



HERBERT
SMITH
FREEHILLS

Agreement

Execution copy

Facilitation Agreement

Commonwealth Bank of Australia

DEXUS Funds Management Limited



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Facilitation Agreement

Date ► 13 December 2013

Between the parties

CBA

Commonwealth Bank of Australia

ABN 48 123 123 124 of Ground Floor, Tower 1, 201 Sussex Street
Sydney New South Wales 2000

(CBA)

DEXUS

**DEXUS Funds Management Limited, in its capacity as
responsible entity of the DEXUS Operations Trust**

ABN 24 060 930 783 of Level 25, Australia Square 264 George
Street Sydney NSW 2000

(DEXUS)

Recitals

- 1 On 11 December 2013, DEXUS and CPPIB announced their intention to make the Takeover Bid.
 - 2 DEXUS wishes to engage CBA to provide the Facilitation Services on the terms set out in this agreement.
 - 3 CBA agrees to, and agrees to procure the Relevant CBA Members to, perform the Facilitation Services on the terms and conditions set out in this agreement.
-

The parties agree as follows:



1 Definitions, interpretation and agreement components

1.1 Definitions and interpretation

In this agreement, capitalised expressions have the meanings set out within the body of this agreement and in Schedule 1. This agreement must be interpreted in accordance with Schedule 1.

1.2 Agreement components

This agreement includes any schedule.

2 Condition Precedent

2.1 Conditions

The obligations of the parties under clauses 3 and 4 are conditional on the Effective Date occurring and do not become binding until the later of:

- (a) the Changeover Date; or
- (b) the date on which the Offer closes,
(unless the obligation expressly arises prior to that date).

2.2 Conditions not satisfied by the End Date

Despite any other provision in this agreement, either party may terminate this agreement in accordance with clause 10 if the Effective Date has not occurred by the End Date.

3 Consideration

- (a) The consideration for the provision of the Facilitation Services is the payment by DEXUS of the Facilitation Payment to CBA.
- (b) The Facilitation Payment is:
 - (1) conditional on the Effective Date occurring; and
 - (2) subject to satisfaction of clause 3(b)(1), payable by DEXUS to CBA on the day following the close of the Offer Period in Immediately Available Funds without counter claim or set off.

4 Facilitation Services

4.1 Retirement and appointment of CPA responsible entity

- (a) CBA must, and must cause Relevant CBA Group Members to, take all actions reasonably requested by DEXUS that it is reasonably practicable for CBA or CBA Group Members to do, noting such actions must not require CBA or CBA Group Members to take on payment obligations to third parties to assist it in connection with:
- (1) the appointment of DEXUS or a member of the DEXUS Group as the responsible entity of CPA; and
 - (2) upon the appointment contemplated in clause 4.1(a)(1) above, the transfer to the new responsible entity of know-how, books and records of CPA RE as they relate to CPA (including records prepared by CPA RE that relate to the preparation of financial reports, taxation returns, taxation statements and other taxation reporting requirements relating to CPA for the financial year ending 30 June 2014).
- (b) If within two weeks after the Offer Period ends, CMIL has not convened a meeting of the members of CPA for the purpose of choosing DEXUS or a member of the DEXUS Group as the responsible entity of CPA, DEXUS must requisition a meeting of the members of CPA for that purpose.

4.2 Property management and development services

- (a) CBA must, and must cause Relevant CBA Group Members to, take all actions reasonably requested by DEXUS that it is reasonably practicable for CBA or CBA Group Members to do, noting such actions must not require CBA or CBA Group Members to take on payment obligations to third parties (for a period not exceeding six months from the Effective Date) in connection with the termination or novation (at the election of DEXUS) of all relevant contracts in relation to the funds management and property management business conducted by the Relevant CBA Group Members in relation to CPA or its assets including:
- (1) the CPA Leasing Authority;
 - (2) the QV Property Management Agreement;
 - (3) the 5 Martin Place Joint Venture Agreement;
 - (4) the Galleria Agreement (if executed); and
 - (5) the CPA Development Services Agreement,
- and such other agreements that entitle CBA Group Members to receive any fee streams or benefits derived from their management relationship with CPA, notwithstanding that by doing so, CBA and the Relevant CBA Group Members will forego revenue and capital receipts which it otherwise would be entitled to, including in relation to the proposed sale of certain Relevant CBA Group Members in connection with the proposed internalisation of CFS Retail Property Trust Group (including in relation to the QV Property Management Agreement).
- (b) CBA must, and must procure that Relevant CBA Group Members take all actions reasonably requested by DEXUS to ensure that services provided by Designated Providers are transitioned to DEXUS or a person nominated by DEXUS (including procuring a termination of existing Designated Arrangements if requested). Notwithstanding clause 4.11, CBA unconditionally and irrevocably agrees to



indemnify DEXUS or any member of the DEXUS Group that is appointed as responsible entity and/or trustee of CPA against any and all Losses that may arise as a result of terminating any Designated Arrangements and/or transitioning services provided by a Designated Provider to DEXUS. DEXUS holds the benefit of this clause as trustee for itself and for any member of the DEXUS Group that is appointed as responsible entity or trustee of CPA.

4.3 QV Property Management Agreement

Without limiting the generality of clause 4.2, CBA must use reasonable endeavours to procure that DEXUS or its nominee obtains property management rights in relation to the QV Building at 180-222 Lonsdale Street Melbourne on terms no less favourable than those currently enjoyed by CFSM and for that purpose, CBA will use reasonable endeavours to procure all requisite consents from Victoria Square QV Investments Pty Limited as a joint owner of the property. DEXUS acknowledges that, other than in accordance with clause 4.5, the revenue streams derived from the QV Property Management Agreement will not automatically accrue to DEXUS or a member of the DEXUS Group upon being appointed as responsible entity of CPA, and accordingly DEXUS hereby requests and CBA agrees that it will procure all relevant consents, waivers and releases required from CFSM whether in relation to termination or novation of the QV Property Management Agreement or any other action that may be required of CFSM for the purpose of procuring for DEXUS or its nominee the property management rights referred to above.

4.4 5 Martin Place Joint Venture Agreement

Without limiting the generality of clause 4.2, CBA must use reasonable endeavours to procure that DEXUS or its nominee obtains joint development management rights with Cbus Property 5 Martin Place Pty Ltd (and other relevant Cbus Group companies (collectively **Cbus**) on terms no less favourable than those currently enjoyed by CFSM and for that purpose, CBA will use reasonable endeavours to procure all requisite consents from Cbus. DEXUS acknowledges that, other than in accordance with clause 4.5, the revenue streams derived from the 5 Martin Place Joint Venture Agreement will not automatically accrue to DEXUS or a member of the DEXUS Group upon being appointed as responsible entity of CPA, and accordingly DEXUS hereby requests and CBA agrees that it will procure all relevant consents, waivers and releases required from CFSM in relation to termination or novation of the 5 Martin Place Joint Venture Agreement or any other action that may be required of CFSM for the purpose of procuring for DEXUS or its nominee the joint development management rights referred to above.

4.5 Fees

- (a) Prior to the close of the Offer, CBA and each Relevant CBA Group Member will accrue all fee streams or benefits derived from their management relationship with CPA up until the Changeover Date and will retain those fee streams and benefits for their own use;
- (b) On and after the close of the Offer but subject to the occurrence of the Changeover Date, CBA must, and must cause Relevant CBA Group Members to:
 - (1) cause as far as practicable all such fee streams to accrue for the benefit of DEXUS directly; and
 - (2) subject to clause 4.5(d), pay all such fee streams relating to the period after the Changeover Date and received by CBA or the Relevant CBA



Group Member to DEXUS within 5 Business Days of receipt of those amounts by CBA or the Relevant CBA Group Member (whether that benefit accrues to DEXUS at the time of payment or not) unless an arrangement which delivers that benefit (or an equivalent benefit, to DEXUS) has been entered into in accordance with clause 4.9.

- (c) From the Changeover Date, DEXUS must, as far as reasonably practicable, assume full responsibility for the performance of all obligations required under relevant agreements or arrangements in order to earn such fee streams. For this purpose, DEXUS and CBA will, in good faith, seek to agree arrangements for ensuring that on, or as soon as possible after, the Changeover Date, DEXUS will be responsible for performing such obligations.
- (d) DEXUS must pay CBA or any Relevant CBA Group Member on a cost recovery basis all costs and expenses incurred by any of them in continuing to perform any obligations required under relevant agreements or arrangements for any period in which DEXUS is entitled to the fee streams for the performance of such obligations under sub-clause 4.5(c). To the extent any such payment relates to the period from the Changeover Date to the close of the Offer, the obligation to make that payment will arise on the same date that DEXUS is obliged, under clause 3 to pay the Facilitation Payment.
- (e) Notwithstanding clause 4.5(a), CBA must procure that prior to 31 December 2013, CFSPPL will undertake to pay or to transfer any performance fee it receives to the CPA RE to be held as an asset of CPA. Further, CBA must ensure CFSPPL does not do anything (other than under this clause) to become disentitled to the performance fee. These undertakings must be irrevocable unless this agreement is terminated and if this agreement is terminated then there is no obligation in relation to the performance fee and CFSPPL remains entitled to receive and retain the performance fee.

4.6 Consultation

From the date of this agreement, each of CBA and DEXUS agrees to appoint a representative for the purpose of those representatives meeting from time to time as required to consider and make recommendations to the parties in respect of the following matters:

- (a) issues identified by DEXUS in relation to the management of CPA;
- (b) the development of any transition plans for the management of CPA, including property management, arrangements relating to CFSPAM, and asset custody;
- (c) the implementation of any transition plans; and
- (d) sharing information on other issues associated with the management of CPA for the period prior to the change of responsible entity of CPA to an entity outside the CBA Group.

4.7 Books, Records and Financial reports

- (a) CBA must, and must cause Relevant CBA Group Members to, provide all books, records and other information of CFSPPL and CFSPM requested by DEXUS, to the extent that the information:
 - (1) relates to CPA; and
 - (2) are relevant to the ongoing operation of CPA.



Any such books, records and other information may be redacted to the extent legally necessary or to the extent it also relates to other non-CPA related matters.

- (b) CBA must, and must cause Relevant CBA Group Members to, take all actions reasonably requested by DEXUS that it is reasonably practicable for CBA or CBA Group Members to do, noting such actions must not require CBA or CBA Group Members to take on payment obligations to third parties to assist it in connection with the preparation by DEXUS of the financial reports, taxation returns, tax statements and other taxation reporting requirements relating to CPA for the financial year ending 30 June 2014.

4.8 Change of control consents or waivers

- (a) From the date of this agreement, CBA must, and must cause Relevant CBA Group Members to, use reasonable endeavours to advise and assist DEXUS in relation to DEXUS obtaining any change of control consents or waivers required by DEXUS in respect of each:
- (1) debt facility agreement entered into by CPA RE;
 - (2) derivative arrangement entered into by CPA RE;
 - (3) co-owners' agreement or unitholders' agreement entered into by CPA RE; and
 - (4) other agreement entered into by CPA RE agreed by the parties.
- (b) CBA agrees that it will not exercise any rights as lessee of any premises which it may have to purchase the premises under a lease with CPA RE as a consequence of the Takeover Bid or the transactions contemplated by that Takeover Bid or this agreement, including without limitation:
- (1) 5 Martin Place, Sydney;
 - (2) 385 Bourke Street, Melbourne;
 - (3) 2 Dawn Fraser Avenue, Sydney Olympic Park, Homebush;
 - (4) 4 Dawn Fraser Avenue, Sydney Olympic Park, Homebush;
 - (5) 101 George Street, Parramatta; and
 - (6) 150 George Street, Parramatta.
- (c) CBA agrees to provide any consents as lender or counterparty to any financing and derivatives arrangements with CPA RE and agrees to waive any rights which it otherwise would accrue as a consequence of the Takeover Bid or the transactions contemplated by that Takeover Bid or this agreement, including the early termination of those arrangements, including without limitation the \$300m CBA Facility Agreement expiring 30 April 2018.

4.9 Alternative arrangements

To the extent to which CBA, Relevant CBA Group Members and DEXUS are unable to terminate or novate any contracts in accordance with clause 4.2, CBA must, and must cause Relevant CBA Group Members to, use reasonable endeavours by means of agency, derivatives, sub-contracting or otherwise to place DEXUS in the same or a similar position to that in which it would have been had a termination or novation been achievable.

4.10 Sub-trustee

- (a) Subject to clause (b), CBA must procure that CFSPL and CFMPL refrain from retiring as trustee of each Sub-Trust for a period not exceeding 6 months, provided:
- (1) all costs incurred by CFSPL and CFMPL while acting as trustee of a Sub-Trust are paid by DEXUS within 7 days of invoice;
 - (2) CFSPL will not be required to undertake any activities while acting as trustee of a Sub-Trust which would require it to hold an Australian Financial Services Licence;
 - (3) CFMPL and CFSPL are fully indemnified for any liability they incur while acting as trustee of a Sub-Trust when acting consistently with instructions, subject to an exclusion for liabilities that arise as a result of fraud, negligence or wilful default of CFSPL or CFMPL; and
 - (4) CFMPL and CFSPL will not be required to take any action while acting as trustee of a Sub-Trust otherwise than in accordance with all relevant laws and the directions of the relevant unitholders provided that neither CFSPL nor CFMPL may be directed to provide any services or take any action other than as a bare trustee or as a custodian.
- (b) The period under sub-clause (a) will be automatically extended for a period (not exceeding 24 months) specified by DEXUS in respect of any one Sub-Trust if DEXUS notifies CBA that it has formed the view, acting reasonably, that it would be materially adverse to CPA Unitholders (taken as a whole) for a change of trustee of a Sub-Trust to occur having regard to all of the circumstances of the Sub-Trust and its underlying property or properties. If DEXUS exercises its rights under this clause 4.10(b), it must use reasonable endeavours to replace the trustee of the Sub-Trust as soon as possible after the 24 month period referred to in this clause begins.

4.11 Acknowledgement

Despite any assistance provided by CBA or a Relevant CBA Group Member pursuant to this clause 4, the parties acknowledge that DEXUS will be liable for any Loss suffered or incurred by it or by a DEXUS Group Member arising out of the implementation of any action contemplated by this clause 4 unless that Loss is caused by the negligence, recklessness or wilful misconduct of CBA or a Relevant CBA Group Member, provided that complying with an obligation under this agreement, or complying with a direction or request of a DEXUS Group Member will not constitute negligence, recklessness or wilful misconduct.

5 Modification of service levels and fees

- (a) The parties agree that each of the Facilitation Services described in clauses 4.1 to 4.10 of this agreement are independent services requested by DEXUS. The parties consider that the Facilitation Payment is a fair reflection of the aggregate value of those services. Either party may, at any time prior to the earlier of (i) 14 February 2014 or (ii) the Effective Date, by notice in writing to the other, notify the other that it wishes the parties to consider a reduction in the level of any or all of



the services or, alternatively, a termination of the provision of any or all of the services. A party may only give such a notice once.

- (b) If a party gives notice to the other pursuant to clause 5(a), the parties must in good faith consider whether they can agree to a reduction in the level of services and therefore a revised aggregate price for the services and if agreement is reached, the Facilitation Services and the Facilitation Payment will thereafter be the services and price so agreed.
- (c) If the parties do not reach agreement pursuant to clause 5(b) within 5 Business Days after service of a notice pursuant to clause 5(a), either party may terminate this agreement forthwith by notice in writing to the other.

6 Right of first refusal

CBA agrees that if it exercises any rights as lessee of any premises which it may have to purchase the premises under a lease with CPA RE as a consequence of a transaction other than the Takeover Bid or the transactions contemplated by that Takeover Bid or this agreement (including the Takeover Bid), including without limitation:

- (1) 5 Martin Place, Sydney;
- (2) 385 Bourke Street, Melbourne;
- (3) 2 Dawn Fraser Avenue, Sydney Olympic Park, Homebush;
- (4) 4 Dawn Fraser Avenue, Sydney Olympic Park, Homebush;
- (5) 101 George Street, Parramatta; and
- (6) 150 George Street, Parramatta,

CBA will offer to DEXUS or any related body corporate of DEXUS nominated by DEXUS the right to purchase any such premises on no less favourable terms than those on which the premises may be purchased by CBA. DEXUS must pay CBA on demand all costs incurred by CBA in connection with the exercise of any rights as lessee and the subsequent sale of any premises to DEXUS pursuant to the provisions of this clause 6.

7 Employees

DEXUS undertakes to CBA that it will afford to employees of CBA and Related Persons whose employment may be terminated as a consequence of the transactions contemplated by this agreement an interview for possible employment in any suitable roles within DEXUS.



8 Exclusivity

8.1 No shop and no talk

During the Exclusivity Period, CBA must not, and must ensure that its Related Persons do not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 8.1(a); or
- (b) **(no talk):**
 - (1) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make or which would reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (2) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (3) disclose or otherwise provide any material non-public information about the business or affairs of CPA to a Third Party with a view to obtaining or which would reasonably be expected to encourage or lead to receipt of an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Relevant CBA Group Members); or
 - (4) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 8.1(b),

but nothing in this clause 8.1 prevents CBA or any Relevant CBA Group Members from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business.

8.2 Notification

- (a) During the Exclusivity Period, CBA must as soon as possible notify DEXUS in writing if it, or any of its Related Persons, becomes aware of any:
 - (1) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
 - (2) proposal made to CBA or any of its Related Persons in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or

- (3) provision by CBA or any of its Related Persons of any material non-public information concerning CPA to any Third Party in connection with an actual, proposed or potential Competing Proposal,
whether direct or indirect, solicited or unsolicited, and in writing or otherwise.
- (b) A notification given under clause 8.2(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal.

9 Restriction on voting and dealing

Nothing in this agreement:

- (a) requires CBA or any CBA Group Member to vote their CPA units in any particular way; or
- (b) requires, prevents or in any way restricts CBA or any CBA Group Member from dealing, or causing another person to deal, in CPA Units.

10 Termination

10.1 Termination by CBA

CBA may terminate this agreement by notice in writing to DEXUS:

- (a) if DEXUS suffers an Insolvency Event;
- (b) if DEXUS is in material breach of this agreement and the breach (if capable of remedy) has not been remedied within three Business Days of notice in writing from CBA specifying the breach;
- (c) if DEXUS is entitled to withdraw any takeover offer made by it for CPA (whether alone or with any other person) and withdraws that offer in accordance with section 652A of the *Corporations Act 2001* (Cth);
- (d) if a Third Party's voting power in CPA exceeds 50.1%; or
- (e) if a Third Party becomes responsible entity of CPA; or
- (f) on the End Date, if the event in the definition of "Effective Date" has not occurred by that date.

10.2 Termination by DEXUS

DEXUS may terminate this agreement by notice in writing to CBA:

- (a) if CBA suffers an Insolvency Event;
- (b) if CBA is in material breach of this agreement and the breach (if capable of remedy) has not been remedied within three Business Days of notice in writing from DEXUS specifying the breach;



- (c) if DEXUS is entitled to withdraw any takeover offer made by it for CPA (whether alone or with any other person) and withdraws that offer in accordance with section 652A of the *Corporations Act 2001* (Cth);
- (d) if a Third Party's voting power in CPA exceeds 50.1%;
- (e) if a Third Party becomes responsible entity of CPA; or
- (f) on the End Date, if the event specified in the definition of the "Effective Date" has not occurred by that date.

10.3 Effect of termination

If this agreement is terminated by either party under clauses 10.1 or 10.2:

- (a) each party will be released from its obligations under this agreement, except that this clause 10.3 and clause and 13 will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force and effect including any further obligations in respect of the Internalisation.

10.4 Method of termination

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice (in accordance with clause 11) stating that it terminates this agreement and the provision under which it is terminating the agreement.

11 GST

11.1 Definitions

Words used in this clause 11 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

11.2 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (b) To the extent that any supply made under or in connection with this agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the recipient must pay, in addition to the consideration provided under this agreement for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (c) Whenever an adjustment event occurs in relation to any taxable supply to which clause 11.2(b) applies:



- (1) the supplier must determine the amount of the GST component of the consideration payable; and
- (2) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

11.3 Tax invoices

The supplier must issue a Tax Invoice to the recipient of a supply to which clause 11.2 applies no later than 7 days following payment of the GST inclusive consideration for that supply under that clause.

11.4 Reimbursements

If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

12 Notices

12.1 Form of Notice

A notice or other communication to a party under this agreement (**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).

12.2 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



Method of giving Notice	When Notice is regarded as given and received
By fax to the nominated fax number	<p>At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety.</p> <p>However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included.</p>

12.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than fax as permitted in clause 12.2).

13 Duties, costs and expenses

13.1 Duties

DEXUS must pay all Duty in respect of the execution, delivery and performance of this agreement and any agreement or document entered into or signed under this agreement.

13.2 Costs and expenses

- (a) Unless otherwise provided for in this agreement, each party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and registration of this agreement and any other agreement or document entered into or signed under this agreement.
- (b) Any action to be taken by CBA or DEXUS in performing its obligations under this agreement must be taken at its own cost and expense unless otherwise provided in this agreement.

14 General

14.1 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.



14.2 Invalidity and enforceability

- (a) If any provision of this agreement 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 14.2(a) does not apply where enforcement of the provision of this agreement in accordance with clause 14.2(a) would materially affect the nature or effect of the parties' obligations under this agreement.

14.3 Waiver

No party to this agreement 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 14.3 are set out below.

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

14.4 Variation

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

14.5 Assignment of rights

Rights arising out of or under this agreement are not assignable by a party (whether directly, by means of synthetic arrangements, or otherwise) without the prior written consent of the other party.

14.6 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 agreement and the transactions contemplated by it.

14.7 Entire agreement

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



14.8 No reliance

Neither party has relied on any statement by the other party not expressly included in this agreement in relation to the subject matter of this agreement.

14.9 Counterparts

- (a) This agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this agreement by signing any counterpart.

14.10 Relationship of the parties

- (a) Nothing in this agreement gives a party authority to bind any other party in any way. For the avoidance of doubt, this clause 14.10(a) does not limit express obligations of the parties under this agreement.
- (b) Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.

14.11 Exercise of rights

- (a) Unless expressly required by the terms of this agreement, 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 agreement.
- (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 agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

15 Limitation of Liability

15.1 Capacity

DEXUS enters into this agreement only in its capacity as responsible entity of DEXUS Operations Trust (“DXO”) and in no other capacity. References to DEXUS in this agreement are references to DEXUS its responsible entity capacity only. Subject to clause 15.2, and to the extent permitted by law:

- (a) a liability to any person arising under or in connection with this agreement is limited to and can be enforced against DEXUS only to the extent to which it can be satisfied out of the property of DXO; and
- (b) DEXUS is not liable in its personal capacity in contract, tort or otherwise for any loss suffered in any way relating to DXO except to the extent that the Corporations Act or the constitutions of DXO impose a liability of that nature.



15.2 Exceptions to DEXUS's limitation of liability

Clause 15.1 does not apply to any obligation or liability of DEXUS to the extent that it is not satisfied because, under the DXO constitution or by operation of law, there is a reduction in the extent, or elimination, of DEXUS indemnification out of the assets of DXO as a result of DEXUS's fraud, negligence or breach of trust.



Schedule 1

Schedule 1 – Definition and interpretation

1.1 Definitions

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

Term	Meaning
5 Martin Place Joint Venture Agreement	the agreement entitled 'Joint Venture Agreement – Development Phase' dated 3 August 2011 between (amongst others), CPA RE, Cbus Property 5 Martin Place Limited and CFMS.
Associate	has the meaning given in section 12 of the Corporations Act.
Business Day	a day on which banks are open for business in Sydney, excluding a Saturday, Sunday or public holiday in that city.
CBA Group	CBA and each of its related bodies corporate (with the exception of CMIL) and CBA Group Member means any member of the CBA Group.
CFMS	Colonial First State Management Pty Limited (ACN 128 976 787).
CFSP	Colonial First State Property Limited (ABN 20 085 313 926).
CFSPM	Colonial First State Property Management Pty Limited (ACN 101 504 045).
Changeover Date	the date that DEXUS or a member of the DEXUS Group becomes responsible entity of CPA.
CMIL	Commonwealth Managed Investments Limited (ACN 084 098 180).
Competing Proposal	any offer, proposal or expression of interest from any person in relation to a transaction for the management of CPA, including any transaction under which any entity that currently provides responsible entity or management services to CPA:



Term	Meaning
	<ol style="list-style-type: none">1 is acquired; or2 sub-delegates its obligations to a third party that is not, or is not intended to remain, a CBA Group Member; or3 any transaction having an economically similar effect, but not including any proposal to internalise management of the CFS Retail Property Trust.
Corporations Act	the Corporations Act 2001 (Cth).
CPA	Commonwealth Property Office Fund (ARSN 086 029 736).
CPA Development Services Agreement	the agreement entitled 'Development Services Agreement (CPA)' dated 18 March 2009 between CPA RE and CFMSM.
CPA Leasing Authority	the agreement entitled 'Appointment of Leasing Agent' dated 20 May 2009 between CPA RE and CFMSM.
CPA Management Agreement	the agreement entitled 'Commonwealth Property Office Fund – Management Agreement' dated 23 February 2009 between CPA RE and CFSPL.
CPA Sub-Management Deed	the deed entitled 'Deed of Appointment as Manager' dated 26 June 2008 between CFSPL and CFMSM.
CPA RE	Commonwealth Managed Investments Limited (ABN 33 084 098 180) in its capacity as responsible entity of CPA.
CPA Unit	a unit in CPA.
CPA Unitholder	a holder of CPA Units.
CPPIB	the Canadian Pension Plan Investment Board.
Demand	a written notice of, or demand for, an amount payable.
Designated	arrangements agreed in writing by the parties to be "Designated



Term	Meaning
Arrangements	Arrangements”.
Designated Provider	a person agreed in writing by the parties to be a “Designated Provider”.
DEXUS Group	DEXUS and each of its related bodies corporate and DEXUS Group Member means any member of the DEXUS Group.
Disputing Action	in respect of a Tax Demand, any action to cause the Tax Demand to be withdrawn, reduced or postponed or to avoid, resist, object to, defend, appear against or compromise the Tax Demand and any judicial or administrative proceedings arising out of that action.
Duty	any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.
Effective Date	the day on which DEXUS’s Voting Power in CPA increases to 50.1% or more or, if CPPIB is not an Associate of DEXUS, CPPIB and DEXUS’s combined Voting Power in CPA increases to 50.1% or more.
End Date	30 June 2014.
Exclusivity Period	the period from and including the date of this agreement to the earlier of: 1 the date of termination of this agreement; 1 the End Date; or 2 the Effective Date.
Facilitation Payment	\$41 million.
Facilitation Services	each of the obligations of CBA under clause 4.
Galleria Agreement	any agreement which may be executed by CPA RE and any CBA Group Member for the provision of property management services in respect of the retail component (known as the “Galleria”) of the property located at 385 Bourke Street, Melbourne Victoria.



Term	Meaning
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
Immediately Available Funds	cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the payee.
Insolvency Event	means, in relation to an entity: <ol style="list-style-type: none">1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity other than where the order is set aside within the earlier of 14 days or the day on which Completion would otherwise be due to occur;2 a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;3 the entity executing a deed of company arrangement;4 the entity ceasing, or threatening to cease to, carry on substantially all the business conducted by it as at the date of this agreement;5 the entity being or becoming unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or6 the entity being deregistered as a company or otherwise dissolved.
Loss	losses, liabilities, damages, costs, charges and expenses and includes Taxes, Duties and Tax Costs.
Offer	each offer to acquire a CPA Unit to be made in connection with the Takeover Bid.
Offer Period	the period that the Offer will be open for acceptance under the Takeover Bid.
QV Property Management Agreement	the agreement entitled 'Property Management Agreement (QV Complex)' dated 30 November 2010 between CPA RE, Victoria Square QV Investments Pty Ltd and CFMS.
Related Persons	<ol style="list-style-type: none">1 in respect of CBA or its related bodies corporate (with the exception of CMIL), each director, officer, employee, advisor, agent or representative of CBA or related body corporate (with the exception of CMIL); and2 in respect of a financial advisor, each director, officer, employee or contractor of that financial advisor.

Term	Meaning
Relevant CBA Group Members	<ol style="list-style-type: none"> 1 CBA; 2 CFSPL; 3 CFSM; and 4 CFSPM, <p>provided that the entity (other than CBA) is a related body corporate of CBA at the relevant time.</p>
Sub-Trust	each CPA sub-trust for which a CBA Group Member is trustee.
Takeover Bid	an off-market takeover bid to be made by DEXUS Funds Management Limited (ABN 24 060 920 783) for CPA Units, as referred to in the announcement dated 11 December 2013.
Tax	any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above but excludes Duty.
Tax Cost	<p>all costs, and expenses incurred in:</p> <ol style="list-style-type: none"> 1 managing an inquiry; or 2 conducting any Disputing Action in relation to a Tax Demand.
Tax Demand	<ol style="list-style-type: none"> 1 a Demand or assessment from a Government Agency requiring the payment of any Tax or Duty for which the Seller may be liable under this agreement; 2 any document received from a Government Agency administering any Tax or Duty assessing, imposing, claiming or indicating an intention to claim any Tax or Duty; 3 a notice to a contributing member of a Consolidated Group given under section 721 15(5) or (5A) of the ITAA 1997; or 4 lodgement of a tax return or a request for an amendment under a law about self-assessment of Tax.
Third Party	an entity other than CMIL, a related body corporate of CBA, DEXUS, a related body corporate of DEXUS or an associate of DEXUS
Voting Power	has the meaning given to it in the Corporations Act.



1.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (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 agreement have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (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 includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A promise on the part of two or more persons binds them jointly and severally.
- (k) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (m) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (n) A reference to a body, other than a party to this agreement (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 Interpretation of inclusive expressions

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



1.4 **Business Day**

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



Schedule 2

Schedule 2 – Notices

CBA

Commonwealth Bank of Australia

Address Ground Floor, Tower 1, 201 Sussex Street Sydney New South Wales
2000

Attention General Counsel

Fax +61 2 9118 5788

DEXUS

DEXUS Funds Management Limited

Address Australia Square Tower, Level 25, 264 George St, Sydney NSW 2000

Attention Company Secretary

Fax +61 2 9017 1101



Signing page

Executed as an agreement


CBA

Signed for
Commonwealth Bank of Australia
by its attorney

sign here ▶ 
Attorney

print name Annabel Spring.

in the presence of

sign here ▶ 
Witness

print name EDWARD EASON



DEXUS

Signed for
DEXUS Funds Management Limited
by its attorney

sign here ▶

Attorney

print name

JOHN CAMPBELL EASY

ROSS DuVernet

in the presence of

sign here ▶

Witness

print name

Daniel Natale
