



HERBERT  
SMITH  
FREEHILLS

Deed

## Project Volar creditors' trust deed

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Vaughan Strawbridge, Salvatore Algeri, John Greig  
and Richard Hughes in their capacity as joint and  
several deed administrators of the Deed Companies

Vaughan Strawbridge, Salvatore Algeri, John Greig  
and Richard Hughes in their capacity as trustees

Each company listed in Parts 1, 2 and 3 of Schedule  
1

BC Hart Aggregator, L.P. as Deed Proponent



## Project Volar Creditors' Trust Deed

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Date ► 17 November 2020

Between the parties

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**Deed Administrators** **Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes**, each in their capacity as joint and several deed administrators of the Deed Companies, of c/- Deloitte, Level 9, 225 George Street, Sydney NSW 2000

Email: [vstrawbridge@deloitte.com.au](mailto:vstrawbridge@deloitte.com.au), [saalgeri@deloitte.com.au](mailto:saalgeri@deloitte.com.au), [richughes@deloitte.com.au](mailto:richughes@deloitte.com.au), [jgreig@deloitte.com.au](mailto:jgreig@deloitte.com.au)

Attention: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes

**Trustees** **Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes**, each in their capacity as joint and several trustees of the Trust, of c/- Deloitte, Level 9, 225 George Street, Sydney NSW 2000

Email: [vstrawbridge@deloitte.com.au](mailto:vstrawbridge@deloitte.com.au), [saalgeri@deloitte.com.au](mailto:saalgeri@deloitte.com.au), [richughes@deloitte.com.au](mailto:richughes@deloitte.com.au), [jgreig@deloitte.com.au](mailto:jgreig@deloitte.com.au)

Attention: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes

**Deed Companies** **Each company listed in Parts 1, 2 and 3 of Schedule 1**, of c/- Deloitte, Level 9, 225 George Street, Sydney NSW 2000

Email: [vstrawbridge@deloitte.com.au](mailto:vstrawbridge@deloitte.com.au), [saalgeri@deloitte.com.au](mailto:saalgeri@deloitte.com.au), [richughes@deloitte.com.au](mailto:richughes@deloitte.com.au), [jgreig@deloitte.com.au](mailto:jgreig@deloitte.com.au)

Attention: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes

**Deed Proponent** **BC Hart Aggregator, L.P.**, of PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands

Email: [blyons@baincapital.com](mailto:blyons@baincapital.com), [sgarfield@baincapital.com](mailto:sgarfield@baincapital.com)

Attention: Barnaby Lyons and Scott Garfield

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Recitals

- 1 On the Appointment Date, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes were appointed as administrators of the Deed Companies pursuant to Part 5.3A of the Corporations Act.
- 2 At a meeting held on 4 September 2020 and convened pursuant to section 439A of the Corporations Act, the Creditors of the Deed Companies resolved that the Deed Companies execute deeds of company arrangement proposed under section 444B(2)(b) of the Corporations Act.
- 3 On 25 September 2020, the Deed Administrators and the Deed Companies executed the DOCAs pursuant to section 444B(2)(b) of the Corporations Act.
- 4 The Fund Amount will be transferred to the Trustees to settle the Trust in accordance with the DOCAs.
- 5 The Deed Companies and the Trustees enter into this Deed as contemplated by the DOCAs in order to facilitate a distribution by the Trustees to the Trust Creditors in their capacity as beneficiaries of the Trust Fund.

Governing law

New South Wales

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This deed witnesses as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

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

<b>Term</b>	<b>Meaning</b>
<b>Administrators</b>	jointly and severally, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes in their capacity as administrators of the Deed Companies and any successor to that office appointed pursuant to the Corporations Act.
<b>Admitted Claim</b>	the Claim of any Trust Creditor admitted by the Trustees after adjudication in accordance with clause 7 of this Deed.
<b>Administration Debt</b>	any: <ol style="list-style-type: none"><li>1 debt referred to in section 443A(1) of the Corporations Act which was incurred by the Administrators during the Administration Period in respect of a Deed Company;</li><li>2 liability to the Commissioner of Taxation referred to in section 443BA(1); and</li><li>3 other debts or liabilities referred to in section 443D(aa) of the Corporations Act,</li></ol> in respect of which the Administrators are entitled to be indemnified under section 443D of the Corporations Act.
<b>Administration Period</b>	in respect of a Deed Company, the period of time commencing on the Appointment Date for that Deed Company and concluding on the Commencement Date.
<b>Aircraft Logistics Support Agreement</b>	the Aircraft Logistics Support Agreement dated on or about the date of Primary DOCA Completion between, among others, the Trustees and Virgin Australia Airlines Pty Ltd.
<b>Appointment Date</b>	in respect of a Deed Company, the date on which the Administrators were appointed as joint and several administrators of the Deed Company, being the 'Appointment Date' in respect of a Deed Company as defined in a DOCA.
<b>ASIC</b>	the Australian Securities and Investment Commission.



<b>Term</b>	<b>Meaning</b>
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday and on which banks are open for business generally in Brisbane, Sydney and New York.
<b>Claim</b>	in respect of a Deed Company, a 'Claim' as defined in the DOCA for that Deed Company.
<b>Commencement Date</b>	in respect of a Deed Company and a DOCA, the date on which the DOCA is executed by the Deed Administrators, the Deed Company and the Deed Proponent.
<b>Committee of Inspection</b>	the committee of inspection formed: <ol style="list-style-type: none"><li>1 in accordance with Divisions 75 and 80 of the IPS and Division 75 of the IPR, as amended by the Court Orders; and</li><li>2 by resolution of creditors dated 12 May 2020, as that committee is constituted from time to time.</li></ol>
<b>Contingent Value Entitlement</b>	has the meaning given in the Primary DOCA.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Court</b>	the Supreme Court of New South Wales or any court having jurisdiction to hear and determine matters under the Corporations Act and the Trustee Act.
<b>Court Orders</b>	the Orders made by Justice Middleton on 24 April 2020 in Federal Court of Australia proceeding no. NSD464/2020.
<b>Creditor</b>	a person with a Claim.
<b>Critical Supplier</b>	a Trust Creditor identified in Schedule 3.
<b>Critical Supplier Dividend Amount</b>	an amount set out in respect of a Pool C Creditor in Schedule 3.
<b>Cross-Over Claim</b>	any Admitted Claim against an IG DOCA Company that arises from a common underlying obligation or in connection with the same underlying transaction as an Admitted Claim against a Primary



<b>Term</b>	<b>Meaning</b>
	DOCA Company (for example, where an IG DOCA Company is a guarantor, indemnifier or co-obligor of an obligation or debt owing by a Primary DOCA Company).
<b>Deed</b>	this creditors' trust deed as amended from time to time.
<b>Deed Administrators' Costs</b>	includes costs, charges and expenses, including those incurred in connection with advisers, incurred in connection with the performance of the Deed Administrators' duties, obligations and responsibilities under the Corporations Act and any DOCA during the Administration Period and the Deed Period.
<b>Deed Period</b>	in respect of a Deed Company, the 'Deed Period' as defined in the DOCA for that Deed Company.
<b>Deed Proponent</b>	BC Hart Aggregator, L.P.
<b>Dividend</b>	any amount paid to a Trust Creditor in respect of that creditors' Admitted Claim.
<b>DOCA</b>	<ol style="list-style-type: none"><li>1 in respect of a Deed Company that is a Primary DOCA Company, the Primary DOCA;</li><li>2 in respect of a Deed Company that is an IG DOCA Company, the IG DOCA;</li><li>3 in respect of a Deed Company that is a Subsidiary DOCA Company, the Participating Subsidiary DOCA in respect of that Deed Company.</li></ol>
<b>Employee</b>	any person who was an employee of a Deed Company as at or prior to the Appointment Date in respect of that Deed Company and any person who made an advance of money to a Deed Company for which section 560 of the Corporations Act would apply if the Deed Company was taken to be in liquidation as at the Appointment Date in respect of that Deed Company.
<b>Excluded Cash</b>	has the meaning given in the Primary DOCA.
<b>Excluded Superannuation Debt</b>	in respect of a Deed Company, an 'Excluded Superannuation Debt' as defined in the DOCA for that Deed Company.



<b>Term</b>	<b>Meaning</b>
<b>Final Dividend</b>	the last Dividend payment to be made by the Trustees to any Trust Creditor under this Deed.
<b>Fund Amount</b>	<ol style="list-style-type: none"><li>1 if Primary DOCA Completion and IG DOCA Completion occur, the Pool A Fund Amount, the Pool B Fund Amount and the Pool C Fund Amount;</li><li>2 if Primary DOCA Completion occurs and IG DOCA Completion does not occur, the Pool A Fund Amount and the Pool C Fund Amount;</li><li>3 if Primary DOCA Completion does not occur and IG DOCA Completion occurs, the Pool D Fund Amount.</li></ol>
<b>GST</b>	has the meaning given to that term in the GST Act.
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Historical Underpayments</b>	any historical underpayment of wages or superannuation.
<b>IG DOCA</b>	the deed of company arrangement dated 25 September 2020 in relation to the IG DOCA Companies proposed by the Deed Proponent and put to the Creditors of the IG DOCA Companies at the Second Meeting or, where the context requires, the deed of company arrangement in relation to the IG DOCA Companies executed on the Commencement Date between the Deed Proponent, the IG DOCA Companies and Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes in their capacity as joint and several administrators of the IG DOCA Companies.
<b>IG DOCA Companies</b>	the companies listed in Part 2 of Schedule 1.
<b>IG DOCA Completion</b>	completion of the IG DOCA in accordance with its terms.
<b>IG Group Foreign Currency Accounts</b>	the foreign currency accounts held by IG DOCA Companies described in Part 1 of Schedule 4.
<b>Implementation Date</b>	<ol style="list-style-type: none"><li>1 if Primary DOCA Completion occurs, the 'Implementation Date' as defined in the Primary DOCA; or</li><li>2 if Primary DOCA Completion does not occur and IG DOCA Completion occurs, the 'Implementation Date' as defined in the IG DOCA.</li></ol>



<b>Term</b>	<b>Meaning</b>
<b>IPR</b>	the <i>Insolvency Practice Rules (Corporations) 2016</i> (Cth).
<b>IPS</b>	the <i>Insolvency Practice Schedule (Corporations)</i> contained in Schedule 2 of the Corporations Act.
<b>Non-Participating Claim</b>	in respect of a Deed Company, a 'Non-Participating Claim' as defined in the DOCA for that Deed Company.
<b>Participating Subsidiary DOCA</b>	a Subsidiary DOCA in respect of which Subsidiary DOCA Completion occurs.
<b>Participating Subsidiary DOCA Company</b>	a Deed Company that is or was subject to a Participating Subsidiary DOCA.
<b>Pool A Creditors</b>	<ol style="list-style-type: none"><li>1 each Trust Creditor that is a Creditor of a Primary DOCA Company, other than a Pool C Creditor;</li><li>2 if IG DOCA Completion occurs, each Trust Creditor that is a Creditor of an IG DOCA Company; and</li><li>3 each Trust Creditor that is a Creditor of a Participating Subsidiary DOCA Company.</li></ol>
<b>Pool A Fund</b>	<p>the following assets, to be made available for distribution to Pool A Creditors if Primary DOCA Completion occurs:</p> <ol style="list-style-type: none"><li>1 the Pool A Fund Amount;</li><li>2 the Excluded Cash;</li><li>3 any amount received by the Trustees in respect of the Contingent Value Entitlement;</li><li>4 the cash balances of the VAA Foreign Currency Accounts;</li><li>5 if IG DOCA Completion occurs, the cash balances of the IG Group Foreign Currency Accounts;</li><li>6 if IG DOCA Completion does not occur, the Claims of the Primary DOCA Companies against the IG DOCA Companies;</li><li>7 the Pool C Surplus (if any); and</li><li>8 interest accruing from time to time on the Trust Fund.</li></ol>
<b>Pool A Fund Amount</b>	has the meaning given in the Primary DOCA.





<b>Term</b>	<b>Meaning</b>
<b>Pool B Creditors</b>	each Trust Creditor with a Cross-Over Claim, but only in respect of that Cross-Over Claim.
<b>Pool B Fund</b>	the Pool B Fund Amount, to be made available for distribution to Pool B Creditors if Primary DOCA Completion and IG DOCA Completion occur.
<b>Pool B Fund Amount</b>	has the meaning given in the Primary DOCA.
<b>Pool C Creditors</b>	<ol style="list-style-type: none"><li>1 each Critical Supplier listed in Part 1 of Schedule 3, provided that the Critical Supplier has entered into a binding agreement, with effect from Primary DOCA Completion, to waive all termination rights, review events and defaults under any contract between the Critical Supplier and a Primary DOCA Company and to release any Security Interest over aircraft or other assets of any Primary DOCA Company; and</li><li>2 each Critical Supplier listed in Part 2 of Schedule 3.</li></ol>
<b>Pool C Fund</b>	the Pool C Fund Amount, to be made available for distribution to Pool C Creditors if Primary DOCA Completion occurs.
<b>Pool C Fund Amount</b>	has the meaning given in the Primary DOCA.
<b>Pool C Surplus</b>	the sum of the Critical Supplier Dividend Amounts (if any) for each Critical Supplier listed in Part 1 of Schedule 3 in respect of which the condition in paragraph 1 of the definition of 'Pool C Creditors' is not satisfied.
<b>Pool D Creditors</b>	each Trust Creditor that is a Creditor of an IG DOCA Company.
<b>Pool D Fund</b>	the following assets, to be made available for distribution to Pool D Creditors if IG DOCA Completion occurs and Primary DOCA Completion does not occur: <ol style="list-style-type: none"><li>1 the Pool D Fund Amount;</li><li>2 the cash balances of the IG Group Foreign Currency Accounts; and</li><li>3 interest accruing from time to time on the Pool D Fund.</li></ol>
<b>Pool D Fund Amount</b>	has the meaning given in the IG DOCA.



<b>Term</b>	<b>Meaning</b>
<b>Primary DOCA</b>	the deed of company arrangement dated 25 September 2020 in relation to the Primary DOCA Companies proposed by the Deed Proponent and put to the Creditors of the Primary DOCA Companies at the Second Meeting or, where the context requires, the deed of company arrangement in relation to the Primary DOCA Companies executed on the Commencement Date between the Deed Proponent, the Primary DOCA Companies and Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes in their capacity as joint and several administrators of the Primary DOCA Companies.
<b>Primary DOCA Companies</b>	each company listed in Part 1 of Schedule 1.
<b>Primary DOCA Completion</b>	completion of the Primary DOCA in accordance with its terms.
<b>Priority Claim</b>	in respect of a Deed Company, a Claim of an Employee that would have been entitled to priority over the Claims of other unsecured creditors under section 556(1) of the Corporations Act if the Deed Company had been wound up and the winding up was taken to have commenced on the Appointment Date in respect of that Deed Company.
<b>Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>Second Meeting</b>	the meeting of creditors held on 4 September 2020 convened pursuant to section 439A of the Corporations Act and held concurrently in respect of each Primary DOCA Company, IG DOCA Company and Subsidiary DOCA Company.
<b>Security Interest</b>	any mortgage, chattel mortgage, pledge, charge, agreement, encumbrance, lien, right of set-off (arising otherwise than by operation of law or as a result of a banker's right to combine accounts) and assignment which provides for and secures the payment of any debt or monetary liability or the performance of any obligation and any 'security interest' as defined in sections 12(1) or (2) of the PPSA, each in respect of a Primary DOCA Company, IG DOCA Company or Subsidiary DOCA Company, as the context requires.
<b>Subsidiary DOCA</b>	in respect of a Subsidiary DOCA Company dated 25 September 2020 the deed of company arrangement in relation to that Subsidiary DOCA Company proposed by the Deed Proponent and put to the Creditors of the Subsidiary DOCA Company at the Second Meeting or, where the context requires, the deed of



<b>Term</b>	<b>Meaning</b>
	company arrangement in relation to the Subsidiary DOCA Company executed on the Commencement Date between the Deed Proponent, the Subsidiary DOCA Company and Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes in their capacity as joint and several administrators of the Subsidiary DOCA Company.
<b>Subsidiary DOCA Companies</b>	each company listed in Part 3 of Schedule 1.
<b>Subsidiary DOCA Completion</b>	with respect to a Subsidiary DOCA, completion of that Subsidiary DOCA in accordance with its terms.
<b>Termination Date</b>	the date on which the Trust terminates in accordance with clause 16.
<b>Trust</b>	the trust established by this Deed.
<b>Trust Creditor</b>	<ol style="list-style-type: none"><li>1 if Primary DOCA Completion and IG DOCA Completion occur, a 'Trust Creditor' as defined in the Primary DOCA, IG DOCA and each Participating Subsidiary DOCA;</li><li>2 if Primary DOCA Completion occurs and IG DOCA Completion does not occur, a 'Trust Creditor' as defined in the Primary DOCA and each Participating Subsidiary DOCA;</li><li>3 if Primary DOCA Completion does not occur and IG DOCA Completion occurs, a 'Trust Creditor' as defined in the IG DOCA.</li></ol>
<b>Trust Creditor's Claim</b>	a Claim of a Trust Creditor.
<b>Trust Fund</b>	<ol style="list-style-type: none"><li>1 if Primary DOCA Completion and IG DOCA Completion occur, the Pool A Fund, the Pool B Fund and the Pool C Fund;</li><li>2 if Primary DOCA Completion occurs and IG DOCA Completion does not occur, the Pool A Fund and the Pool C Fund;</li><li>3 if Primary DOCA Completion does not occur and IG DOCA Completion occurs, the Pool D Fund.</li></ol>
<b>Trustee Act</b>	the <i>Trustee Act 1925</i> (NSW).
<b>Trustees</b>	jointly and severally, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as trustees of the Trust



<b>Term</b>	<b>Meaning</b>
	and any successor to that office appointed pursuant to the Trustee Act.
<b>Trustees' Costs</b>	the costs, charges and expenses, incurred by the Trustees in connection with the performance of their duties, obligations and responsibilities and the exercise of their powers and discretions under this Deed as trustees of the Trust, including those incurred in connection with advisers.
<b>Trustees' Remuneration</b>	the remuneration of the Trustees referred to in clause 10.1.
<b>VAA Foreign Currency Accounts</b>	the foreign currency accounts held by Primary DOCA Companies described in Part 2 of Schedule 4.
<b>VAH</b>	Virgin Australia Holdings Limited (subject to deed of company arrangement) ACN 100 686 226.

## 1.2 Interpretation

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

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney;



- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (p) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### **1.3 Inconsistency with Act or Regulations**

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

### **1.4 Other inconsistencies**

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

### **1.5 Business Days**

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

### **1.6 Deed components**

This Deed includes any Schedule.

## **2 Commencement of this Deed**

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The Trust will come into effect and the Deed Administrators will act as Trustees pursuant to the terms of this Deed immediately upon completion of:

- (a) the Primary DOCA; or



- (b) if the conditions to the Primary DOCA are not satisfied, upon completion of the IG DOCA.

### 3 Payment of Fund Amount

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- (a) If Primary DOCA Completion occurs and IG DOCA Completion occurs, on the Implementation Date, subject to the terms of the Primary DOCA and in accordance with clause 10.4 of the Primary DOCA, VAH must pay, or procure the payment of, the Pool A Fund Amount, the Pool B Fund Amount and the Pool C Fund Amount at the direction of the Deed Administrators to the Trustees.
- (b) If Primary DOCA Completion occurs and IG DOCA Completion does not occur, on the Implementation Date, subject to the terms of the Primary DOCA and in accordance with clause 10.4 of the Primary DOCA, VAH must pay, or procure the payment of, the Pool A Fund Amount and the Pool C Fund Amount at the direction of the Deed Administrators to the Trustees.
- (c) If Primary DOCA Completion does not occur and IG DOCA Completion occurs, on the Implementation Date, subject to the terms of the IG DOCA and in accordance with clause 10.2 of the IG DOCA, the Deed Proponent must pay, or procure the payment of, the Pool D Fund Amount at the direction of the Deed Administrators to the Trustees.

### 4 Declaration of Trust

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#### 4.1 Declaration

The Trustees acknowledge and declare that the Trust Fund will be held on trust by the Trustees as follows:

- (a) if Primary DOCA Completion and IG DOCA Completion occur:
  - (1) the Pool A Fund, for the Pool A Creditors;
  - (2) the Pool B Fund, for the Pool B Creditors;
  - (3) the Pool C Fund, for the Pool C Creditors;
- (b) if Primary DOCA Completion occurs and IG DOCA Completion does not occur:
  - (1) the Pool A Fund, for the Pool A Creditors;
  - (2) the Pool C Fund, for the Pool C Creditors;
- (c) if Primary DOCA Completion does not occur but IG DOCA Completion occurs, the Pool D Fund, for the Pool D Creditors,

on the terms in this Deed.

#### 4.2 Name of Trust

The trust constituted by this Deed will be called the Project Volar Creditors' Trust.



### 4.3 Trustees' powers

Without limiting the powers that the Trustees have by operation of the Trustees Act, for the purposes of administering the trust created by this Deed, the Trustees have the following powers:

- (a) to administer and distribute the Trust Fund in accordance with the provisions set out in each DOCA and this Deed;
- (b) to fulfil the Trustees' obligations in accordance with the terms of this Deed including to take or defend such legal proceedings or other steps as the Trustees think fit to fulfil these obligations;
- (c) to sell, re-invest or otherwise deal with the assets of the Trust Fund;
- (d) to perfect title in any assets of the Trust Fund;
- (e) to insure any assets of the Trust Fund;
- (f) to, at any time, call meetings of the Trust Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
- (g) to admit Claims to proof in accordance with the provisions of each DOCA and this Deed;
- (h) to determine Admitted Claims and then to pay Dividends in accordance with the terms of this Deed;
- (i) to act as attorney for the Deed Companies or any other person for any purpose associated with the Trust or this Deed;
- (j) to enforce compliance with the terms of this Deed and each DOCA including to take such legal proceedings or other steps as the Trustees think fit to enforce these obligations;
- (k) to accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to the Trustees;
- (l) to enter upon or take possession of the Trust Fund and to collect the revenue or income from or interest on the Trust Fund and exercise any rights or powers relating to any part of the Trust Fund;
- (m) to continue, bring, prosecute and defend any claim, action, suit or proceeding, which includes the power to continue, bring and defend any claim, counter-claim, set-off, action, suit or proceeding in any Deed Company's name or (if necessary, after assignment) in the Trustees' name, to enforce any right, claim or cause of action that forms part of, or relates to a claim against, the Trust Fund, and to that end:
  - (1) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as the Trustees think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the Trust Fund and any claim, proceeding or action forming part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees think fit;
  - (2) to appoint any solicitor and counsel to prosecute or defend in those proceedings as the occasion may require; and



- (3) to take any other lawful ways and means for the recovering or getting in any of the Trust Fund or defending claims made against the Trustees or in respect of the Trust Fund;
- (n) to convene and hold meetings of the Trust Creditors for any purpose as the Trustees consider fit;
- (o) to permit any person authorised by the Trustees to operate any account in the name of the Trust;
- (p) to do all acts and execute in the name and on behalf of the Trust all deeds, receipts and other documents;
- (q) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Trust;
- (r) subject to the Corporations Act, to prove in the winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Trust;
- (s) to bring or defend an application for the vesting or winding up of the Trust;
- (t) to report to the Trust Creditors from time to time;
- (u) to make interim or other distributions of the Trust Fund;
- (v) to appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
- (w) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (x) to compromise any claim, action, suit or proceeding brought by or against the Trustees on such terms as the Trustees consider fit, which includes the power to compromise any claim, action, suit or proceeding referred to in paragraph (m) of this clause;
- (y) to provision for and set aside a sum or sums equal to an amount which the Trustees reasonably anticipate may be payable in respect of any tax, including income tax, capital gains tax or GST;
- (z) to enter into, perform their obligations under and exercise any of their rights under the Aircraft Logistics Support Agreement;
- (aa) to do anything incidental to exercising a power set out in this Deed;
- (bb) to do anything else that is necessary or convenient for administering the Trust;  
and
- (cc) to pay any amounts from the Trust Fund for which an indemnity exists under this Deed.

#### **4.4 Exercise of discretion and powers**

- (a) The Trustees may exercise any discretion under this Deed in the Trustees' absolute and unfettered discretion.
- (b) The Trustees shall not be required to give any reason for the exercise of, or failure to exercise, any of the Trustees' powers.





## 4.5 Objects of the Trust

The Trustees shall receive and hold the Trust Fund on trust for the benefit of the Trust Creditors and will distribute the Trust Fund in accordance with the terms of this Deed.

## 5 Trust Fund

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### 5.1 Trust Fund

The Trust Fund shall be comprised of:

- (a) if Primary DOCA Completion and IG DOCA Completion occur, the Pool A Fund, the Pool B Fund and the Pool C Fund;
- (b) if Primary DOCA Completion occurs but IG DOCA Completion does not occur, the Pool A Fund and the Pool C Fund;
- (c) if IG DOCA Completion occurs but Primary DOCA Completion does not occur, the Pool D Fund.

### 5.2 Distribution of the Trust Fund

- (a) Subject to clause 5.2(d), the Trust Fund will be available for distribution to the Trust Creditors as set out in this clause 5.2.
- (b) If Primary DOCA Completion occurs, the Pool A Fund, Pool B Fund and Pool C Fund will be available for distribution as follows, provided that the Pool B Fund will only be available for distribution if IG DOCA Completion also occurs:
  - (1) the Pool A Fund will be available for distribution to the Pool A Creditors as follows:
    - (A) first, to the Administrators or Deed Administrators for any amount which they are entitled to be paid or indemnified for under:
      - i. the Primary DOCA;
      - ii. if IG DOCA Completion occurs, the IG DOCA; and
      - iii. each Participating Subsidiary DOCA,  
(even though they may have ceased to be Administrators or Deed Administrators);
    - (B) next, to the Trustees in satisfaction of the Trustees' Remuneration and the Trustee's Costs (which may include an amount of the Trustees' Remuneration and the Trustees' Costs which are estimated to be incurred by the Trustees up to the Termination Date);
    - (C) next, to each Pool A Creditor that is an Employee of a Primary DOCA Company, Participating Subsidiary DOCA Company or (if IG DOCA Completion occurs) an IG DOCA Company, the amount of any Priority Claim including any Claim in respect of Historical Underpayments;



- (D) next, to the Pool A Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of those Pool A Creditors.
  - (2) if IG DOCA Completion occurs, the Pool B Fund will be available for distribution to each Pool B Creditor on a pro rata basis, in accordance with the dollar value of the Cross-Over Claims of the Pool B Creditors; and
  - (3) the Pool C Fund will be available for distribution to each Pool C Creditor in the amount of the Critical Supplier Dividend Amount allocated to that Pool C Creditor set out in Schedule 3.
- (c) If IG DOCA Completion occurs but Primary DOCA Completion does not occur, the Pool D Fund will be available for distribution as follows:
- (1) first, to the Administrators or Deed Administrators for any amount which they are entitled to be paid or indemnified for under the IG DOCA (even though they may have ceased to be Administrators or Deed Administrators);
  - (2) next, to the Trustees in satisfaction of the Trustees' Remuneration and the Trustee's Costs (which may include an amount of the Trustees' Remuneration and the Trustees' Costs which are estimated to be incurred by the Trustees up to the Termination Date);
  - (3) next, to each Pool D Creditor that is an Employee of an IG DOCA Company, the amount of any Priority Claim including any Claim in respect of Historical Underpayments;
  - (4) next, to the Pool D Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of those Pool D Creditors.
- (d) Notwithstanding clauses 5.2(b) and 5.2(c), any Creditor who would have been entitled to priority over other unsecured creditors under section 562 of the Corporations Act in respect of any amount forming part of the Trust Fund will retain a priority in respect of the assets of the Trust Fund at least equal to that they would have been entitled to if the property of the relevant Deed Company had been applied in accordance with section 562 of the Corporations Act.
- (e) Notwithstanding any other provision of this Deed, for the purposes of section 444DA of the Corporations Act and clause 5.2(b)(1)(C), any Priority Claims of an Employee will retain a priority in respect of the assets of the Trust Fund at least equal to that which they would have been entitled to if the property of the relevant Deed Company had been applied in accordance with sections 556, 560 and 561 of the Corporations Act.
- (f) No distributions will be made in respect of a Trust Creditor's Claim unless that Trust Creditor's Claim is an Admitted Claim.
- (g) The Trustees may distribute the Trust Fund at such times as the Trustees consider, in their absolute discretion, that is appropriate and feasible to do so, including making distributions (whether interim or final) under any provision of clause 5.2 in advance of making any payments under any lower ranking subclause in this clause 5.2 on the basis that they have retained sufficient funds to ensure that any payments to be made under any provision of clause 5.2 having higher priority may be made when the time comes to do so.



### 5.3 Postponement

Should proceedings be brought by any person in respect of the distribution of the Trust Fund, then the Trustees are entitled at their sole discretion to postpone the payment of any entitlement until determined by the Trustees.

### 5.4 Unclaimed moneys

In the event that the Trustees, for any reason, are unable to locate a Trust Creditor, or if any cheque sent by the Trustees to a Trust Creditor has not been presented within 6 months, then:

- (a) the Trustees shall stop payment of such cheque;
- (b) the moneys represented by such stopped cheque or held by the Trustees on behalf of the Trust Creditor shall be paid to ASIC; and
- (c) the provisions of sections 544(1) and 544(3) of the Corporations Act will apply, with such modifications as are necessary, to such payment as if references in those sections to 'liquidator' were references to the 'Trustees'.

### 5.5 Multiple claims arising out of the same circumstances

- (a) Subject to clause 5.5(b), if a Trust Creditor is a Creditor of two or more Deed Companies in respect of Admitted Claims that arise from a common underlying obligation or in connection with the same underlying transaction (for example, where one Deed Company is a guarantor, indemnifier or co-obligor of an obligation or debt owing by another Deed Company), then the Trust Creditor is only entitled to receive a distribution for one of those Admitted Claims, and where they are for different amounts, for the largest Admitted Claim.
- (b) Notwithstanding clause 5.5(a), Pool B Creditors will be entitled to a distribution from the Pool A Fund and the Pool B Fund in respect of a Cross-Over Claim.
- (c) If multiple Trust Creditors are Creditors of a Deed Company in respect of Admitted Claims that arise from a common underlying obligation or in connection with the same underlying transaction (for example, where a Creditor that is an agent or trustee of another Creditor has a Claim against a Deed Company in respect of the same underlying debt), only one Trust Creditor will be entitled to receive a distribution for one of those Admitted Claims.

## 6 Perpetuity period

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Notwithstanding any other provision in this Deed, each

- (a) interest in property; and
- (b) Trustee's power over or in connection with property,  
created or granted by this Deed that, but for this provision, might vest, take effect, or be exercisable after the expiry of eighty (80) years commencing on the date of this Deed, but which has not vested or taken effect by that date,
- (c) will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.



## 7 Claims

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### 7.1 Admissibility of Claims

- (a) Upon this Deed being settled, and in accordance with clause 6.6 of the Primary DOCA, clause 6.6 of the IG DOCA and clause 6.6 of each Participating Subsidiary DOCA, as applicable, each Claim of a Trust Creditor against a Deed Company will convert to and become a claim against the Trust Fund under this Deed, equal in amount to the Trust Creditor's entitlement to a distribution in respect of the Trust Creditor's released Claim in accordance with clause 5.2 of this Deed.
- (b) Interest will not accrue or be payable on any Admitted Claim.

### 7.2 Trustees' discretion

The Trustees may, in their absolute discretion:

- (a) call for proofs of debt or claim;
- (b) admit all or part of a Claim;
- (c) reject all or part of a Claim; or
- (d) pay any Admitted Claim,

in accordance with the provisions of this Deed.

### 7.3 Determination of Claims

- (a) Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Corporations Act apply to Claims under this Deed as if references to the liquidator were references to the Trustees and references to winding up were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (b) Regulations 5.6.11A, 5.6.37, 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations shall apply to this Deed and to the Trustees as if references to the liquidator were references to the Trustees and references to winding up were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (c) The Trustees may make interim distributions of trust property under this Deed.
- (d) The Trustees may make any distribution by cheque or by electronic funds transfer to a bank account nominated by the relevant Trust Creditor.
- (e) The Trustees must declare and distribute trust property under this Deed as soon as practicable after the Trust comes into effect under clause 4.1. However, subject to clauses 7.3(a) and 7.3(b), the Trustees have an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of the distribution of the trust property in payment of Admitted Claims.
- (f) Where the Trustees propose to reject a Claim (whether in part or in full) the Trustees shall send a notice to the Creditor informing the Creditor of the proposed rejection and giving the party 14 days within which to make an application to the Court to determine the questions relating to the Claim.



- (g) The Trustees are entitled to rely upon any steps and determinations made by the Deed Administrators for the purposes of this clause in respect of whether a claim asserted for the purposes of claiming under this Deed is an Admitted Claim, together with any information and proofs or particulars of debt provided to the Administrators or Deed Administrators.

#### **7.4 Access to records and staff**

- (a) The Trustees may at any time inspect and take copies of the books and records of the Deed Companies at no cost and the Deed Companies authorise the Trustees and their staff to enter the Deed Companies' premises on any Business Day between the hours of 9.00am and 5.00pm with no less than 24 hours' notice, for the purpose of conducting such an inspection and for the purpose of doing anything necessary or desirable in the exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as Trustees under this Deed, including to take photocopies or images of any books and records for that purpose.
- (b) The Deed Companies must on reasonable notice provide copies of their books and records as reasonably requested by the Trustees from time to time to facilitate the Trustees' exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as Trustees under this Deed.
- (c) The Deed Companies must provide assistance to the Trustees by the provision of information and access to staff with relevant technical expertise reasonably requested by the Trustees to facilitate the exercise of their powers and discretions and the performance of the Trustees' duties, obligations and responsibilities as Trustees under this Deed.

#### **7.5 Excluded Superannuation Debts not admissible**

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

#### **7.6 Creditors' costs and expenses**

Any costs and expenses incurred by a Trust Creditor in asserting a Claim (including any application under clause 7.3(f)) under this Deed will be borne by that Trust Creditor and will not form part of that Trust Creditor's Claim under this Deed.

#### **7.7 Abandonment of Claims**

A Trust Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Trust Fund:

- (a) which are not the subject of a proof lodged with the Deed Administrators or the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
- (b) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within the time allowed under clause 7.3(f).

#### **7.8 Discharge of Claims**

- (a) All persons having a Claim must accept their Admitted Claims under this Deed (if any) in full satisfaction and complete discharge of all claims which they have or claim to have against the Trustees or the Trust Fund and each of them will, if



called upon to do so, execute and deliver to the Trustees such forms of release of any such claim as the Trustees require.

- (b) The Trustees must take all steps reasonably required by the Deed Proponent to obtain such releases from any Trust Creditors nominated by the Deed Proponent.

## **7.9 Claims extinguished**

On payment of the Final Dividend to the Trust Creditors from the Trust Fund:

- (a) all Claims against the Trust Fund are extinguished; and
- (b) the obligations of the Trustees to the Trust Creditors under the Trust will be fully and finally discharged.

## **7.10 Bar**

After distribution of the Final Dividend from the Trust Fund, the Trustees may plead this Deed in bar to any Claim.

## **7.11 Non-Participating Claims**

No Creditor is entitled to participate in or receive any distribution from the Trust Fund in respect of a Non-Participating Claim.

# **8 GST on Claims**

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## **8.1 Definitions**

Words and expressions used in this clause 8 which are defined in the GST Act have the same meaning in this clause.

## **8.2 GST credits on Claims which have been or will be claimed by the Deed Companies**

To the extent that input tax credits on Admitted Claims have been or will be claimed by a Deed Company, the parties agree and acknowledge that following the payment of distributions to those Creditors by the Trustees from the Trust Fund, the Deed Company by its directors will be responsible for making any adjustment required by the provisions of the GST Act insofar as those adjustments relate to those Admitted Claims and Practice Statement PS LA 2012/1 (GA) will be applied by the Deed Company to calculate the impact of those adjustments.

## **8.3 GST credits for Administration Debts and Deed Administrators' Costs**

To the extent that:

- (a) an input tax credit is available in respect of an Administration Debt or a Deed Administrators' Cost; and
- (b) neither the Administrators nor the Deed Administrators are able to claim that input tax credit because it is attributable to a tax period that arises after the date



on which the GST registration of the Administrators or the Deed Administrators ends,

then, the parties agree and acknowledge that the Deed Companies are responsible for claiming that input tax credit.

#### **8.4 GST credits during operation of Trust**

The parties agree and acknowledge that to the extent that an input tax credit is available in respect of a Trustee Cost which is incurred and paid for by the Trustees during the operation of the Trust, the Trustees (acting in their capacity as Trustees of the Trust) will be responsible for the claiming those input tax credits.

### **9 Meetings of Trust Creditors**

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- (a) The Trustees may at any time convene a meeting of Trust Creditors and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the IPR applies, with such modifications as are necessary, to meetings of the Trust Creditors as if references to the 'external administrator' or chairperson, as the case may be, were references to one or more of the Trustees.
- (b) Trust Creditors who have been paid the full amount of their entitlement in respect of their Admitted Claim under this Deed will no longer be entitled to attend and participate in meetings of Trust Creditors.
- (c) Subject to clause 9(d), the Trustees may, by deed or resolution and with the consent of the majority of the Trust Creditors given at a meeting convened pursuant to this clause 9, vary the provisions of this Deed.
- (d) Despite any other provision of this Deed, the Trustees may not amend this Deed to lessen the Trustees' liabilities or obligations under this Deed or at law including, but not limited to, lessening their liabilities in respect of any fraud, wilful default, negligence or breach of trust by the Trustees.

### **10 Remuneration**

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#### **10.1 Remuneration of Trustees**

The Trustees:

- (a) are to be remunerated at the usual rates charged by Deloitte Financial Advisory Pty Ltd from time to time in respect of any work done by the Trustees, and any partner or employee of the Trustees, in connection with:
  - (1) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Administrators and/or Deed Administrators, even though that remuneration has not been approved by the Creditors pursuant to Division 60 Subdivision B of the IPS;
  - (2) the calling for and adjudicating upon proofs of Claims;
  - (3) the distribution of the Trust Fund; and



- (4) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Trustees under this Deed, and
- (b) acknowledge that the Trustees' Costs, including costs, charges and expenses (including those incurred in connection with advisers) incurred in connection with the foregoing, including any stamp duty payable by them in respect of this Deed, will be payable from the Trust Fund.
- (c) The Trustees' Remuneration and the Trustees' Costs referred to in this clause 10.1 and all other costs shall be reimbursed and/or paid out of the Trust Fund. The Trustees shall be entitled to draw such amounts from the Trust Fund from time to time. The Administrators have estimated the Trustees' Costs to be between \$7 million and \$8 million excluding GST and disbursements. For the avoidance of doubt, where the Trustees are liable to pay GST in respect of any taxable supply (within the meaning of the GST Act) they make under this Deed, the Trustees are entitled to recover an additional amount equal to the amount of that GST liability from the Trust Fund.

## 10.2 Acknowledgement

The parties acknowledge that the Trustee's Remuneration as referred to in clause 10.1(a) includes remuneration and costs incurred by the Trustees in connection with or as a result of their duties, obligations and responsibilities as Administrators and/or Deed Administrators.

## 11 Committee of Inspection

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- (a) The Trustees may convene meetings of the Committee of Inspection from time to time for the purpose of consulting with the Committee of Inspection on matters arising in the course of the administration of the Trust including in respect of the Trustees' Remuneration.
- (b) The Committee of Inspection will operate as a consultative committee and will not have power to direct or bind the Trustees in any way.
- (c) The:
  - (1) appointment or removal of members of the Committee of Inspection will be governed by Division 80-15 of the IPS and Division 80-10 of the IPR;
  - (2) power to convene meetings of the Committee of Inspection will be governed by Division 80-27 of the IPS; and
  - (3) obligations of members of the Committee of Inspection will be governed by Division 80-55 of the IPS,with such amendments in form and substance as are necessary to give efficacy to the administration of the Trust by the Trustees.
- (d) Subject to the discretion of the Trustees to make such disclosures as are necessary or convenient for the purposes of the administration of the Trust, the affairs of the Committee of Inspection will be conducted on a confidential basis.
- (e) The Committee of Inspection may, if requested, approve the Trustees' Remuneration by a majority in attendance at the relevant meeting.





## 12 Indemnity

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### 12.1 Indemnity

The Trustees are entitled to be indemnified out of the Trust Fund for all actions, suits, proceedings, accounts, claims and demands arising out of or relating to this Deed which may be commenced, incurred by or made on the Trustees by any person and against all costs, charges and expenses incurred by the Trustees in respect of them, provided that the Trustees shall not be entitled to an indemnity in respect of any liabilities or demands to the extent that the indemnification contravenes the Corporations Act or the Trustee Act.

### 12.2 Continuing indemnity

This indemnity takes effect on and from the date of this Deed and will be without limitation as to time and will operate notwithstanding the removal of the Trustees (or any of them) and the appointment of new trustees or the termination of this Trust for any reason whatsoever.

### 12.3 Indemnity not to be affected or prejudiced

The indemnity under clause 12.1 will not:

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

## 13 Liability

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### 13.1 Exclusion of liability

- (a) The Trustees, and the Trustees' partners and employees, are not liable for any loss or damage occasioned to any trust property under this Deed (including the Trust Fund) or to any person by:
  - (1) the exercise of any discretion or power conferred by this Deed or by law on the Trustees or any delay or failure to exercise any of those discretions or powers;
  - (2) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustees, partner or employee; or
  - (3) any disclosure by the Trustees or the officer of any document, matter or thing relating to the Trust, the trust property or any Trust Creditor.



- (b) All persons claiming any interest in the trust property must be treated as taking it with and subject to notice of the protection conferred by this clause 13.

### **13.2 Proceedings against co-trustee**

The Trustees are not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.

### **13.3 Reliance on advice**

Where the Trustees act in reliance upon the advice of any solicitor instructed on behalf of the Trust in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Trust, the Trustees are not liable to any person in respect of any act done or omitted to be done by the Trustees in accordance with the advice.

## **14 Trustees' resignation**

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

- (a) convene a meeting of Trust Creditors in accordance with clause 9 of this Deed for the purpose of nominating a replacement trustee;
- (b) assign to a replacement trustee nominated by the Trust Creditors the Trustees' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 14(b).

## **15 Trustees not obliged to take action**

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The Trustees will not be obliged to take any action under this Deed until such time as there are sufficient funds in hand and immediately available to them to pay the Trustees' Remuneration and Trustees' Costs.

## **16 Termination**

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### **16.1 Termination of the Trust**

This Trust will terminate and the Trustees will resign as soon as reasonably practicable:

- (a) after distribution of the Final Dividend from the Trust Fund; or
  - (b) upon the expiry of the perpetuity period referred to in clause 6,
- whichever occurs first.



## 16.2 Meeting of Trust Creditors

The Trustees must convene a meeting of Trust Creditors to consider a resolution to vary this Deed or terminate the Trust if:

- (a) at any time prior to the termination of the Trust, the Trustees determine that it is no longer practicable or desirable to continue to implement or carry out this Deed; or
- (b) the Court so orders.

## 16.3 Termination of the Trust by Court order and Trust Creditors' resolution

This Trust will terminate if:

- (a) a Court so orders; or
- (b) the Trust Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clause 16.2.

In that event, either of the following may occur:

- (c) if all Trust Creditors have received their distribution in accordance with clause 5.2, any remaining part of the Trust Fund must be immediately paid to or at the direction of the Deed Proponent and shall not be available for distribution to Trust Creditors; or
- (d) if any Trust Creditors have not received their distribution in accordance with clause 5.2, then any remaining part of the Fund Amount will be refunded to or at the direction of the Deed Proponent and any other remaining funds in the Trust Fund will be returned to the Deed Companies and shall not be available for distribution to Trust Creditors.

## 16.4 Report to Trust Creditors

Upon a meeting being convened pursuant to clause 16.2, the Trustees must send each Trust Creditor prior to the meeting a report as to the state of affairs of the Trust accompanied by such financial statements as the Trustees think fit. The report must include:

- (a) a statement explaining the circumstances which have caused the Trustees to convene the meeting pursuant to clause 16.2; and
- (b) a statement that the Trust will be terminated if the Trust Creditors so resolve.

## 16.5 Previous operation of this Deed preserved

The termination or avoidance, in whole or in part, of this Trust does not affect the efficacy of any act done prior to the termination or avoidance.

## 16.6 Variation of Deed

This Deed may be varied:

- (a) with the consent of the Trustees by resolution passed at a meeting of Trust Creditors by a majority of Trust Creditors in number and in value, but only if the variation is not materially different from the proposed variation set out in the notice of that meeting and provided that the variation does not materially



prejudice the interests of any class of Trust Creditors without the approval of a majority of that class of Trust Creditors in number and value; or

- (b) by the Court upon application of any of the Trust Creditors or the Trustees pursuant to the Trustee Act.

## 17 General

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### 17.1 Invalidity and enforceability

- (a) If any provision of this Deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 17.1(a) does not apply where enforcement of the provision of this Deed in accordance with clause 17.1(a) would materially affect the nature or effect of the parties' obligations under this Deed.

### 17.2 Waivers

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

The meanings of the terms used in this clause 17.2 are set out below.

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

### 17.3 Counterparts

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

### 17.4 Governing law and jurisdiction

This Deed is governed by the law in force in the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Court of New South Wales and any Court which may hear appeals from those Courts.



### **17.5 Further action to be taken at each party's own expense**

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

### **17.6 Assignment**

Unless expressed otherwise, rights arising out of or under this Deed are not assignable by a party without the prior written consent of the other parties.

### **17.7 Entire agreement**

This Deed states all the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### **17.8 No reliance**

No party has relied on any statement by any other party not expressly included in this Deed.

### **17.9 Relationship of the parties**

Nothing in this Deed gives a party authority to bind any other party in any way.

### **17.10 Exercise of rights**

- (a) Unless expressly required by the terms of this Deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

### **17.11 Stamp duty**

Any stamp duty assessed on this Deed is to be paid out of the Trust Fund.

### **17.12 Creditor's Power of Attorney**

Each Trust Creditor irrevocably appoints each of the Trustees jointly and severally as its attorney to execute any document to give effect to the releases in clause 7.8(a).

### **17.13 Joint Parties**

If two or more parties are included within the same defined term in this Deed:

- (a) liability of those parties under this Deed is a joint liability of all of them and a several liability of each of them.



- (b) a right given to those parties under this deed is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

#### 17.14 Costs

Each party must pay its own costs of negotiating, preparing and executing this Deed.

#### 17.15 Survival

Despite any other provision of this Deed, clauses, 1, 8, 10, 12, 13, 16 and 17 survive the termination of this Deed.

### 18 Notices

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#### 18.1 Form of Notice

A notice or other communication to a party under this Deed (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to that party in accordance with the details nominated in Schedule 2 (or any alternative details nominated to the sending party by Notice).

#### 18.2 How Notice must be given and when Notice is received

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

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By email to the nominated email address	When the email (including any attachment) has been sent to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee)



### **18.3 Notice must not be given by electronic communication**

A Notice must not be given by electronic means of communication (other than email as permitted in clause 18.2).



## Schedule 1

### Deed Companies

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#### 1 Primary DOCA Companies

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	<b>Name</b>	<b>ACN</b>
1.	Virgin Australia Holdings Limited (subject to deed of company arrangement)	100 686 226
2.	Virgin Australia Airlines Holdings Pty Ltd (subject to deed of company arrangement)	093 924 675
3.	VAH Newco No.1 Pty Ltd (subject to deed of company arrangement)	160 881 345
4.	Tiger Airways Australia Pty Limited (subject to deed of company arrangement)	124 369 008
5.	Virgin Australia Airlines Pty Ltd (subject to deed of company arrangement)	090 670 965
6.	Virgin Tech Pty Ltd (subject to deed of company arrangement)	101 808 879
7.	A.C.N. 098 904 262 Pty Ltd (subject to deed of company arrangement)	098 904 262
8.	Virgin Australia Regional Airlines Pty Ltd (subject to deed of company arrangement)	008 997 662
9.	Virgin Australia Holidays Pty Ltd (subject to deed of company arrangement)	118 552 159
10.	VB Ventures Pty Ltd (subject to deed of company arrangement)	125 139 004
11.	Virgin Australia Cargo Pty Ltd (subject to deed of company arrangement)	600 667 838





12.	VB Leaseco Pty Ltd (subject to deed of company arrangement)	134 268 741
13.	VB Investco Pty Ltd (subject to deed of company arrangement)	101 961 095
14.	VAH Newco No.2 Pty Ltd (subject to deed of company arrangement)	160 881 354
15.	Virgin Australia International Operations Pty Ltd (subject to deed of company arrangement)	155 859 608
16.	VBNC5 Pty Ltd (subject to deed of company arrangement)	119 691 502
17.	Short Haul 2017 No. 1 Pty Ltd (subject to deed of company arrangement)	617 644 390
18.	VB PDP 2010-11 Pty Ltd (subject to deed of company arrangement)	140 818 266
19.	VB LH 2008 No. 1 Pty Ltd (subject to deed of company arrangement)	134 280 354
20.	VB LH 2008 No. 2 Pty Ltd (subject to deed of company arrangement)	134 288 805
21.	737 2012 No.1 Pty. Ltd. (subject to deed of company arrangement)	154 201 859
22.	737 2012 No. 2 Pty Ltd (subject to deed of company arrangement)	154 225 064
23.	VA Regional Leaseco Pty Ltd (subject to deed of company arrangement)	127 491 605
24.	VA Hold Co Pty Ltd (subject to deed of company arrangement)	165 507 157
25.	Virgin Australia 2013-1 Issuer Co Pty Ltd (subject to deed of company arrangement)	165 507 326
26.	VA Lease Co Pty Ltd (subject to deed of company arrangement)	165 507 291



27.	Short Haul 2016 No. 1 Pty Ltd (subject to deed of company arrangement)	612 766 328
28.	Short Haul 2016 No. 2 Pty Ltd (subject to deed of company arrangement)	612 796 077

## 2 IG DOCA Companies

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	<b>Name</b>	<b>ACN</b>
1.	Virgin Australia International Holdings Pty Ltd (subject to deed of company arrangement)	155 860 021
2.	Virgin Australia International Airlines Pty Ltd (subject to deed of company arrangement)	125 580 823
3.	Tiger International Number1 Pty Ltd (subject to deed of company arrangement)	606 131 944
4.	Virgin Australia Airlines (SE Asia) Pty Ltd (subject to deed of company arrangement)	097 892 389

## 3 Subsidiary DOCA Companies

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	<b>Name</b>	<b>ACN</b>
1.	VB Leaseco No 2 Pty Ltd (subject to deed of company arrangement)	142 533 319
2.	VB 800 2009 Pty Ltd (subject to deed of company arrangement)	135 488 934
3.	Short Haul 2017 No. 2 Pty Ltd (subject to deed of company arrangement)	617 644 443
4.	Short Haul 2018 No. 1 Pty. Ltd. (subject to deed of company arrangement)	622 014 831
5.	VA Borrower 2019 No. 1 Pty Ltd (subject to deed of company arrangement)	633 241 059



6.	VA Borrower 2019 No. 2 Pty Ltd (subject to deed of company arrangement)	637 371 343
7.	Short Haul 2014 No. 1 Pty Ltd (subject to deed of company arrangement)	600 809 612
8.	Short Haul 2014 No. 2 Pty Ltd (subject to deed of company arrangement)	600 878 199
9.	Short Haul 2017 No. 3 Pty. Ltd. (subject to deed of company arrangement)	622 014 813



## Schedule 2

### Notice details

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#### Clause 18.1

<b>Trustees</b>	Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes in their capacity as joint and several trustees of the Trust
Address	c/- Deloitte, Level 9, 225 George Street, Sydney NSW 2000
Attention	Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes
Email	vstrawbridge@deloitte.com.au, saalgeri@deloitte.com.au, richughes@deloitte.com.au, jgreig@deloitte.com.au

---

<b>Deed Companies</b>	each company listed in Part 1, Part 2 and Part 3 of Schedule 1
Address	c/- Deloitte, Level 9, 225 George Street, Sydney NSW 2000
Attention	Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes
Email	vstrawbridge@deloitte.com.au, saalgeri@deloitte.com.au, richughes@deloitte.com.au, jgreig@deloitte.com.au

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<b>Deed Proponent</b>	BC Hart Aggregator, L.P.
Address	PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands
Attention	Barnaby Lyons and Scott Garfield
Email	blyons@baincapital.com, sgarfield@baincapital.com

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## Schedule 3

### Critical Suppliers

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#### 1 Airport Critical Suppliers

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<b>Name of Creditor</b>	<b>Critical Supplier Dividend Amount (including GST)</b>
Adelaide Airport Limited	\$3,255,154
Brisbane Airport Corporation Limited	\$12,475,820
Canberra Airport Pty Limited	\$2,344,711
Gold Coast Airport Pty Limited	\$2,113,084
Australia Pacific Airports (Melbourne) Pty Ltd	\$9,769,041
Perth Airport Pty Ltd	\$6,647,577
Australia Pacific Airports (Launceston) Pty Ltd	\$409,285
Hobart International Airport Pty Ltd	\$977,624
Townsville Airport Pty Ltd	\$157,232
Sunshine Coast Airport Pty Ltd	\$262,667
Sydney Airport Corporation Limited	\$8,858,189



## 2 Other Critical Suppliers

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Name of Creditor	Critical Supplier Dividend amount (including GST)
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Tech Mahindra Limited	\$1,840,000
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The Boeing Company	\$45,000,000
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## Schedule 4

### Foreign currency accounts

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#### 1 IG Group Foreign Currency Accounts

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<b>Bank Name</b>	<b>Account name</b>	<b>Acc number</b>	<b>Currency</b>
ANZ Bank, Solomon Islands	VAIA SBD	*****7455	SBD
ANZ BANK (VANUATU) LTD	VAIA VUV	*****1500	VUV
ANZ Bank, Tonga	VAIA TOP	*****7472	TOP
ANZ BANK (SAMOA) LTD	VAIA FX WST	*****9724	WST
BANK ANZ INDONESIA, P.T.	VAIA FX IDR	*****0001	IDR
AUSTRALIA AND NEW ZEALAND BANKING GROUP (PNG) LTD.	VASE FX PGK	*****9010	PGK

#### 2 VAA Foreign Currency Accounts

---

<b>Bank Name</b>	<b>Account name</b>	<b>Acc number</b>	<b>Currency</b>
ANZ Bank, Australia	VAA ANZ JPY ACC	*****0001	JPY
Hong Kong Branch	VA FX HKD	*****9532	HKD
JPMORGAN CHASE BANK, N.A.	VA FX EUR	*****5167	EUR
WESTPAC BANKING CORPORATION	VA WBC FJD	*****1473	FJD



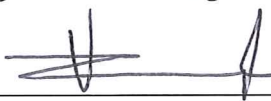
# Signing page

Executed as a deed

---

**Trustee**

Signed sealed and delivered by  
**Vaughan Strawbridge**

sign here ► 

print name           Vaughan Strawbridge          

in the presence of

sign here ►   
Witness

print name           ANTHONY LOWE          

---

**Trustee**

Signed sealed and delivered by  
**Salvatore Algeri**

sign here ► \_\_\_\_\_

print name \_\_\_\_\_

in the presence of

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

---





## Signing page

Executed as a deed

---

### Trustee

Signed sealed and delivered by  
Vaughan Strawbridge

sign here ► \_\_\_\_\_

print name \_\_\_\_\_

in the presence of

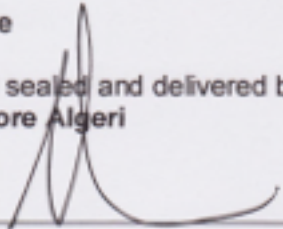
sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

---

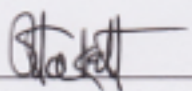
### Trustee

Signed sealed and delivered by  
Salvatore Algeri

sign here ► \_\_\_\_\_  


print name Salvatore Algeri

in the presence of

sign here ► \_\_\_\_\_  
Witness 

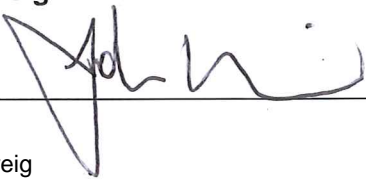
print name Shelley Hackett

---



**Trustee**

Signed sealed and delivered by  
**John Greig**

sign here ▶   
\_\_\_\_\_

print name John Greig

in the presence of

sign here ▶   
\_\_\_\_\_

Witness

print name ANTHONY LOWE

**Trustee**

Signed sealed and delivered by  
**Richard Hughes**

sign here ▶   
\_\_\_\_\_

print name Richard Hughes

in the presence of

sign here ▶   
\_\_\_\_\_

Witness


print name ANTHONY LOWE



HERBERT  
SMITH  
FREEHILLS

**Deed Administrator**

Signed sealed and delivered by  
**Vaughan Strawbridge**

sign here ►  \_\_\_\_\_

print name \_\_\_\_\_ Vaughan Strawbridge \_\_\_\_\_

in the presence of

sign here ►  \_\_\_\_\_  
Witness

print name \_\_\_\_\_ Anthony Lowe \_\_\_\_\_

---

**Deed Administrator**

Signed sealed and delivered by  
**Salvatore Algeri**

sign here ► \_\_\_\_\_

print name \_\_\_\_\_

in the presence of

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_



**Deed Administrator**

Signed sealed and delivered by  
**Vaughan Strawbridge**

sign here ► \_\_\_\_\_

print name \_\_\_\_\_

in the presence of

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

**Deed Administrator**

Signed sealed and delivered by  
**Salvatore Algeri**

sign here ► \_\_\_\_\_

print name Salvatore Algeri

in the presence of

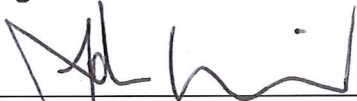
sign here ► \_\_\_\_\_  
Witness

print name Shelley Hackett



**Deed Administrator**

Signed sealed and delivered by  
**John Greig**

sign here ▶ 

print name John Greig

in the presence of

sign here ▶   
Witness

print name ANTHONY LOWE


**Deed Administrator**

Signed sealed and delivered by  
**Richard Hughes**

sign here ▶ 

print name Richard Hughes

in the presence of

sign here ▶   
Witness

print name ANTHONY LOWE



### **Deed Companies**

Signed sealed and delivered for and on behalf of each of the following Primary DOCA Companies:

**Virgin Australia Holdings Limited (subject to deed of company arrangement)**

**Virgin Australia Airlines Holdings Pty Ltd (subject to deed of company arrangement)**

**VAH Newco No.1 Pty Ltd (subject to deed of company arrangement)**

**Tiger Airways Australia Pty Limited (subject to deed of company arrangement)**

**Virgin Australia Airlines Pty Ltd (subject to deed of company arrangement)**

**Virgin Tech Pty Ltd (subject to deed of company arrangement)**

**A.C.N. 098 904 262 Pty Ltd (subject to deed of company arrangement)**

**Virgin Australia Regional Airlines Pty Ltd (subject to deed of company arrangement)**

**Virgin Australia Holidays Pty Ltd (subject to deed of company arrangement)**

**VB Ventures Pty Ltd (subject to deed of company arrangement)**

**Virgin Australia Cargo Pty Ltd (subject to deed of company arrangement)**

**VB Leaseco Pty Ltd (subject to deed of company arrangement)**

**VB Investco Pty Ltd (subject to deed of company arrangement)**

**VAH Newco No.2 Pty Ltd (subject to deed of company arrangement)**

**Virgin Australia International Operations Pty Ltd (subject to deed of company arrangement)**

**VBNC5 Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2017 No. 1 Pty Ltd (subject to deed of company arrangement)**

**VB PDP 2010-11 Pty Ltd (subject to deed of company arrangement)**

**VB LH 2008 No. 1 Pty Ltd (subject to deed of company arrangement)**



**VB LH 2008 No. 2 Pty Ltd (subject to deed of company arrangement)**

**737 2012 No.1 Pty. Ltd. (subject to deed of company arrangement)**

**737 2012 No. 2 Pty Ltd (subject to deed of company arrangement)**

**VA Regional Leaseco Pty Ltd (subject to deed of company arrangement)**

**VA Hold Co Pty Ltd (subject to deed of company arrangement)**

**Virgin Australia 2013-1 Issuer Co Pty Ltd (subject to deed of company arrangement)**

**VA Lease Co Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2016 No. 1 Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2016 No. 2 Pty Ltd (subject to deed of company arrangement)**

by their joint and several deed administrator:

sign here ▶

Deed Administrator

print name

Vaughan Strawbridge

in the presence of

sign here ▶

Witness

print name

ANTHONY LOWE



HERBERT  
SMITH  
FREEHILLS

Signed sealed and delivered for and on behalf of each of the following IG DOCA Companies:

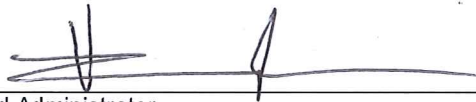
**Virgin Australia International Holdings Pty Ltd (subject to deed of company arrangement)**

**Virgin Australia International Airlines Pty Ltd (subject to deed of company arrangement)**

**Tiger International Number1 Pty Ltd (subject to deed of company arrangement)**

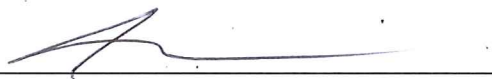
**Virgin Australia Airlines (SE Asia) Pty Ltd (subject to deed of company arrangement)**

by their joint and several deed administrator:

sign here ►   
Deed Administrator

print name Vaughan Strawbridge

in the presence of

sign here ►   
Witness

print name ANTHONY LOWE





Signed sealed and delivered for and on behalf of each of the following Subsidiary DOCA Companies:

**VB Leaseco No 2 Pty Ltd (subject to deed of company arrangement)**

**VB 800 2009 Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2017 No. 2 Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2018 No. 1 Pty. Ltd. (subject to deed of company arrangement)**

**VA Borrower 2019 No. 1 Pty Ltd (subject to deed of company arrangement)**

**VA Borrower 2019 No. 2 Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2014 No. 1 Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2014 No. 2 Pty Ltd (subject to deed of company arrangement)**

**Short Haul 2017 No. 3 Pty. Ltd. (subject to deed of company arrangement)**

by their joint and several deed administrator:

sign here ▶

Deed Administrator

print name

Vaughan Shawbridge

in the presence of

sign here ▶

Witness

print name

ANTHONY LOWE



**Deed Proponent**

Signed sealed and delivered by

**BC Hart Aggregator, L.P.**

By: BC Hart Investors, LLC

its general partner

By: Bain Capital Asia Fund IV, L.P.

its manager

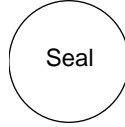
By: Bain Capital Investors Asia IV,

LLC

its general partner

By: Bain Capital Investors, LLC

its manager



sign here ▶

Authorised signatory

sign here ▶

Witness

print name

Ryan Cotton

print name

Kelly Milanette