agree or offer to sell, assign, transfer or otherwise dispose of;
- (c) enter into any option which, if exercised, enables or requires the relevant security holder to sell, assign, transfer or otherwise dispose of; or
- (d) create or agree to offer to create or permit to be created any Security Interest in,

and **Dealing** has a corresponding meaning.

Doctor means a medical practitioner who is contracted to a Group Company to provide ART Services and in-vitro fertilisation services to the Group.

Escrow Period means the period commencing on the date on which Completion of the Offer occurs and ending on the first trading day in Shares on ASX following

the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2014.

Escrow Shares means the number of "Escrow Shares" listed in the Schedule.

Group means the Company and all of its Subsidiaries from time to time and **Group Company** means any one of them.

Holding Lock has the meaning given in section 2 of the ASX Settlement Operating Rules.

Issuer Sponsored Subregister has the meaning given to that term in the settlement rules of ASX Settlement.

Offer means the initial public offering of Shares and the admission or quotation of those Shares to the quotation system of ASX.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Security Interest means a "security interest" within the meaning of the PPSA.

Restricted Business means any business or activity which competes with or is substantially similar to the business of the Company or any other Group Company with which the Holder has been involved and/or for which the Holder has performed duties during the 12 month period immediately before the Termination Date.

Restricted Period means the period of the Holder's employment with the Company or other Group Company (as applicable) and the period of 12 months following the Termination Date.

Restricted Territory means any state or territory of Australia or region of New Zealand in which the Group operates as at the Termination Date and includes any state or territory of Australia or region of New Zealand in which, at any time in the 12 months prior to the Termination Date, the Group has actively sought to establish or acquire an entity or business which will form part of the Group.

Securities has the meaning given in the ASX Listing Rules.

Security Interest means an interest or power:

- (a) reserved in or over an interest in any securities including, any retention of title; or
- (b) created or otherwise arising in or over any interest in any securities under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, but is not limited to:

- (c) any agreement to grant or create any of the above; and
- (d) a PPSA Security Interest.

Share means a fully paid ordinary share in the capital of the Company.

Share Registry means the share registry engaged by the Company to administer and manage its register of members.

Subsidiary has the meaning given in the Corporations Act.

Supplier means any person, firm, company or organisation who is in the business of supplying fertility related services or products, specialised diagnostics and/or day hospital services.

Takeover Bid means a takeover bid for all Shares under Chapter 6 of the Corporations Act.

Termination Date means the date of termination of the Holder's employment with the Company or other Group Company (as applicable).

Voluntary Escrow Deed means a voluntary escrow deed entered into in connection with the Offer.

1.2 Interpretation

In this deed, unless the context requires another meaning:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a document (including this deed) is a reference to that document as amended, consolidated, supplemented, novated or replaced;
 - (iv) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) a party means a party to this deed;
 - (vi) an item, Recital, clause, provision, Schedule or Annexure is to an item, Recital, clause, provision, Schedule or Annexure of or to this deed;
 - (vii) a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators;
 - (viii) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
 - (ix) time is to prevailing Sydney time; and
 - (x) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (c) headings and the Recitals are for convenience only and do not affect interpretation of this deed;
- (d) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day;
- (e) a warranty, representation, covenant or obligation given or entered into by more than one person binds them severally but not jointly;
- (f) unless otherwise expressly provided in this deed, if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day;
- (g) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (h) the word "law" includes common law, principles of equity and legislation, and a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them; and
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions.

1.3 Compliance with ASX Listing Rules

For so long as the Company is listed on the official list of the ASX:

- (a) notwithstanding anything contained in this deed, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the ASX Listing Rules this deed is deemed not to contain that provision to the extent of the inconsistency.

2 Condition Precedent

The undertakings of the Holder pursuant to this deed are conditional upon Completion of the Offer occurring.

3 Escrow

3.1 Holder restrictions

During the Escrow Period the Holder agrees that it will not:

- (a) Deal with;
- (b) Deal in any interest or right in respect of; or
- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Escrow Shares.

3.2 Escrow restrictions

The parties acknowledge and agree that:

- (a) as soon as practicable following the issue or transfer, as applicable, of the Escrow Shares to the Holder or following the Completion of the Offer, as applicable, the Escrow Shares will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company will apply a Holding Lock on the Escrow Shares as soon as practicable after registration of the Escrow Shares on the Issuer Sponsored Subregister and the Holder agrees to the application of the Holding Lock; and
- (c) the Company will do all things necessary to ensure that the Holding Lock is released:
 - (i) to the extent necessary to permit disposals of the Escrow Shares permitted by this deed; and
 - (ii) in full at the conclusion of the Escrow Period.

3.3 Notice by Holder

If the Holder becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.1 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.1 during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

3.4 Dividends and voting rights

For the avoidance of doubt, the parties agree that except as provided in clauses 7 and 8, the terms of this deed will have no effect on any rights of the Holder to receive dividends or to exercise voting rights in respect of the Escrow Shares.

3.5 Takeovers, mergers and reorganisations

Clause 3.1 will cease to apply to the extent necessary to allow:

- (a) the Holder to accept an offer made under a Takeover Bid for any of the Escrow Shares, provided that:
 - (i) without limiting clause 3.5(a)(ii), holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have accepted the Takeover Bid; and
 - (ii) the Takeover Bid is unconditional or all conditions to the Takeover Bid have been satisfied or waived;
- (b) the Holder to tender any of the Escrow Shares into a bid acceptance facility established in connection with a Takeover Bid, provided that holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have either accepted the Takeover Bid or tendered (and not withdrawn) their Shares into the bid acceptance facility; or
- (c) the Escrow Shares to be transferred or cancelled as part of a Share buyback or other similar reorganisation, a merger being implemented by way of a scheme of arrangement or an acquisition of all Shares which has received all necessary approvals, including all such necessary approvals by shareholders of the Company and courts,

provided that, if for any reason any or all Escrow Shares are not transferred or cancelled in accordance with a Takeover Bid, scheme of arrangement or other transaction described in clause 3.5(a), 3.5(b) or 3.5(c), then the Holder agrees that the restrictions applying to the Escrow Shares under this deed (including under clauses 3.1 and 3.2) will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Escrow Shares not so transferred or cancelled.

3.6 Other exceptions

Clause 3.1 will cease to apply to the extent necessary to allow a Dealing in Escrow Shares:

- (a) with the prior written approval of the Company;
- (b) pursuant to an order of a court of competent jurisdiction compelling any Escrow Shares to be disposed of or a Security Interest granted over them; or
- (c) pursuant to a transfer by the personal representatives of the Holder to whomever the Escrow Shares have been bequeathed, provided that the transferee of the Escrow Shares has agreed to be bound by a deed in substantially the same terms as this deed in respect of the Escrow Shares.

4 Restraint

4.1 Non-competition undertaking

- (a) The Holder must not (either personally or through any other entity), without the Company's prior written consent, be employed or engaged in any capacity, provide services to, or be otherwise involved or interested in any Restricted Business in the Restricted Territory during the Restricted Period.
- (b) Nothing in this clause 4.1 prevents the Holder from being a shareholder in a company whose shares are quoted on the ASX and of which the

Holder holds less than 5% of the issued capital even though such company is engaged in any Restricted Business.

4.2 Non-solicitation undertaking

- (a) During the Restricted Period, the Holder must not (either personally, directly or indirectly or through any entity) and whether on the Holder's own account or for any other party:
 - (i) solicit or endeavour or attempt to solicit from the Company or the Group the business or services of any business, person, firm, company or organisation who was a customer or Supplier of the Company or the Group (including any business in the process of being engaged as such a customer or Supplier) and whom the Holder had dealings with or knowledge of during the period of 12 months immediately prior to the Termination Date;
 - (ii) accept the business of any person, firm, company or organisation who is a client or Supplier (or who was in the process of being engaged as a client or Supplier) of the Company or Group and with whom the Holder had dealings with or knowledge of during the period of 12 months immediately prior to the Termination Date; or
 - (iii) entice away or endeavour to entice away from the Company or the Group any employee, officer, contractor (for the avoidance of doubt, including any Doctor) or agent of the Company or another Group Company or anyone who was at any time during the period of 12 months immediately prior to the Termination Date an employee, contractor (for the avoidance of doubt, including any Doctor), or agent of the Company or another Group Company.
- (b) Nothing in this clause 4.2 prevents the Holder from soliciting or accepting the business or services of any person, firm, company or organisation who is a Supplier (or who was in the process of being engaged as a Supplier) of the Company or Group if such actions do not adversely effect the provision of business or services by that Supplier to the Company or the Group.

4.3 Severability

If clauses 4.1 and 4.2 are judged to go beyond what is reasonable in the circumstances and necessary to protect the legitimate interests of the Company but would be judged reasonable and necessary if any activity or any part of the Restricted Business, Restricted Period or Restricted Territory were deleted or reduced, then clauses 4.1 and/or 4.2 (whichever is applicable) apply with that part deleted or reduced by the minimum amount necessary to make clauses 4.1 or 4.2 (whichever is applicable) reasonable in the circumstances.

4.4 Trade marks and names

The Holder undertakes that he or she will not at any time following the Termination Date use a logo, symbol, trade mark, company name, domain name or business name substantially identical or deceptively similar to such names owned or used by the Company or the Group.

4.5 Acknowledgment

The Holder acknowledges and agrees that:

- (a) in view of his or her position within the Company and the Group, the relationships he or she will develop with the Company's customers and employees and the commercially sensitive knowledge about the Company, its products and its business that he or she will acquire during the course of his or her employment with the Company, that the restrictions in this clause 4 are reasonable in the circumstances and necessary to protect the business interests and goodwill of the Company;
- (b) a breach by him or her of the restrictions in this clause 4 will result in irreparable harm to the Company; and
- (c) damages may not be a sufficient remedy for the Company for any breach of this clause 4 and the Company is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Holder of this clause 4, in addition to any other remedies available to the Company at law or in equity.

5 Termination

- (a) This deed terminates with immediate effect and without the action of any party upon the later of:
 - (i) the end of the Escrow Period; and
 - (ii) the date on which the undertakings in clauses 4.1 and 4.2 cease to have any effect,provided that this deed will terminate with immediate effect and without the action of any party if Completion of the Offer has not occurred by 31 December 2013.
- (b) The Company will procure that the Share Registry releases the Holding Lock in respect of the Escrow Shares, if still in effect, as soon as possible following termination of this deed.

6 Warranties and acknowledgement

6.1 Giving of warranties

Each of the warranties and representations in this clause 6 is given by the Holder in favour of the Company:

- (a) as at the date of this deed, unless a later date is specified in clause 6.2; and
- (b) from the applicable date under clause 6.1(a), at all times until expiry of the Escrow Period.

The warranties and representations in this clause 6 are given in respect of any and all Escrow Shares from time to time during the Escrow Period.

6.2 Holder warranties and representations

The Holder warrants and represents the following:

- (a) prior to the Escrow Period he or she has not done, or omitted to do, any act which would result in a Dealing in Escrow Shares which will take effect during the Escrow Period;
- (b) from the date of Completion of the Offer, the Escrow Shares are free from all Security Interests and other third party interests or rights;
- (c) he or she has full power and authority, without the consent of any other person, to enter into and perform his or her obligations under this deed;
- (d) he or she has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes a legal, valid and binding obligation on him or her and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) the execution, delivery and performance by the Holder of this deed does not and will not violate, breach or result in a contravention of:
 - (i) any applicable law, regulation or authorisation; or
 - (ii) any agreement, undertaking, Security Interest or document which is binding on the Holder.

6.3 Survival of warranties and representations

The warranties and representations in this clause 6 survive the termination of this deed.

7 Consequences of breaching this deed

- (a) Without limiting clause 8, if the Holder breaches this deed or the Company believes that a prospective breach of this deed may occur, each of the following applies:
 - (i) the Company may take the steps necessary to enforce the deed, or to rectify the breach, as soon as practicable after becoming aware of the breach or prospective breach;
 - (ii) except in the case of a breach or prospective breach of clause 4, the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or other Dealing in any Escrow Shares; and
 - (iii) except in the case of a breach or prospective breach of clause 4, the Holder will cease to be entitled to any voting rights attaching to the Escrow Shares while the breach continues or for so long as the Company believes a prospective breach of this deed may occur.
- (b) The parties agree that damages would be an insufficient remedy for a breach or prospective breach of this deed by the Holder and the Holder agrees that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's obligations under this deed, without proof of actual damage and without prejudice to any of the Company's other rights or remedies.

8 Cessation of dividends

- (a) The Holder irrevocably waives all dividends and distributions on all Escrow Shares and acknowledges and agrees that all Escrow Shares will cease to be entitled to any dividends or distributions, if any of the following occur:
 - (i) the Holder breaches this deed or the Company believes that a prospective breach of this deed by the Holder is likely to occur, other than a breach or prospective breach of clause 4, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach and for so long as the breach continues or the Company believes a prospective breach of this deed is likely to occur; or
 - (ii) the Holder breaches clause 4 of this deed or the Company believes that a prospective breach of clause 4 of this deed is likely to occur, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach until the end of the Escrow Period.
- (b) The Holder releases, in advance, the Company from all Claims he or she has, or may have had but for this deed, arising out of, in relation to or in connection with, the failure to declare or pay any dividend or distribution with respect to any Escrow Shares in accordance with clause 8(a).
- (c) The Holder undertakes not to make any Claim, or participate in any Claim, against the Company inconsistent with any obligation, acknowledgement, undertaking or agreement arising under clause 7 or clause 8 of this deed, even if any of those obligations, acknowledgements, undertakings or agreements prove to be ineffective for any reason.
- (d) For the avoidance of doubt and without limiting any other provision of this deed, each party agrees that if any of the circumstances described in clause 8(a) exist, no dividends or distributions will be taken to accrue, have accrued or be payable for any purpose for so long as the Escrow Shares are not entitled to be paid any dividends or distributions in accordance with clause 8(a).

9 Notices and other communications

9.1 Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed by the sender (if an individual) or a person duly authorised by the sender; and

- (d) marked for the attention of the person identified or referred to in the Details or Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

9.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 9.1. However, the email:

- (a) must state the first and last name of the sender; and
- (b) must be in plain text format or, if attached to an email, must be an Adobe Portable Document Format (pdf) file.

Communications sent by email are taken to be signed by the named sender.

9.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details or Schedule; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details or Schedule; or
- (c) sent by email to the address set out or referred to in the Details or Schedule; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or email address, then communications must be to that address or email address.

9.4 When effective

Communications take effect from the time they are received or taken to be received under clause 9.5 (whichever happens first) unless a later time is specified.

9.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

9.6 Receipt outside business hours

Despite clauses 9.4 and 9.5, if communications are received or taken to be received under clause 9.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

10 General provisions

10.1 Invalid or unenforceable provisions

If a provision of this deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

10.2 Waiver and exercise of rights

- (a) A waiver by a party of a provision or a right under this deed is binding on the party granting the waiver only if it is given in writing and is signed by the party or an officer of the party granting the waiver.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

10.3 Amendment

This deed may be amended only by a document signed by both parties.

10.4 Further assurances

The Holder undertakes to do all things necessary or desirable to effect the transactions contemplated by this deed as expeditiously as possible, including executing, delivering or completing any form, document or instrument necessary or desirable to give effect to any of the transactions contemplated by this deed.

10.5 PPSA further steps

If the Company determines that this deed results in the creation of a PPSA Security Interest, the Holder agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;

- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

10.6 Non-merger

The warranties, other representations and undertakings by the parties in this deed are continuing and will not merge or be extinguished on Completion of the Offer.

10.7 Assignment

The Holder must not transfer, assign, create an interest in, or deal in any other way with, any of his or her rights or obligations under this deed without the prior written consent of the Company.

10.8 Entire agreement

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings or agreements and all other communications.

10.9 Remedies

The rights, remedies and powers of the parties under this deed are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

10.10 Inconsistent agreements

If a provision of this deed is inconsistent with a provision of any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and any other person, the provision of this deed prevails.

10.11 Successors and assigns

This deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns and, in the case of the Holder, his or her personal representatives and any trustee, receiver or other person lawfully acting on his or her behalf.

10.12 Approvals and consents

Except where this deed expressly states otherwise, a party or other person referred to in this deed (including the Board) may, in its absolute discretion, give conditionally or unconditionally or withhold any approval, consent, resolution or determination under this deed.

10.13 Counterparts

This deed may be signed in counterparts and all counterparts taken together constitute one document.

10.14 Governing law

This deed is governed by the laws of New South Wales.

10.15 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives any claim or objection based on absence of jurisdiction or inconvenient forum.

EXECUTED as a deed

Escrow Deed

Schedule - Holder Details

Holder

Name: 

Address: 

Email: 

Attention: 

Escrow Shares 

Escrow Deed

Signing page

DATED: _____

[Insert execution clauses]

Escrow Deed

Dated May 2013

Virtus Health Limited (ACN 129 643 492) (**Company**)
The **Holder** whose details are set out in the Schedule
The **Controller** whose details are set out in the Schedule

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Escrow Deed

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Escrow Deed

Details

Parties	Company, the Holder and the Controller	
Company	Name	Virtus Health Limited
	ACN	129 643 492
	Address	Level 3, 176 Pacific Highway, Greenwich NSW 2065
	Telephone	02 9425 1722
	Email	info@virtushealth.com.au
	Attention	Company Secretary
Holder	The Holder whose name and address are set out in the Schedule.	
Controller	The Controller whose name and address are set out in the Schedule.	
Recitals	A	The Holder is a shareholder of the Company and the Controller is the ultimate beneficial owner of all of the equity securities in the Holder.
	B	The Holder intends to sell a portion of its Shares pursuant to the Offer. After Completion of the Offer, the Holder will retain ownership of the Escrow Shares and any other Shares not sold in the Offer.
	C	The Holder undertakes to the Company to hold the Escrow Shares pursuant and subject to the terms of this deed.
	D	The Controller undertakes to the Company to hold the Controller Interests pursuant and subject to the terms of this deed.
Governing law	New South Wales	
Date of deed	See signing page	

Escrow Deed

General terms

1 Definitions and interpretation

1.1 Definitions

ART Services means services related to assisted reproductive technology comprising stimulated cycle in vitro fertilisation procedures, frozen embryo transfers and other assisted reproductive services.

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

ASX Listing Rules means the listing rules of ASX.

ASX Settlement means ASX Settlement Pty Limited (ABN 49 008 504 532).

ASX Settlement Operating Rules means the operating rules of ASX Settlement.

Board means the board of directors of the Company.

Business Day means a business day as defined in the ASX Listing Rules.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Completion of the Offer means the completion of the allotment of Shares pursuant to the Offer.

Control means, in respect of a person, the capacity to determine the outcome of decisions in relation to the financial and operating policies of that person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise (and, without limiting the previous words, a person is deemed to Control another person if it holds, directly or indirectly, together with other persons it Controls, the beneficial interest in more than 50% of the total voting rights in the other person) and **Controlled** and **Controlling** have corresponding meanings.

Controller Interests means all Securities, substantial economic interests or other interests in the Escrow Shares and each intermediate entity through which that interest occurs.

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

Deal means:

- (a) sell, assign, transfer or otherwise dispose of;
- (b) agree or offer to sell, assign, transfer or otherwise dispose of;

- (c) enter into any option which, if exercised, enables or requires the relevant security holder to sell, assign, transfer or otherwise dispose of; or
- (d) create or agree to offer to create or permit to be created any Security Interest in,

and **Dealing** has a corresponding meaning.

Doctor means a medical practitioner who is contracted to a Group Company to provide ART Services and in-vitro fertilisation services to the Group.

Escrow Period means the period commencing on the date on which Completion of the Offer occurs and ending on the first trading day in Shares on ASX following the public announcement by the Company of its preliminary final report with respect to the financial year ending 30 June 2014.

Escrow Shares means the number of "Escrow Shares" listed in the Schedule.

Group means the Company and all of its Subsidiaries from time to time and **Group Company** means any one of them.

Holding Lock has the meaning given in section 2 of the ASX Settlement Operating Rules.

Issuer Sponsored Subregister has the meaning given to that term in the settlement rules of ASX Settlement.

Offer means the initial public offering of Shares and the admission or quotation of those Shares to the quotation system of ASX.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Security Interest means a "security interest" within the meaning of the PPSA.

Restricted Business means any business or activity which competes with or is substantially similar to the business of the Company or any other Group Company with which the Controller has been involved and/or for which the Controller has performed duties during the 12 month period immediately before the Termination Date.

Restricted Period means the period of the Controller's employment with the Company or other Group Company (as applicable) and the period of 12 months following the Termination Date.

Restricted Territory means any state or territory of Australia or region of New Zealand in which the Group operates as at the Termination Date and includes any state or territory of Australia or region of New Zealand in which, at any time in the 12 months prior to the Termination Date, the Group has actively sought to establish or acquire an entity or business which will form part of the Group.

Securities has the meaning given in the ASX Listing Rules.

Security Interest means an interest or power:

- (a) reserved in or over an interest in any securities including, any retention of title; or
- (b) created or otherwise arising in or over any interest in any securities under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, but is not limited to:

- (c) any agreement to grant or create any of the above; and
- (d) a PPSA Security Interest.

Share means a fully paid ordinary share in the capital of the Company.

Share Registry means the share registry engaged by the Company to administer and manage its register of members.

Subsidiary has the meaning given in the Corporations Act.

Supplier means any person, firm, company or organisation who is in the business of supplying fertility related services or products, specialised diagnostics and/or day hospital services.

Takeover Bid means a takeover bid for all Shares under Chapter 6 of the Corporations Act.

Termination Date means the date of termination of the Controller's employment with the Company or other Group Company (as applicable).

Voluntary Escrow Deed means a voluntary escrow deed entered into in connection with the Offer.

1.2 Interpretation

In this deed, unless the context requires another meaning:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a document (including this deed) is a reference to that document as amended, consolidated, supplemented, novated or replaced;
 - (iv) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) a party means a party to this deed;
 - (vi) an item, Recital, clause, provision, Schedule or Annexure is to an item, Recital, clause, provision, Schedule or Annexure of or to this deed;
 - (vii) a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators;

- (viii) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (ix) time is to prevailing Sydney time; and
- (x) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) headings and the Recitals are for convenience only and do not affect interpretation of this deed;
- (d) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day;
- (e) a warranty, representation, covenant or obligation given or entered into by more than one person binds them severally but not jointly;
- (f) unless otherwise expressly provided in this deed, if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day;
- (g) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (h) the word "law" includes common law, principles of equity and legislation, and a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them; and
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions.

1.3 Compliance with ASX Listing Rules

For so long as the Company is listed on the official list of the ASX:

- (a) notwithstanding anything contained in this deed, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;

- (e) if the ASX Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the ASX Listing Rules this deed is deemed not to contain that provision to the extent of the inconsistency.

2 Condition Precedent

The undertakings of the Holder and the Controller pursuant to this deed are conditional upon Completion of the Offer occurring.

3 Escrow

3.1 Holder restrictions

During the Escrow Period the Holder agrees that it will not:

- (a) Deal with;
- (b) Deal in any interest or right in respect of; or
- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Escrow Shares.

3.2 Controller restrictions

During the Escrow Period the Controller agrees that he or she will not:

- (a) Deal with;
- (b) Deal in any interest or right in respect of; or
- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest or right in respect of,

any or all of the Controller Interests.

3.3 Escrow restrictions

The parties acknowledge and agree that:

- (a) as soon as practicable following the issue or transfer, as applicable, of the Escrow Shares to the Holder or following the Completion of the Offer, as applicable, the Escrow Shares will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company will apply a Holding Lock on the Escrow Shares as soon as practicable after registration of the Escrow Shares on the Issuer Sponsored Subregister and the Holder agrees to the application of the Holding Lock; and

- (c) the Company will do all things necessary to ensure that the Holding Lock is released:
 - (i) to the extent necessary to permit disposals of the Escrow Shares permitted by this deed; and
 - (ii) in full at the conclusion of the Escrow Period.

3.4 Notice by Holder

If the Holder becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.1 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.1 during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

3.5 Notice by Controller

If the Controller becomes aware:

- (a) that any action, event or circumstance referred to in clause 3.2 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 3.2 during the Escrow Period,

he or she must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

3.6 Dividends and voting rights

For the avoidance of doubt, the parties agree that except as provided in clauses 7 and 8, the terms of this deed will have no effect on any rights of the Holder to receive dividends or to exercise voting rights in respect of the Escrow Shares.

3.7 Takeovers, mergers and reorganisations

Clause 3.1 will cease to apply to the extent necessary to allow:

- (a) the Holder to accept an offer made under a Takeover Bid for any of the Escrow Shares, provided that:
 - (i) without limiting clause 3.7(a)(ii), holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have accepted the Takeover Bid; and
 - (ii) the Takeover Bid is unconditional or all conditions to the Takeover Bid have been satisfied or waived;
- (b) the Holder to tender any of the Escrow Shares into a bid acceptance facility established in connection with a Takeover Bid, provided that holders of not less than 50% of the Shares that are not subject to a Voluntary Escrow Deed have either accepted the Takeover Bid or tendered (and not withdrawn) their Shares into the bid acceptance facility; or

- (c) the Escrow Shares to be transferred or cancelled as part of a Share buyback or other similar reorganisation, a merger being implemented by way of a scheme of arrangement or an acquisition of all Shares which has received all necessary approvals, including all such necessary approvals by shareholders of the Company and courts,

provided that, if for any reason any or all Escrow Shares are not transferred or cancelled in accordance with a Takeover Bid, scheme of arrangement or other transaction described in clause 3.7(a), 3.7(b) or 3.7(c), then the Holder agrees that the restrictions applying to the Escrow Shares under this deed (including under clauses 3.1, 3.2 and 3.3) will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Escrow Shares not so transferred or cancelled.

3.8 Controller reorganisation

Clauses 3.1 and 3.2 will cease to apply to the extent necessary to allow a Dealing in Escrow Shares or Controller Interests to enable the Controller to undertake a reorganisation of his or her affairs, subject to:

- (a) the prior consent of the Company in writing;
- (b) the Controller retaining ultimate control of the Escrow Shares; and
- (c) any new holder of the Escrow Shares or Controller Interests agreeing to be bound by a deed in substantially the same terms as this deed.

3.9 Other exceptions

Clauses 3.1 and 3.2 will cease to apply to the extent necessary to allow a Dealing in Escrow Shares or Controller Interests:

- (a) with the prior written approval of the Company;
- (b) pursuant to an order of a court of competent jurisdiction compelling any Escrow Shares or Controller Interests to be disposed of or a Security Interest granted over them; or
- (c) pursuant to a transfer by the personal representatives of the Controller to whomever the Escrow Shares or Controller Interests have been bequeathed, provided that the transferee of the Escrow Shares or Controller Interests has agreed to be bound by a deed in substantially the same terms as this deed in respect of the Escrow Shares or Controller Interests.

4 Restraint

4.1 Non-competition undertaking

- (a) The Controller must not (either personally or through any other entity), without the Company's prior written consent, be employed or engaged in any capacity, provide services to, or be otherwise involved or interested in any Restricted Business in the Restricted Territory during the Restricted Period.
- (b) Nothing in this clause 4.1 prevents the Controller from being a shareholder in a company whose shares are quoted on the ASX and of which the Controller holds less than 5% of the issued capital even though such company is engaged in any Restricted Business.

4.2 Non-solicitation undertaking

- (a) During the Restricted Period, the Controller must not (either personally, directly or indirectly or through any entity) and whether on the Controller's own account or for any other party:
 - (i) solicit or endeavour or attempt to solicit from the Company or the Group the business or services of any business, person, firm, company or organisation who was a customer or Supplier of the Company or the Group (including any business in the process of being engaged as such a customer or Supplier) and whom the Controller had dealings with or knowledge of during the period of 12 months immediately prior to the Termination Date;
 - (ii) accept the business of any person, firm, company or organisation who is a client or Supplier (or who was in the process of being engaged as a client or Supplier) of the Company or Group and with whom the Controller had dealings with or knowledge of during the period of 12 months immediately prior to the Termination Date; or
 - (iii) entice away or endeavour to entice away from the Company or the Group any employee, officer, contractor (for the avoidance of doubt, including any Doctor) or agent of the Company or another Group Company or anyone who was at any time during the period of 12 months immediately prior to the Termination Date an employee, contractor (for the avoidance of doubt, including any Doctor), or agent of the Company or another Group Company.
- (b) Nothing in this clause 4.2 prevents the Controller from soliciting or accepting the business or services of any person, firm, company or organisation who is a Supplier (or who was in the process of being engaged as a Supplier) of the Company or Group if such actions do not adversely effect the provision of business or services by that Supplier to the Company or the Group.

4.3 Severability

If clauses 4.1 and 4.2 are judged to go beyond what is reasonable in the circumstances and necessary to protect the legitimate interests of the Company but would be judged reasonable and necessary if any activity or any part of the Restricted Business, Restricted Period or Restricted Territory were deleted or reduced, then clauses 4.1 and/or 4.2 (whichever is applicable) apply with that part deleted or reduced by the minimum amount necessary to make clauses 4.1 or 4.2 (whichever is applicable) reasonable in the circumstances.

4.4 Trade marks and names

The Controller undertakes that he or she will not at any time following the Termination Date use a logo, symbol, trade mark, company name, domain name or business name substantially identical or deceptively similar to such names owned or used by the Company or the Group.

4.5 Acknowledgments

The Controller acknowledges and agrees that:

- (a) in view of his or her position within the Company and the Group, the relationships he or she will develop with the Company's customers and

employees and the commercially sensitive knowledge about the Company, its products and its business that he or she will acquire during the course of his or her employment with the Company, that the restrictions in this clause 4 are reasonable in the circumstances and necessary to protect the business interests and goodwill of the Company;

- (b) a breach by him or her of the restrictions in this clause 4 will result in irreparable harm to the Company; and
- (c) damages may not be a sufficient remedy for the Company for any breach of this clause 4 and the Company is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Controller of this clause 4, in addition to any other remedies available to the Company at law or in equity.

5 Termination

- (a) This deed terminates with immediate effect and without the action of any party upon the later of:
 - (i) the end of the Escrow Period; and
 - (ii) the date on which the undertakings in clauses 4.1 and 4.2 cease to have any effect,

provided that this deed will terminate with immediate effect and without the action of any party if Completion of the Offer has not occurred by 31 December 2013.

- (b) The Company will procure that the Share Registry releases the Holding Lock in respect of the Escrow Shares, if still in effect, as soon as possible following termination of this deed.

6 Warranties and acknowledgement

6.1 Giving of warranties

Each of the warranties and representations in this clause 6 is given by the Holder or the Controller, as applicable, in favour of the Company:

- (a) as at the date of this deed, unless a later date is specified in clause 6.2 or 6.3; and
- (b) from the applicable date under clause 6.1(a), at all times until expiry of the Escrow Period.

The warranties and representations in this clause 6 are given in respect of any and all Escrow Shares from time to time during the Escrow Period.

6.2 Holder warranties and representations

The Holder warrants and represents the following:

- (a) prior to the Escrow Period it has not done, or omitted to do, any act which would result in a Dealing in Escrow Shares which will take effect during the Escrow Period;

- (b) from the date of Completion of the Offer, the Escrow Shares are free from all Security Interests and other third party interests or rights;
- (c) it has full power and authority, without the consent of any other person, to enter into and perform its obligations under this deed (including, if the Holder has entered into this deed as a trustee (**Trustee**), under the trust deed for the relevant trust (**Trust**));
- (d) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes a legal, valid and binding obligation on it and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and, to the best of its knowledge and belief, there is no proposal to remove it as trustee of the Trust;
- (g) if the Holder is a Trustee:
 - (i) the Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way;
 - (ii) the assets of the Trust are sufficient to satisfy that right in full and the Holder has not released or disposed of its equitable lien over those Trust assets; and
 - (iii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (h) the execution, delivery and performance by the Holder of this deed does not and will not violate, breach or result in a contravention of:
 - (i) any applicable law, regulation or authorisation;
 - (ii) its constitution or other constituent documents, if any (and, if the Holder is a Trustee, the trust deed for the Trust); or
 - (iii) any agreement, undertaking, Security Interest or document which is binding on the Holder.

6.3 Controller warranties and representations

The Controller warrants and represents the following:

- (a) prior to the Escrow Period he or she has not done, or omitted to do, any act which would result in a Dealing in any Controller Interests which will take effect during the Escrow Period;
- (b) the Controller Interests are free from all Security Interests and other third party interests or rights;
- (c) he or she has full power and authority, without the consent of any other person, to enter into and perform his or her obligations under this deed;
- (d) he or she has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;

- (e) this deed constitutes legal, valid and binding obligations on him or her and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and there is no proposal to remove the Holder as trustee of the Trust;
- (g) if the Holder is a Trustee:
 - (i) the Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full; and
 - (ii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettlement the Trust; and
- (h) the execution, delivery and performance by the Controller of this deed does not and will not violate, breach or result in a contravention of:
 - (i) any applicable law, regulation or authorisation; or
 - (ii) any agreement, undertaking, Security Interest or document which is binding on the Controller.

6.4 Survival of warranties and representations

The warranties and representations in this clause 6 survive the termination of this deed.

7 Consequences of breaching this deed

- (a) Without limiting clause 8, if the Holder or the Controller breaches this deed or the Company believes that a prospective breach of this deed may occur, each of the following applies:
 - (i) the Company may take the steps necessary to enforce the deed, or to rectify the breach, as soon as practicable after becoming aware of the breach or prospective breach;
 - (ii) except in the case of a breach or prospective breach of clause 4, the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or other Dealing in any Escrow Shares; and
 - (iii) except in the case of a breach or prospective breach of clause 4, the Holder will cease to be entitled to any voting rights attaching to the Escrow Shares while the breach continues or for so long as the Company believes a prospective breach of this deed may occur.
- (b) The parties agree that damages would be an insufficient remedy for a breach or prospective breach of this deed by the Holder or the Controller and each of the Holder and Controller agrees that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's or Controller's (as applicable) obligations under this deed, without proof of actual damage and without prejudice to any of the Company's other rights or remedies.

8 Cessation of dividends

- (a) Each of the Holder and the Controller irrevocably waive all dividends and distributions on all Escrow Shares and acknowledge and agree that all Escrow Shares will cease to be entitled to any dividends or distributions, if any of the following occur:
 - (i) the Holder or the Controller breaches this deed or the Company believes that a prospective breach of this deed by the Holder or the Controller is likely to occur, other than a breach or prospective breach of clause 4, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach and for so long as the breach continues or the Company believes a prospective breach of this deed is likely to occur; or
 - (ii) the Holder or the Controller breaches clause 4 of this deed or the Company believes that a prospective breach of clause 4 of this deed is likely to occur, in which case all dividends and distributions on all Escrow Shares will be waived and all Escrow Shares will cease to be entitled to any dividends or distributions from the date the Company becomes aware of such breach or prospective breach until the end of the Escrow Period.
- (b) The Holder and the Controller release, in advance, the Company from all Claims either of them has, or may have had but for this deed, arising out of, in relation to or in connection with, the failure to declare or pay any dividend or distribution with respect to any Escrow Shares in accordance with clause 8(a).
- (c) The Holder and the Controller undertake not to make any Claim, or participate in any Claim, against the Company inconsistent with any obligation, acknowledgement, undertaking or agreement arising under clause 7 or clause 8 of this deed, even if any of those obligations, acknowledgements, undertakings or agreements prove to be ineffective for any reason.
- (d) For the avoidance of doubt and without limiting any other provision of this deed, each party agrees that if any of the circumstances described in clause 8(a) exist, no dividends or distributions will be taken to accrue, have accrued or be payable for any purpose for so long as the Escrow Shares are not entitled to be paid any dividends or distributions in accordance with clause 8(a).

9 Capacity

If the Holder has entered into this deed as a Trustee:

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 9 but subject to clause 9(c), the Holder enters into this deed only in its capacity as Trustee of the Trust and in no other capacity. A liability arising under or in connection with this deed can be enforced against the Holder only to the extent which it can be satisfied out of the property of the Trust for which the Holder is actually indemnified for the liability. The Holder will exercise its rights of indemnification in order to satisfy its obligations under this deed;

- (b) subject to clause 9(c), a party to this deed may not sue the Holder in any capacity other than as Trustee in respect of the Trust, including seeking the appointment to the Holder of a receiver (except in relation to the property of the Trust), a liquidator, administrator or any similar person; and
- (c) the provisions of this clause 9 will not apply to any obligation or liability of the Holder to the extent that it is not satisfied because under the Trust's relevant trust deed or by operation of law, there is a reduction in the extent, or elimination of, the Holder's right of indemnification out of the assets of the Trust, or the right does not exist at all, as a result of the Holder's fraud, negligence, improper performance of duties or breach of trust.

10 Notices and other communications

10.1 Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed by the sender (if an individual) or a person duly authorised by the sender; and
- (d) marked for the attention of the person identified or referred to in the Details or Schedule or, if the recipient has notified otherwise, then marked for attention in the way last notified.

10.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 10.1. However, the email:

- (a) must state the first and last name of the sender; and
- (b) must be in plain text format or, if attached to an email, must be an Adobe Portable Document Format (pdf) file.

Communications sent by email are taken to be signed by the named sender.

10.3 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details or Schedule; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details or Schedule; or
- (c) sent by email to the address set out or referred to in the Details or Schedule; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or email address, then communications must be to that address or email address.

10.4 When effective

Communications take effect from the time they are received or taken to be received under clause 10.5 (whichever happens first) unless a later time is specified.

10.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

10.6 Receipt outside business hours

Despite clauses 10.4 and 10.5, if communications are received or taken to be received under clause 10.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

11 General provisions

11.1 Invalid or unenforceable provisions

If a provision of this deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

11.2 Waiver and exercise of rights

- (a) A waiver by a party of a provision or a right under this deed is binding on the party granting the waiver only if it is given in writing and is signed by the party or an officer of the party granting the waiver.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.

- (c) A single or partial exercise of a right by a party does not preclude another or further exercise or attempted exercise of that right or the exercise of another right.
- (d) Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

11.3 Amendment

This deed may be amended only by a document signed by all parties.

11.4 Further assurances

The Holder and the Controller each undertake to, and to procure that all persons under their respective Control, do all things necessary or desirable to effect the transactions contemplated by this deed as expeditiously as possible, including executing, delivering or completing any form, document or instrument necessary or desirable to give effect to any of the transactions contemplated by this deed.

11.5 PPSA further steps

If the Company determines that this deed results in the creation of a PPSA Security Interest, the Holder and the Controller each agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

11.6 Non-merger

The warranties, other representations and undertakings by the parties in this deed are continuing and will not merge or be extinguished on Completion of the Offer.

11.7 Assignment

The Holder and the Controller must not transfer, assign, create an interest in, or deal in any other way with, any of their respective rights or obligations under this deed without the prior written consent of the other parties.

11.8 Entire agreement

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings or agreements and all other communications.

11.9 Remedies

The rights, remedies and powers of the parties under this deed are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

11.10 Inconsistent agreements

If a provision of this deed is inconsistent with a provision of any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and the Controller, or between the Holder or the Controller and any other person, the provision of this deed prevails.

11.11 Successors and assigns

This deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns and, in the case of the Controller, his or her personal representatives and any trustee, receiver or other person lawfully acting on his or her behalf.

11.12 Approvals and consents

Except where this deed expressly states otherwise, a party or other person referred to in this deed (including the Board) may, in its absolute discretion, give conditionally or unconditionally or withhold any approval, consent, resolution or determination under this deed.

11.13 Counterparts

This deed may be signed in counterparts and all counterparts taken together constitute one document.

11.14 Governing law

This deed is governed by the laws of New South Wales.

11.15 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
- (b) waives any claim or objection based on absence of jurisdiction or inconvenient forum.

EXECUTED as a deed

Escrow Deed

Schedule - Holder and Controller Details

Holder

Name: 

Address: 

Email: 

Attention: 

Controller

Name: 

Address: 

Email: 

Escrow Shares 

Escrow Deed

Signing page

DATED: _____

[Insert execution clauses]