



Execution version

Convertible Notes Trust Deed

Clime Capital Limited

ABN 99 106 282 777

Equity Trustees Limited

ABN 46 004 031 298

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THIS TRUST DEED is made on 17th November 2017

BETWEEN:

- (1) **Clime Capital Limited** ABN 99 106 282 777 (the "**Issuer**"); and
- (2) **Equity Trustees Limited** ABN 46 004 031 298 (the "**Trustee**").

RECITALS:

- (A) The Issuer wishes to issue Notes subject to and under the terms of this document.
- (B) The Trustee has agreed, at the request of the Issuer, to act on the terms set out in this document as trustee for the benefit of persons who are Noteholders from time to time.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

"Amendment" has the meaning in clause 17.1.

"Application Form" means the relevant application form attached to, or accompanying, the Prospectus upon which an application for Offer Securities may be made.

"ASIC" means the Australian Securities & Investments Commission.

"ASTC" means the ASX Settlement Pty Ltd (ABN 49 008 504 532).

"ASX Settlement Operating Rules" means the settlement rules of ASTC as amended or replaced from time to time.

"ASX" means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires.

"ASX Listing Rules" means the listing rules of ASX.

"Business Day" means a day which is a business day within the meaning of the ASX Listing Rules.

"Attorney" means an attorney appointed under this document and any attorney's substitute or delegate.

"Authorisation" means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

"Authorised Representative" means, for a person:

- (a) a company secretary or director of the person or an employee of the person whose title includes the word "manager", "officer", "director", "counsel", "chief" or "head";
- (b) a person who is acting temporarily in one of those positions; or
- (c) a person, or a person holding a position, nominated by the person by written notice to the other party to this document.

"Authorised Representative's Certificate" means a certificate signed by an Authorised Representative of the Issuer.

"CHESS" means the Clearing House Electronic Subregister System.

"CHESS Approved Securities" means securities in respect of which approval has been given by ASX Settlement in accordance with the ASX Settlement Operating Rules.

"Clearing System" means the Clearing House Electronic Sub-register System operated by ASTC or any other applicable securities trading and/or clearance system.

"Confidential Information" means all information and other material (other than information or material in the public domain) provided to or obtained by the Trustee, or any officer, employee, delegate, adviser or other consultant of the Trustee under, in connection with or related to this document or any obligation, duty or power of the Trustee under this document.

"Conversion" means the conversion of a Note in accordance with clause 4 of Note Terms and the words Convert, Convertible, Converting and Converted bear a corresponding meaning.

"Conversion Date" means the date (determined by the Issuer (in its absolute discretion) in accordance with the Note Terms) on which Shares will be issued to the Noteholder on conversion of the Notes under clause 4 of the Note Terms.

"Conversion Notice" means a notice of conversion given in accordance with clauses 4.2 and 4.3 of the Note Terms and in the form prescribed in Schedule 3.

"Controller" has the same meaning as in the Corporations Act.

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

"Event of Default" means the happening of any event set out in clause 8.1 of the Note Terms.

"Excluded Tax" means a Tax on net income in any jurisdiction, other than:

- (a) a Tax that is calculated on or by reference to the gross amount of any payment derived by a party under this document or the transactions that this document contemplates (unless the Tax is imposed because the party has not given its tax file number to the person who made the payment); or
- (b) a Tax that is imposed because a party is regarded as being subject to tax in a jurisdiction solely because it is a party to this document or because it is participating in the transactions that this document contemplates.

"Face Value" has the meaning given to it in the Note Terms.

"Finance Party" means the Trustee and each Noteholder.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised under any acceptance credit, bill acceptance or bill endorsement facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting principles, standards and practices in Australia, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (h) consideration for the acquisition of assets or services payable more than 90 days after acquisition;
- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (j) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other Instrument Issued by a bank or financial institution; and
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"Government Agency" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"Group" means the Issuer and each of its Subsidiaries.

"GST" means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and

- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

"GST Law" means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Guarantee" means a guarantee, indemnity, letter of credit, performance bond, binding letter of comfort, or other undertaking or obligation (whether conditional or unconditional) to:

- (a) do any one or more of the following in respect of an obligation of another person (whether or not it involves the payment of money):
 - (i) provide funds (including by the purchase of property), or otherwise to make property available, in or towards payment or discharge of that obligation;
 - (ii) indemnify against the consequences of default in the payment or performance of that obligation; or
 - (iii) be responsible in any other way for that obligation; or
- (b) be responsible for the solvency or financial condition of another person.

"Insolvency Event" means, in respect of the Trustee (in its personal capacity and not as trustee of any trust) or in respect of any other person:

- (a) an administrator being appointed to the person;
- (b)
 - (i) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;
 - (ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property and not being withdrawn, stayed or dismissed within 30 days; or
 - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the person's property (including seizing the person's property within the meaning of section 123 of the PPSA);
- (d) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) an application being made to a court for an order for its Winding Up;
- (f) an order being made, or the person passing a resolution, for its Winding Up;
- (g) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or

- (ii) being unable to pay its debts or otherwise insolvent;
- (h) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (i) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (j) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

"Institutional Investor" means a person to whom Offer Securities are able to be offered and/or issued under applicable law without the need for any prospectus, registration or other formality (other than a registration or formality with which the Issuer is willing to comply), which in Australia means a "sophisticated investor" (within the meaning of section 708(8) of the Corporations Act) or a "professional investor" (within the meaning of section 708(11) of the Corporations Act).

"Interest Payment Date" means, in respect of a Note:

- (a) 10th Business Day following the end of the quarterly periods ending 28 February, 31 May, 31 August and 30 November;
- (b) the Conversion Date (if the Issuer elects not to include the Interest accrued but unpaid on the Note in the Conversion Amount);
- (c) the Maturity Date; and
- (d) any Redemption Date.

"Interest Period" means, for a Note, each period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next Interest Payment Date. However:

- (a) the first Interest Period commences on (and includes) its Issue Date; and
- (b) the final Interest Period ends on (but excludes) the Maturity Date, Conversion Date or the Redemption Date.

"Interest Rate" means, in respect of an Interest Period for a Note, 6.25% per annum

"Issue Date" means, in respect of a Note, the date on which that Note is issued.

"Investors" means both Institutional Investors and Retail Investors who participate in the Offer.

"Issuer" means Clime Capital Limited ACN 106 282 777.

"Limited Recourse Debt" means Financial Indebtedness incurred or owed by one or more entities (including a trust) for or in respect of the purchase, construction, development or operation of an asset or assets where the financier's recourse is limited to those assets (or the income or cashflow from those assets) or shares or units issued by that entity or those entities and the financier otherwise has no Guarantee from any other member of the Group or any security over any other assets of the Group.

"Material Adverse Effect" means an event or circumstance which (and, for the avoidance of doubt, after taking account of any warranty, indemnity or other right of recourse against any creditworthy third party with respect to the relevant event or circumstance provided that in each such case the benefit of each such warranty, indemnity, insurance, or other right of recourse is likely to be realised within a timeframe sufficient to negate the otherwise material adverse effect of the event or circumstance in question) has or would reasonably be expected to have a material adverse effect on:

- (a) the ability of the Issuer to meet its payment obligation under the Notes; or
- (b) subject to the reservations or qualifications of any legal opinion accepted by the Trustee in connection with the issue of any Notes, the validity or enforceability of the rights and remedies (taken as a whole) of the Noteholders under this document.

"Maturity Date" means 30 November 2021.

"Meeting Provisions" means the provisions for meetings of the Noteholders and related matters contained in Schedule 2.

"Moneys Owning" means, without double counting, the aggregate of all moneys owing (whether presently, contingently or prospectively) from time to time by the Issuer to any of the Trustee and the Noteholders under this document and the Notes and, in relation to a Noteholder, means the foregoing to the extent that it is owing to or relates to that Noteholder.

"Note" means a debt obligation denominated in Australian dollars and issued, or to be issued, by the Issuer which is constituted by, and owing under, the Trust Deed, the details of which are recorded in, and evidenced by, entry in the Register.

"Noteholder" means, in respect of a Note, the person from time to time whose name is entered on the Register as the holder of that Note.

"Note Certificate" means a certificate issued by the Issuer in respect of a Note.

"Note Terms" means, in relation to a Note, the terms and conditions of issue of that Note (as set out in Schedule 1).

"Offer" means the offer by the Issuer to Investors to subscribe for Offer Securities under the Offer Documents at the Face Value, to raise up to \$21 million.

"Offer Documents" means all documents issued or published by or issued with the consent of the Issuer in connection with the Offer, including:

- (a) the Prospectus;
- (b) any Application Form;
- (c) any ASX announcements and investor presentation materials in respect of the Offer;
- (d) any other public or media statements, announcements, advertisements, publicity, roadshow materials or marketing presentations in respect of the Offer; and
- (e) all other communications with investors or potential investors, nominees and other parties approved or authorised by or issued with the consent of the Issuer in respect of the Offer.

"Offer Securities" means the Notes which are to be issued by the Issuer pursuant to the Offer.

"Official List" means the Official List of the ASX.

"Ordinary Resolution" has the meaning given in the Note Terms.

"Permitted Security Interest" means, in relation to the Issuer and the Group, as the case may be, any of the following:

- (a) liens, rights of retention and statutory charges arising by operation of law in the ordinary course of business where the related indebtedness is not more than 60 days overdue or is being contested in good faith and appropriately provisioned;
- (b) any Security Interest over the assets of a member of the Group where:
 - (i) such member became a Subsidiary of the Issuer after the date of the Trust Deed and such Security Interest was not created in contemplation of that member becoming a Subsidiary of the Issuer; and
 - (ii) the money secured by that Security Interest is paid or repaid either in accordance with the terms applicable to such payment as those terms were in effect at the time the member of the Group became a Subsidiary of the Issuer or at such earlier time as that member elects;
- (c) any Security Interest for Limited Recourse Debt; and
- (d) any other Security Interest not referred to in sub-paragraphs (a) to (c) above provided the aggregate value of assets subject to such Security Interests is not more than 10% of the Total Equity.

"Power" means any right, power, authority, discretion or remedy of, or conferred on, the Trustee or a Noteholder, an Attorney or a Controller by this document or any applicable law.

"PPS Security Interest" means a security interest that is subject to the PPSA.

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

"Proper ASTC Transfer" has the meaning given in the *Corporations Regulations 2001* (Cth).

"Prospectus" means a prospectus to be issued by the Issuer in respect of a public offer of Notes.

"Protected Person" means the Trustee and any Authorised Representative, director, officer, employee, agent, delegate, attorney or related body corporate of the Trustee.

"Recovered Money" means (subject to this document), the net proceeds of all money received or recovered by the Trustee under this document and Chapter 2L of the Corporations Act whether by enforcement or otherwise (after deduction of fees, costs, charges, expenses and other amounts paid or incurred in accordance with this document and Chapter 2L of the Corporations Act).

"Redemption" means the redemption of a Note in accordance with clause 5 of the Note Terms and the words Redeem, Redeemable and Redeemed bear their corresponding meanings.

"Redemption Date" means, in respect of a Note, the date, other than the Maturity Date, on which the Note is Redeemed.

"Register" means the register of Noteholders established and maintained under clause 6 and, where appropriate, includes:

- (a) a sub-register maintained by or for the Issuer under the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules; and
- (b) any branch register.

"Registrar" means Boardroom Pty Limited ACN 003 209 836 or any other person appointed by the Issuer (with such appointment notified to the Trustee) to maintain the Register and perform any payment and other duties as specified in this document.

"Related Body Corporate" has the meaning given to it in the Corporations Act.

"Retail Investor" means a person who is not an Institutional Investor.

"Security Interest" means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

"Series" means a series of Notes issued under this document.

"Shares" means an ordinary share in the capital of the Issuer.

"Special Resolution" means:

- (a) a resolution passed at a meeting of the Noteholders duly called and held under the Meeting Provisions:
 - (i) by at least 75% of the persons voting on a show of hands (unless paragraph (ii) below applies); or
 - (ii) if a poll is duly demanded, then by a majority consisting of at least 75% of the votes cast; or
- (b) a resolution passed by postal ballot or circular written resolution by Noteholders representing (in aggregate) at least 75% of the principal amount then outstanding of all of the Notes.

"Subsidiary" has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

"Tax" means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

"Transaction Document" means:

- (a) each Note;
- (b) the Note Terms; and
- (c) this document.

"Trust" means the trust established under clause 2.2.

"Trust Fund" means (with none of the following limiting any other):

- (a) the sum of \$10 referred to in clause 2.2(a);
- (b) all right, title and interest vested in the Trustee in, to and under this document, including all rights and benefits under them;
- (c) the benefit of all undertakings, covenants, agreements, representations and warranties made or given or agreed to or in favour of, or granted to or for the benefit of, the Trustee under this document;
- (d) the right to enforce the Issuer's duty to repay the Moneys Owning;
- (e) the right to enforce any other duties that the Issuer has under the Note Terms, this document and Chapter 2L of the Corporations Act;
- (f) all money paid to the Trustee under this document in its capacity as trustee of the Trust (other than, for the avoidance of doubt, those amounts which are paid to the Trustee in its personal capacity);
- (g) all Recovered Money;
- (h) the benefit of all claims, actions and demands arising in respect of the Powers; and
- (i) all other property acquired by the Trustee and intended to be held for the benefit of the Noteholders or the Trustee from time to time on the trusts of this document.

"Trustee Company" means any person qualified to be a trustee of the Trust in accordance with section 283AC of the Corporations Act.

"Winding Up" means in respect of a person the appointment of a liquidator or provisional liquidator of that person (and where the appointment is made by a court, by a court of competent jurisdiction in Australia).

1.2 Incorporation of defined terms in Note Terms

- (a) Subject to clause 1.1, terms that are defined in the Note Terms have the same meaning in this document.
- (b) The terms of the Note Terms prevail over the terms of this document to the extent of any inconsistency, unless otherwise expressly provided.

1.3 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **"information"** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The word **"agreement"** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) The expression **"this document"** includes the agreement, arrangement, understanding or transaction recorded in this document and the Note Terms (unless otherwise expressly specified that the reference to "this document" does not include the Note Terms).
- (i) The expressions **"subsidiary"**, **"holding company"** and **"related body corporate"** have the same meanings as in the Corporations Act.
- (j) A reference to **"dollars"** or **"\$"** is to an amount in Australian currency.
- (k) If a calculation is required under this document, the calculation will be rounded to four decimal places, provided that the amount to be paid to a Noteholder will be rounded down to the nearest whole cent.

- (l) A reference to the **"fraud", "gross negligence" or "wilful default"** of the Trustee, means the fraud, gross negligence or wilful default of the Trustee and of its officers and employees.
- (m) An Event of Default **"continues"** or **"subsists"** until it has been waived by the Trustee or remedied.

1.4 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.5 **Inconsistency**

- (a) **(Corporations Act):** This document is to be interpreted subject to the Corporations Act. If any provision of this document is or becomes inconsistent with the Corporations Act, as modified by any applicable exceptions or declarations made by ASIC, this document does not operate to the extent of the inconsistency. This provision prevails over all other provisions of this document (including clause 1.5(b)(ii)).
- (b) **(Listing and ASX Settlement Operating Rules):** This document is to be interpreted subject to the Listing Rules, while the Issuer is admitted to the official list of ASX, and the ASX Settlement Operating Rules while the Notes are CHESS Approved Securities. To the extent that the Listing Rules or the ASX Settlement Operating Rules:
 - (i) restrict or prohibit an act from being done, it may not be done;
 - (ii) require an act to be done, It must be done;
 - (iii) require this document to contain a provision, this document is taken to contain that provision; and
 - (iv) require this document not contain a provision, the document is taken not to contain that provision,

and if any provision of this document is or becomes inconsistent with the Listing Rules or the ASX Settlement Operating Rules, this document is taken not to contain that provision to the extent of the inconsistency.

2. **TRUSTEE**

2.1 **Appointment of Trustee**

The Issuer appoints the Trustee to act as trustee of the Trust, on the terms and conditions of this document, and the Trustee accepts that appointment.

2.2 **Declaration of Trust**

- (a) The Issuer has settled the sum of \$10 on the Trustee.

- (b) The Trustee declares that it holds:
 - (i) the sum of \$10, and the Trust Fund; and
 - (ii) the benefit of the Transaction Documents for the Noteholders,

on trust for the Noteholders from time to time on the terms and conditions of this document.
- (c) Without limiting clause 2.2(b), the benefit of this document includes:
 - (i) the right to enforce the Issuer's duty to repay the Moneys Owing; and
 - (ii) the right to enforce any other duties that the Issuer has under:
 - (A) the Note Terms;
 - (B) the provisions of this document; and
 - (C) Chapter 2L of the Corporations Act.
- (d) The issue of Notes to any Noteholder confers on that Noteholder the benefits of all covenants, warranties and indemnities given by Issuer under the Transaction Documents to Noteholders (whether expressed to be or not).
- (e) Subject to this document, no Noteholder is entitled to enforce such covenants, warranties and indemnities other than through the Trustee.

2.3 Benefit of the Trust

Each Noteholder from time to time is entitled to the benefit of the Trust Fund on the terms and conditions contained in this document.

3. PAYMENT OF MONEYS OWING AND OBLIGATION TO PERFORM

3.1 Undertaking to pay and perform

The Issuer undertakes unconditionally and irrevocably in favour of the Trustee that it will:

- (a) pay the Moneys Owing when due and payable in accordance with the Note Terms to, or to the order of, the Trustee; and
- (b) otherwise comply with this document.

3.2 Payments to Noteholders

Notwithstanding clause 3.1, every payment by the Issuer in accordance with this document to a Noteholder on account of the Moneys Owing in relation to that Noteholder will be in satisfaction of the Issuer's obligation to pay those Moneys Owing to the Trustee under clause 3.1.

3.3 Method of Payment

- (a) Subject to paragraph (b), any payment to be made in respect of the Notes by the Issuer or the Trustee may be made in the manner provided in the Note Terms and any payment so made will be a good discharge to the Issuer and/or the Trustee, as the case may be.

- (b) Any money payable on or in respect of a Note must be paid in Australian dollars only:
 - (i) by cheque sent by prepaid post on the payment date, at the risk of the registered Noteholder, to the Noteholder (or to the first named joint holder of the Note) at its address appearing in the Register at the close of business on the Record Date;
 - (ii) by any method of direct credit determined by the Issuer, to such bank account as may be nominated by the Noteholder Register; or
 - (iii) by any other method of transferring money approved and agreed by the Issuer and the Trustee from time to time.
- (c) Every cheque referred to in clause 3.3(b) is sent at the risk of the person entitled to the money represented by the cheque.
- (d) Payment is treated as made when the cheque is posted or the deposit is made in accordance with this clause 3.3.

4. **ISSUE AND OWNERSHIP OF NOTES**

4.1 **Issue of Notes**

- (a) The Issuer may issue Notes from time to time in accordance with this document and the Note Terms by entering the relevant subscriber in the Register as the holder of those Notes.
- (b) The Issuer may designate Notes issued at different times (whether or not on the Note Terms set out in Schedule 1) as different Series or as part of a Series already on issue.

4.2 **Form, constituent documents and denomination of the Notes**

Each Note is a direct, redeemable, unsecured and unsubordinated obligation of the Issuer and will:

- (a) **(registered securities)** be in the form of a registered debt security;
- (b) **(constituent document)** be constituted by, and owing under, this document and issued on and subject to the Note Terms;
- (c) **(denomination)** be denominated in Australian dollars;
- (d) **(ranking)** rank equally and without preference amongst all other Notes;
- (e) **(convertible)** is convertible into Shares on and in accordance with terms of this document (including the Note Terms); and
- (f) **(issue)** subject to clause 4.7, be created and issued upon inscription in the Register of the relevant subscriber as the Initial Noteholder of the Note.

4.3 **Deed and Note Terms are binding**

- (a) Noteholders are deemed to have notice of and be bound by, this document and the Note Terms.

- (b) The terms and conditions of this document and the Note Terms are binding on each Noteholder and all persons claiming through any Noteholder as if that Noteholder and those persons were a party to this document.
- (c) This document and the Note Terms are binding on the Issuer and the Trustee.
- (d) It is a condition of a Noteholder receiving any of the rights or benefits in connection with this document or Notes that the Noteholder performs all of the obligations and complies with all restrictions and limitations applicable to it under this document.
- (e) Each Noteholder is taken to have irrevocably authorised the Trustee to enter into this document and to perform its obligations and duties, and to exercise its rights, under this document and Chapter 2L of the Corporations Act.

4.4 Binding nature of relationship

Each Noteholder is taken to have agreed:

- (a) to be bound by anything properly done or properly not done by the Trustee in accordance with this document, whether or not the Trustee is acting on the instructions of the Noteholders given by a Special Resolution or an Ordinary Resolution and whether or not the Noteholders gave an instruction by way of a Special Resolution or Ordinary Resolution or approved of the thing done or not done; and
- (b) at the Trustee's request, to ratify anything properly done or properly not done by the Trustee in accordance with this document.

4.5 Limit on Noteholders' rights

All of the rights against the Issuer in connection with the Notes are held by the Trustee for the Noteholders. Accordingly, subject to clause 4.6:

- (a) no Noteholder is entitled to directly enforce any rights, powers or remedies in connection with the Notes under this document directly against the Issuer; and
- (b) the rights, powers and remedies of the Trustee under and in respect of this document are exercisable and enforceable by the Trustee only. No Noteholder may exercise any of them (whether in its own name or the Trustee's name).

4.6 Noteholder's right to take action

No Noteholder is entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of the Notes unless the Trustee, having become bound to proceed in accordance with this document, fails to do so within a reasonable period and such failure is continuing.

4.7 Subscription for Notes in cleared funds

No actual or proposed Noteholder or any other person has any right, title or interest in, under or to any Note until the Issuer has received cleared funds in full for the money subscribed for the Note, unless otherwise agreed between the Noteholder and the Issuer.

4.8 Payment of commission

Subject to it complying with applicable law, the Issuer may pay a commission, underwriting fee, brokerage or any other analogous fees to any person for subscribing or underwriting the subscription of or obtaining subscription for the Notes.

4.9 Notes not invalid if issued in breach

No Note will be invalid or unenforceable on the ground that it was issued in breach of this document.

5. NOTE CERTIFICATES

5.1 No Note Certificates unless required by law etc

- (a) No Note Certificate will be issued by the Issuer to evidence title to a Note unless the Issuer determines that such evidence should be made available or is required by law, the Listing Rules or the ASX Settlement Operating Rules.
- (b) If the Issuer determines that a Note Certificate should be issued for the purposes of paragraph (a) above, clauses 5.2, 5.3 and 5.4 will apply.

5.2 Form of Note Certificates

A Note Certificate will be in such form as may be agreed from time to time between the Issuer and the Trustee.

5.3 Execution of Note Certificates

- (a) A Note Certificate may be engraved, lithographed or printed and must be signed, either manually, mechanically, electronically, by facsimile or by other means agreed between the Issuer and the Trustee, by an Authorised Representative or other delegate of the Issuer.
- (b) A Note Certificate is valid notwithstanding that when the Note Certificate is issued the person whose facsimile signature has been applied to the Note Certificate has died or otherwise ceased to hold office.

5.4 Worn Out or lost note certificates

If a Note Certificate becomes worn out or defaced, then upon production of it to the Issuer, a replacement will be issued. If a Note Certificate is lost or destroyed, and upon proof of this to the satisfaction of the Issuer and the provision of such indemnity as the Issuer considers adequate, a replacement Note Certificate will be issued. A fee not exceeding \$10 may also be charged by the Issuer for the new Note Certificate if it so requires.

5.5 Uncertificated holdings and holding statements

Where no Note Certificate is issued to a Noteholder, such Noteholder will be entitled to receive, and the Issuer or the Registrar (as applicable) must provide to such Noteholder, statements of the holdings of Notes of the Noteholder as the Issuer is required to give pursuant to the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules.

6. THE REGISTER

6.1 Establishment, maintenance and location of the Register

- (a) The Issuer must establish and maintain, or procure the establishment and maintenance of, a register in relation to the Notes.
- (b) The Register must be located in:

- (i) Sydney, Melbourne or Perth; or
- (ii) such other Australian city as may be notified from time to time by the Issuer to the Trustee in writing.

The Issuer must notify the Trustee in writing of the location of any register maintained in respect of the Notes.

- (c) If the Issuer is not itself establishing or maintaining the Register, the Issuer must:
 - (i) require the person that is maintaining the Register on its behalf to discharge the Issuer's obligations under this document in relation to the Register; and
 - (ii) give the Trustee notice of the name of the person that the Issuer has appointed from time to time to establish or maintain the Register on the Issuer's behalf being, as at the date of this document, Boardroom Pty Limited (ABN 14 003 209 836).

6.2 Information to be entered on the Register

The following information must be entered on the Register in respect of a Note and each Noteholder:

- (a) **(name, email address and address)** the name, address and email address (if notified by the relevant Noteholder) of each Noteholder;
- (b) **(amount of Notes)** the number and Series of Notes then held by each Noteholder;
- (c) **(Australian tax file number)** if provided, the Australian tax file number of each Noteholder or evidence of any exemption from the need to provide an Australian tax file number;
- (d) **(ACN, ABN etc)** if provided, the Australian Company Number, Australian Business Number or other identifying registration number of each Noteholder;
- (e) **(payment instructions)** any payment instructions or account details notified by the relevant Noteholder (or by the Issuer in respect of the relevant Noteholder) to the Registrar for the purpose of receiving payments in relation to the Notes held by such Noteholder; and
- (f) **(additional required information)** such other information as:
 - (i) is required by this document, the Corporations Act or by any other applicable law; or
 - (ii) the Trustee or the Issuer considers necessary or desirable.

6.3 No Notice of any trust or other interests

Except as provided by statute or as required by an order of a court of competent jurisdiction:

- (a) **(No trusts)** no notice of any trust (whether express, implied or constructive or other interest) may be entered in the Register in respect of a Note; and
- (b) **(No other interests)** neither the Issuer nor the Trustee is to be affected by or compelled to recognise (even when having notice of it) any right or interest in any Notes other than the registered Noteholder's absolute right to the entire interest in

the Notes and the receipt of the Noteholder is a good discharge to the Trustee and the Issuer.

6.4 Title from Register

Each entry in the Register in respect of a Note:

- (a) **(separate obligations)** evidences a separate and Independent obligation owing by the Issuer to the person so entered;
- (b) **(conclusive evidence of title)** evidences conclusively that the person or persons so entered is the absolute owner of, and holder of title to, the Note, except:
 - (i) if more than one person is specified in the entry, the persons hold the Note as joint tenants (but no more than 4 persons may be specified in an entry); and
 - (ii) the entry is subject to rectification for fraud or any manifest error made in the entry; and
- (c) **(absolute ownership)** vests absolute ownership in, and title to, the Note in the person specified in the entry, to the exclusion of the previous Noteholder and other persons.

6.5 Change of details

- (a) Any change of the name or address of a Noteholder must be notified immediately by the Noteholder in writing to the Issuer. That notice must be accompanied, in the case of a change of name, by any evidence the Issuer requires.
- (b) Upon receipt of a notice pursuant to paragraph (a) above, the Issuer will alter the Register, or procure the alteration of the Register, accordingly.

6.6 Rectification of Register

If:

- (a) **(omissions)** an entry is omitted from the Register;
- (b) **(non-compliant entries)** an entry is made in the Register otherwise than in accordance with this document;
- (c) **(incorrect entries)** an entry wrongly exists in the Register;
- (d) **(errors or defects)** there is an error or defect in any entry in the Register; or
- (e) **(default)** default is made or unnecessary delay takes place in entering in the Register that any person has commenced, or ceased, to be the holder of Notes,

then the Issuer may rectify the same.

6.7 No liability for errors

- (a) The Issuer is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs 6.6(a) to 6.6(e) occurring provided that it is not as a result of the Issuer's fraud, negligence or wilful default.

- (b) The Trustee is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs 6.6(a) to 6.6(e).

6.8 Inspection

The Register will be open, during business hours for the inspection by the Trustee, a Noteholder (to the extent that the inspection or request relates to that part of the Register which contains particulars of that person's holdings), by any persons authorised in writing by the Trustee or the Noteholders, and by any persons as required by the Corporations Act as it applies to the Issuer.

6.9 Closure of Register

The Issuer may, subject to the Listing Rules or ASX Settlement Operating Rules, from time to time close the Register for any period or periods not exceeding in total in any one year the maximum period for the time being permitted by law or 30 days, whichever is the lesser period.

6.10 Location of the Notes

Property in the Notes is located at the place where the Register is kept.

6.11 Copy of Register to the Trustee

The Issuer will give, or procure to be given, to the Trustee a complete copy of the Register within two Business Days after the Trustee so requests.

6.12 Joint Noteholders

- (a) **(registration of address of joint Noteholders)** Subject to clause 6.12(e), if more than one person is registered as the holder of a Note, the address of only one of them will be entered on the Register. If more than one address is notified to the Issuer, the address recorded in the Register will be the address of the joint Noteholder whose name first appears in the Register.
- (b) **(delivery of notices to first joint Noteholder)** The delivery to the joint Noteholder whose name first appears in the Register of a notice or other communication to the joint Noteholders will be an effective discharge by the Issuer or the Trustee of any obligation to deliver that notice or communication to the joint Noteholders, and in that case the notice or communication will be deemed to be given to all those joint Noteholders.
- (c) **(entitlement to a Note Certificate)** Only the joint Noteholder in respect of a Note whose name first appears on the Register is entitled to be issued a Note Certificate (if Note Certificates have or will be issued in respect of that Note).
- (d) **(payment to one joint Noteholder)** The payment to any one joint Noteholder of any moneys from time to time payable or repayable to the joint Noteholders will be an effective discharge to the Issuer or the Trustee from each of the joint Noteholders for the moneys so paid.
- (e) **(maximum number of registered Noteholders)** Subject to the ASX Settlement Operating Rules, the Issuer will not be bound to register more than four persons as the joint holders of any Notes.

(f) **(all joint Noteholders required)** All joint Noteholders in respect of a Note must join in:

- (i) any transfer of the Note; and
- (ii) any application for the replacement of the Note Certificate (if any) relating to the Note that has been lost, destroyed, worn out or defaced.

7. TRANSFER OF NOTES

7.1 Transfer must comply with this clause

Subject to this document, each Note is transferrable in whole but not in part in accordance with this clause but not otherwise.

7.2 Form of transfers

A Noteholder may transfer all or any of the Notes the Noteholder holds by:

- (a) where, at any time, a Note is quoted on the Official List, by an instrument in writing in any usual form or in any other form that the Issuer approves, provided it complies with the requirements of the Corporations Act and Listing Rules (in respect of an off market transfer);
- (b) where, at any time, a Note is quoted on the Official List, in accordance with the Listing Rules or the ASX Settlement Operating Rules (as applicable), and recognised under the Corporations Act (in respect of an on market transfer);
- (c) where, at any time, a Note is not quoted on the Official List, by a written instrument of transfer in a form that the Issuer approves, provided it complies with the requirements of the Corporations Act.

7.3 Registration of transfer

A transferor of Notes remains the owner of the Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Notes, and the transferee of Notes on being entered on the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Noteholder under this document.

7.4 Issuer to register transfers

Subject to clause 7.5, the Issuer will not refuse to register or fail to register or give effect to a transfer of Notes.

7.5 Refusal to register transfers other than Proper ASTC Transfers

- (a) **(refusal to register transfers)** The Issuer may refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Corporations Act, Listing Rules or ASX Settlement Operating Rules permit the Issuer to do so.
- (b) **(breach of Listing Rules)** The Issuer will refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules require the Issuer to do so.

7.6 Notice of refusal to register

- (a) **(notice to transferee)** Where the Issuer refuses to register a transfer of Notes under clause 7.5, the Issuer will give written notice of the refusal and the reasons for the refusal to the transferee and the person who lodged the transfer, if not the transferee, within such period of time required by the Corporations Act.
- (b) **(failure to notify)** A failure by the Issuer to give notice under clause 7.6(a) will not invalidate the refusal to register the transfer in any way.

7.7 Participation in transfer systems

The Issuer may determine that the Notes which are quoted on the official list of ASX will participate in the CHESS or any other computerised or electronic system of transfer or registration and may create rules to facilitate such participation which may be additional to or may override this clause 7.

7.8 Death and legal disability

- (a) **(legal personal representative)** The legal personal representative of a deceased Noteholder (not being a joint Noteholder) will be the only person recognised by the Issuer as having any title to that Noteholder's Notes. Any person becoming entitled to Notes in consequence of the death or liquidation of any Noteholder may, on producing such evidence of that person's title as the Issuer requires be registered as the holder of the Notes or may transfer those Notes. The Issuer may retain the Face Value and interest payments and any other money payable in respect of any Notes which any person under this clause is entitled to or to transfer until that person is registered or has transferred the Notes. Nothing in this clause will prejudice the rights of any person to vote in respect of that Note at any meeting or on a poll.
- (b) **(joint Noteholders)** In the case of the death of any one joint Noteholder, the survivors will be the only persons recognised by the Issuer as having any title to or interest in the Notes registered in their names jointly.

7.9 Transfer and transmission under clause 7.8

The Issuer need not register any transfer or transmission under clause 7.8 unless the transferee provides an indemnity in favour of the Issuer in a form determined by or satisfactory to the Issuer in respect of any consequence arising from the transfer or transmission.

7.10 Two or more persons jointly entitled

Where two or more persons are jointly entitled to any Note in consequence of the death of the registered holder of that Note, they will be regarded as joint holders of that Note.

7.11 Moneys payable in respect of Notes

The Issuer may retain any moneys payable in respect of any Notes which any person under this clause 7 is entitled to or to transfer until such person is registered or has duly transferred the Notes.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and warranties – Issuer and Trustee

The Issuer and the Trustee each represent and warrant (in respect of itself) that:

- (a) **(status)** in respect of each of the Issuer and the Trustee, it is a company limited by shares incorporated under the Corporations Act.
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and to carry out the transactions that this document contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates; and
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence,and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(Trust Deed effective)** in the case of the Issuer only, this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) **(no contravention)** in the case of the Issuer only, neither its execution of this document nor the carrying out by it of the transactions that it contemplates, does or will cause it to:
 - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any material agreement binding on it or any of its property; or
 - (iv) contravene its constitution or the powers or duties of its directors; and
- (g) **(ensure true and fair accounts)** in the case of the Issuer only, its most recent consolidated audited accounts have been prepared in accordance with current accounting practice (except to the extent disclosed in them) and with the laws of its place of incorporation and give a true and fair view of its consolidated financial position as at the date of those accounts and of its consolidated results of operations for the financial year then ended.

8.2 Representation and warranty – Offer Documents

The Issuer represents and warrants that, as at the date of the Offer Documents, the Offer Documents will contain all of the information required to comply with all applicable law and will not be misleading or deceptive or otherwise defective.

8.3 Repetition of representations and warranties

The representations and warranties in clause 8.1 are taken to be repeated on each Issue Date and on each Interest Payment Date, on the basis of the facts and circumstances as at that date.

9. ISSUER'S COVENANTS

9.1 Issuer's obligations

The Issuer covenants with the Trustee that, for so long as any Notes remain outstanding, it will:

- (a) **(keep accounts)** keep or cause to be kept proper books of account (in accordance with current accounting practice and standards);
- (b) **(provide accounts)** provide the following:
 - (i) without charge, to the Trustee (within 120 days after 30 June in each year) and to each Noteholder who requests it in accordance with section 318(2) of the Corporations Act, a copy of the Issuer's consolidated audited accounts in respect of each financial year and a copy of the Issuer's annual report for that financial year; and
 - (ii) without charge, to the Trustee (within 90 days after 31 December in each year), a copy of the Issuer's consolidated financial report in respect of each financial half year in the form submitted to the ASX;
- (c) **(stamp duty)** where there exists any recurring obligation on the Issuer or the Trustee or both to furnish certain information on the basis of which stamp duty will be payable in any State or Territory or other place, provide such information as is required by the Trustee to properly complete any return required to be lodged under the provisions of any stamp duty legislation which are applicable to this document or any of the Notes or otherwise to enable the Trustee to comply with its obligations with respect to any undertaking given pursuant to any such legislation, such information to be furnished to the Trustee not less than 14 days prior to the time when such return is required to be lodged;
- (d) **(make records available for inspection)** make all financial and other records of the Issuer (insofar as they relate to the Notes) available for inspection by:
 - (i) the Trustee;
 - (ii) any registered company auditor appointed by the Trustee for that purpose;
 - (iii) any officer, employee or auditor of the Trustee authorised by the Trustee to carry out the inspection,

and give them any information, explanations or other assistance that they reasonably require about matters relating to those records;

- (e) **(make payments)** make all payments of principal and interest in respect of the Notes, as and when due, in accordance with the Note Terms, to the persons who are entitled to receive such payments;
- (f) **(listing)** use its best endeavours to ensure that the Notes are, upon being Issued, quoted on the ASX and that such quotation is maintained (including paying all necessary listing fees), and provide to the ASX such information as the ASX may require in accordance with the Listing Rules and any other ASX requirements (including providing ASX with a copy of this document);
- (g) **(comply with obligations)** comply with its obligations under the terms of this document, the Note Terms, the Corporations Act (including Chapter 2L), the Listing Rules and the ASX Settlement Operating Rules where a failure to do so would have or would be likely to have a Material Adverse Effect;
- (h) **(valuation)** provide the Trustee (at the Issuer's own cost) with a valuation of its assets and business conducted on a 'going concern' basis, as and when requested by the Trustee for the purpose of ensuring that the Trustee can comply with Chapter 2L of the Corporations Act;
- (i) **(accounts)** ensure that any accounts provided to the Trustee:
 - (i) comply with the requirements of the Corporations Act;
 - (ii) comply with current accounting practice except to the extent disclosed in them and with all applicable laws; and
 - (iii) give a true and fair view of the matters with which they deal;
- (j) **(compliance)** comply with all statutory and regulatory requirements applicable to it (including Chapter 2L of the Corporations Act) and its obligations under this document and the Note Terms;
- (k) **(information)** give the Trustee (and, in respect of paragraph (v) below, give a Noteholder, within 10 Business Days of a request by that Noteholder):
 - (i) **(s283BF quarterly reports)** within one month after the end of each calendar quarter, the report required by section 283BF of the Corporations Act, prepared in accordance with and containing all information required by section 283BF of the Corporations Act (and, at the same time, lodge such report with ASIC);
 - (ii) **(confirm payments)** promptly after redeeming or cancelling all Notes in full, details of that Redemption or cancellation;
 - (iii) **(copies of notices to Noteholders)** a copy of all documents and notices which it gives to Noteholders;
 - (iv) **(other information)** promptly, all other information requested by the Trustee which is reasonably required for the purposes of the discharge of its duties, trusts and powers under this document or imposed upon it by law;
 - (v) **(copies of this document)** a copy of this document, if requested; and
 - (vi) **(retirement of auditor)** promptly, notice of any appointment, retirement, resignation or removal of an auditor of the Issuer;

- (l) **(notify breaches)** promptly notify the Trustee, and in any event no later than 2 Business Days after it becomes aware, of an Event of Default or any other breach by the Issuer of any obligation under this document or Chapter 2L of the Corporations Act that is continuing; and
- (m) **(assist Trustee)** do any other thing reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this document, the Corporations Act (or any other laws binding on the Trustee with respect to the Trust or the Notes), the Listing Rules or the ASX Settlement Operating Rules.

9.2 Management certificate

In addition to its reporting obligations under the Corporations Act, within one month of the end of each Interest Period until and including the Maturity Date, the Issuer must give the Trustee a certificate signed by an Authorised Representative certifying the following:

- (a) full particulars of the Moneys Owing as at the relevant Interest Payment Date including details of the:
 - (i) Face Value; and
 - (ii) Interest Rate;
 - (iii) full particulars of and the Face Value of all Notes Redeemed for which a delisting notice has been given in that Interest Period;
- (b) full particulars of and the Face Value of all Notes Converted in that Interest Period;
- (c) whether all amounts which have become due and payable on or prior to that Interest Payment Date have been duly paid in respect of all Notes.

9.3 Issuer's obligations on execution

As soon as practicable after execution of this document, the Issuer will:

- (a) attend to all filings and registrations which are required to be effected, and all Taxes which are required to be paid, to ensure that this document is legal, valid, binding and admissible in evidence; and
- (b) advise ASIC of the name of the Trustee, and any other information as required under section 283BC of the Corporations Act.

9.4 Notification obligations when in Liquidation

If the Issuer or any of its assets are placed in Liquidation, then the receiver, receiver and trustee, official trustee, liquidator, administrator or similar official appointed to the Issuer or its assets (as applicable) ("**Appointee**") must:

- (a) notify the Noteholders of each relevant Event of Default and of the Appointee's appointment; and
- (b) provide regular updates to the Trustee and the Noteholders as to the status of the Liquidation and any other material developments affecting the Issuer or its assets.

9.5 General undertakings

The undertakings in this clause 9.5 remain in force from the date of this issue of the Notes for so long as any amount is outstanding under the Notes.

(a) Negative pledge

The Issuer will comply with the negative covenants as set out in the Note Terms.

(b) Merger

The Issuer shall not enter into any amalgamation, demerger, merger or corporate reconstruction (other than solvent reorganisations).

(c) Carry on business

The Issuer must carry on and conduct its business in a proper and efficient manner.

(d) Trust Deed effective

The Issuer must obtain and maintain each Authorisation that is necessary or desirable to:

- (i) execute this document and to carry out the transactions that this documents contemplates;
- (ii) ensure that this document is legal, valid, binding and admissible in evidence; and
- (iii) must comply with any conditions to which any of these Authorisations are subject.

10. TRUSTEE'S LIMITATION OF LIABILITY

- (a) The Trustee is not liable to the Issuer, any Noteholder or any other person in any capacity other than as trustee of the Trust.
- (b) Any liability arising under or in connection with this document or a Note is limited to and can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified out of the Trust Fund for that liability. This limitation of the Trustee's liability applies despite any other provision of this document or the Note Terms and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or a Note.
- (c) Neither the Issuer nor any Noteholder may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a Controller (except in relation to the Trust Fund), a liquidator an administrator or any other similar person to the Trustee or prove in any liquidation of or affecting the Trustee (except in relation to the Trust Fund).
- (d) The Issuer and each Noteholder waives each of their rights against the Trustee, and each releases the Trustee from any personal liability, in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this document or a Note, which cannot be paid or satisfied out of the Trust Fund.
- (e) The provisions of this clause 10 will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, gross negligence or wilful default.

- (f) The Issuer and each Noteholder each acknowledge that it is responsible for performing a variety of obligations under this document and the Note Terms. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this document or the Note Terms) will be considered fraud, gross negligence or wilful default of the Trustee for the purposes of this clause 10 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer, a Noteholder or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Issuer, a Noteholder or any other person.
- (g) No Authorised Representative of the Trustee appointed in accordance with this document has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no such act or omission of any such person will be considered fraud, gross negligence or wilful default of the Trustee for the purpose of this clause 10.
- (h) The Trustee is not obliged to do or refrain from doing anything under this document or the Note Terms (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in this clause 10.
- (i) The provisions of this clause 10:
 - (i) are paramount and apply regardless of any other provision of this document or the Note Terms or any other instrument, even a provision which seeks to apply regardless of any other provision;
 - (ii) survive and enure beyond any termination of this document for any reason; and
 - (iii) are not severable from this document.

11. TRUSTEE'S RIGHTS AND RESPONSIBILITIES

11.1 Trustee entitled to exercise all rights

Subject to this document:

- (a) the Trustee is entitled to exercise all Powers under this document and any other document to which it is party in its capacity as trustee of the Trust (including those Powers conferred on trustees generally by statute and those conferred on trustees generally by law or equity) as if the Trustee were the absolute and beneficial owner of the Trust Fund and such documents;
- (b) the Trustee may enter into such other documents in its capacity as trustee of the Trust as it is authorised to from time to time by the Noteholders; and
- (c) (despite clause 11.2 and any other clause operating as between the Trustee and the Noteholders) the Trustee will, as between itself and each Noteholder, have the absolute discretion:
 - (i) as to whether or not to take any steps to enforce the Notes or otherwise seek to recover moneys payable under the Notes; and
 - (ii) as to the manner of any enforcement (including the identity of a Controller to be appointed under this document).

11.2 Trustee's general undertakings

The Trustee undertakes to the Noteholders that it will:

- (a) act honestly and in good faith in the performance of its functions as Trustee, and show the degree of care and diligence required of a trustee having regard to the extent of its rights and obligations under this document;
- (b) act continuously as Trustee until either the Trust is terminated, or it retires or is removed in accordance with clause 12;
- (c) comply with all duties imposed on it under the Corporations Act and satisfy at all times the requirements to be appointed and act as a trustee as provided for in sections 283AC(1) and 283AC(2) of the Corporations Act;
- (d) subject to the provisions of this document and the Trustee's general duties as trustee at law, in equity or by statute, not interfere with the conduct of the ordinary business of the Issuer; and
- (e) hold, and account for, the Trust Fund separate from any other property owned or administered by it,

without being responsible, or liable to any person, for any loss occasioned by so doing unless the Trustee has been guilty of fraud, wilful default or gross negligence.

11.3 Exercise of powers to waive

- (a) Except where otherwise expressly provided in this document or by the Corporations Act, the Trustee may waive or excuse any breach (whether anticipatory or actual) of any provision under this document (except the non-payment of the Face Value of any Note in breach of this document which has not been remedied).
- (b) Each Noteholder will be bound by any such waiver or excusal of breach by the Trustee.

11.4 Exercise of enforcement and other powers

The Trustee may at any time, at its discretion and without further notice, institute such proceedings against the Issuer as it may think fit to enforce any term or condition binding on the Issuer under this document.

11.5 Trustee to convene meeting

If the Trustee is actually aware of the occurrence of an Event of Default and provided that the Trustee has, or will have, available to it from the Trust Fund sufficient money to cover the cost and expenses of doing so, the Trustee must promptly convene a meeting of Noteholders in accordance with clause 16 at which it must seek directions from the Noteholders as to the action it should take in relation to that Event of Default.

11.6 Trustee not bound to enforce

Subject to the Note Terms and section 283DA(h) of the Corporations Act, the Trustee shall not in any event be bound to take any action referred to in clauses 11.4 and 11.5 above, unless:

- (a) in respect of clause 11.4 only, it shall have been so directed by a Special Resolution of the Noteholders

- (b) it shall have been indemnified, to its satisfaction, by the Noteholders as contemplated by clause 13.3 of this document;
- (c) it is first placed in funds sufficient to cover the costs that it may incur as a result of doing so; and
- (d) it is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Trustee forms the view that such action is or could be inconsistent with this document or the Corporations Act or any other applicable law, it may take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary any direction given by Special Resolution, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take by Special Resolution.

11.7 No obligation to notify or investigate or monitor

Subject to section 283DA of the Corporations Act, the Trustee need not:

- (a) notify any person of the execution of this document or the occurrence of any breach of this document or Event of Default;
- (b) take any steps to ascertain whether there has occurred (and will not be deemed to have knowledge that such has occurred except in accordance with clause 11.16(b)) any:
 - (i) Event of Default; or
 - (ii) event which constitutes or which would, with the giving of notice or the lapse of time or the issue of a certificate, constitute an Event of Default;
- (c) enquire as to whether the provisions of this document have been complied with;
- (d) notify any Noteholder of any breach by the Issuer of any provision of this document;
- (e) request information or otherwise keep itself informed about the circumstances of the Issuer or consider or provide to any person (including a Noteholder) any information with respect to the Issuer (whenever coming into its possession);
- (f) investigate the adequacy, accuracy or completeness of any information provided by the Issuer; or
- (g) assess, investigate or keep under review the business, financial condition, status or affairs of the Issuer.

11.8 Instructions and extent of discretion

- (a) Except:
 - (i) in respect of amounts due to the Trustee in its personal capacity; or
 - (ii) to the extent expressly provided to the contrary in this document,
 in exercising any Power or giving any consent, approval, agreement or waiver or making any determination under this document, the Trustee must, and is only

obliged to, act if and only if it is directed to do so, unless a provision of this document expressly states otherwise.

- (b) Unless this document expressly provide to the contrary, any direction by a Special Resolution of Noteholders (as applicable) is binding on all Noteholders except where this document provides that instructions must be provided by all the Noteholders or by such other number of Noteholder or Noteholders.
- (c) Each Noteholder authorises the Trustee to give any consent and do any other matter or thing necessary or appropriate for it to give effect to any instructions given under this document.
- (d) Any action taken by the Trustee under this document is binding, as between the Trustee and the Noteholders, on all the Noteholders.
- (e) Where a direction by way of a Special Resolution of Noteholders is required under this document, for the purposes of determining whether the Special Resolution has been given:
 - (i) the Trustee will request each Noteholder to provide to it within a reasonable specified period (which will be at least 5 Business Days or, in an urgent case, any shorter period agreed by the Trustee and the Issuer) a signed written direction or confirmation of its decision; and
 - (ii) the Trustee will determine whether the Special Resolution has been made.
- (f) If a Noteholder does not provide Instructions in writing within the period specified it will be taken to have a Face Value of Notes of nil for the purpose only of determining whether instructions have been given by a specified majority of Noteholders.
- (g) Each Noteholder agrees with the Trustee that the Noteholder will act reasonably in giving instructions to the Trustee in respect of any matter in which:
 - (i) the consent or approval of the Trustee is required, the Trustee is required to form an opinion or the Trustee is given powers; and
 - (ii) this document provides that the consent or approval of the Trustee may not be withheld unreasonably, that the consent or approval must be given reasonably, that the opinion must be a reasonable opinion, or that the Trustee must act reasonably in the exercise of those powers.
- (h) Any statement by the Trustee to the Issuer that instructions or a direction have been given to the Trustee by any Noteholder, all the Noteholders or by way of a Special Resolution, as the case may be, or as to the terms of those instructions or direction, is sufficient evidence of its contents.
- (i) Despite any other provision of this document, the Trustee is not obliged to take any action under this document, or exercise any Power until it is first:
 - (i) indemnified to its satisfaction in accordance with clause 14 or otherwise; and
 - (ii) placed in funds sufficient to cover the costs that it may incur as a result of doing so.

- (j) The Trustee may apply to a court for directions in relation to any disputes or ambiguity relating to any of its rights, powers, authorities, discretions, remedies and obligations under this document or any applicable law and may comply with any such directions. For so long as the Trustee is using reasonable endeavours to resolve any dispute or ambiguity, the Trustee may (but need not) refuse to do anything in relation to such rights, powers, authorities, remedies or obligations (as the case may be) affected by the dispute or ambiguity until such direction is given by the court.

11.9 Performance of obligations of Trustee

The Trustee may:

- (a) refrain from doing anything that would, or in its reasonable opinion might, contravene any applicable law or a directive or request (whether or not having the force of law) of a Government Agency or constitute a breach of trust or of any proper practice relating to secrecy or confidentiality; and
- (b) do anything that, in its reasonable opinion, is necessary to comply with any applicable law or a directive or request (whether or not having the force of law) of a Government Agency.

11.10 Right to appoint agents and delegates

- (a) The Trustee, instead of acting personally, may employ an agent to do an act required or permitted to be done under this document or in relation to this document or the Notes. The Trustee must notify the Issuer of the appointment or revocation of appointment of any such agent prior to that appointment or revocation.
- (b) The Trustee may delegate any of its Powers, either wholly or partially or subject to any limitations or restrictions, to any person as it thinks fit and may revoke that delegation and may for that purpose execute powers of attorney or other instruments, as it thinks fit. The Trustee must notify the Issuer of the appointment or revocation of appointment of any such delegate prior to that appointment or revocation.
- (c) No person dealing with the Trustee, or any delegate to whom any Powers of the Trustee has been delegated, is bound to enquire whether the delegation remains in force.
- (d) The Trustee may rely and act on the opinion, certificate or advice of or information obtained from, an agent, delegate, expert or legal or other professional adviser appointed by it or by any one or more of the Noteholders. The Trustee is not responsible to a Noteholder for any loss occasioned by so doing if the Trustee has acted in good faith in so acting.
- (e) The Trustee is not liable in respect of any act or omission of any agent or delegate employed or appointed by the Trustee in good faith.

11.11 Trustee may rely on certain matters

The Trustee:

- (a) may accept and rely upon an Issuer's Authorised Representative's Certificate as to any fact or matter as conclusive evidence of it;

- (b) may accept, rely upon and act upon any information, statement, certificate, report, balance sheet or account supplied by or on behalf of the Issuer; and
- (c) may accept, rely upon and act upon the statements and opinions contained in any statement, certificate, report, balance sheet or account given pursuant to the provisions of this document as conclusive evidence of the contents of it.

The Trustee is not bound to call for further evidence other than such certificate, statement, report, balance sheet or account nor to enquire as to the accuracy thereof and is not responsible for any loss or damage that may be occasioned by its reliance.

11.12 Trustee may assume certain matters

The Trustee may assume that:

- (a) any representation or statement made by a person in this document or the Prospectus remains true;
- (b) any deed or information provided to it is genuine and accurate if it believes in good faith that this is the case; and
- (c) (unless it is notified in writing by a Noteholder or the Issuer to the contrary) any right, power, authority or discretion vested in any party has not been exercised.

11.13 Identity of Noteholders

The Trustee may assume that each Noteholder is the beneficial owner of its respective rights, and is bound by its obligations, under this document, except to the extent that it receives a notice satisfactory to the Trustee (acting reasonably) of the assignment or transfer of those rights.

11.14 Information to Noteholders

- (a) Unless this document specifically provides otherwise, the Trustee is not required to determine the accuracy or completeness of any document or copy that it receives, or that it gives to another party (including to a Noteholder).
- (b) Nothing in this document obliges the Trustee to disclose any information relating to the Issuer if the disclosure would constitute a breach of any law or duty of secrecy or confidence.

11.15 Noteholders' own investigations

- (a) As a condition to its holding of Notes, each Noteholder will be deemed to have confirmed that, as between itself and the Trustee, it:
 - (i) has made its own appraisal and investigation of the business, financial condition, status and affairs of the Issuer;
 - (ii) is solely responsible for continuing that appraisal and investigation after the date of this document;
 - (iii) has subscribed for its Notes without any inducement from the Trustee; and
 - (iv) has made its own appraisal of its financial return under each Note that it holds.

- (b) As a condition to its holding of Notes, each Noteholder will be deemed to have confirmed that it has not relied, and will not rely, on the Trustee at any time to:
 - (i) give it any information concerning the business, financial condition, status or affairs of the Issuer, other than the provision of any notices, reports, accounts or other documents or information which must be provided to the Noteholders by the Trustee under this document;
 - (ii) investigate the adequacy, accuracy or completeness of any information given by the Issuer in connection with this document or the Note Terms (whether or not the information is given to that Noteholder by the Trustee); or
 - (iii) assess or keep under review the business, financial condition, status or affairs of the Issuer.

11.16 Monitoring and Events of Default

- (a) Except where otherwise expressly provided in this document or by the Corporations Act, the Trustee is not required to:
 - (i) notify any person of the execution of this document;
 - (ii) monitor, enquire or keep itself informed as to whether any party is in breach of its obligations under this document or another document or agreement to which the Issuer is a party; or
 - (iii) inspect the properties or books of the Issuer or to assess or keep under review the business, operations, financial condition, creditworthiness or state of affairs of the Issuer.
- (b) The Trustee is not taken to have knowledge that an Event of Default has occurred unless:
 - (i) the Trustee becomes actually aware that an Event of Default has occurred; or
 - (ii) the Trustee has received written notice from the Issuer or a Noteholder stating that an Event of Default has occurred and describing it.
- (c) If the Trustee receives a notice of the kind referred to in clause 11.16(b)(ii), the Trustee may consider the Event of Default to be continuing until:
 - (i) the Trustee has received a further notice from the party giving the original notice stating that the Event of Default is no longer continuing, and the Trustee may rely on that further notice for all purposes under this document; or
 - (ii) the Trustee becomes actually aware that the Event of Default is no longer continuing.
- (d) Subject to this document, the Trustee may represent the Noteholders generally in:
 - (i) any investigation, negotiation, action, transaction or proceeding relating to or affecting the interests of the Noteholders; or
 - (ii) the enforcement of the rights of the Noteholders or the Trustee,

and in representing the Noteholders, has an absolute discretion to act or to refrain from acting and to commence, prosecute, vary or discontinue, abandon, waive or compromise any action, proceeding or claim on any terms or conditions as it thinks fit.

11.17 Knowledge of the Trustee

The Trustee will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual knowledge, actual notice or actual awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trust.

11.18 Protection of Trustee

- (a) Subject to clause 11.18(b), no Protected Person is liable to a Noteholder or the Issuer for:
- (i) any loss or damage occurring as a result of any of them exercising, failing to exercise or purporting to exercise any Power under this document or in relation to a Note;
 - (ii) any Event of Default, negligence or fault of any of them whether or not their employment or appointment was necessary or expedient;
 - (iii) a mistake or omission made by any of them;
 - (iv) any other matter or thing done, or not done, by any of them in relation to this document or a Note;
 - (v) the value, validity, effectiveness, genuineness, execution, enforceability or sufficiency of this document or a Note or any document or agreement referred to or provided for in, or received by any of them under, this document;
 - (vi) an absence of, or defect in, title or for the inability of any of them to exercise any of the Trustee's Powers arising from an absence of, or defect in, title;
 - (vii) a failure by the Issuer to perform its obligations under this document or in relation to a Note;
 - (viii) any recital, statement, representation or warranty contained in this document, in any information memorandum or in any document or agreement referred to or provided for in, or received by any of them under, this document;
 - (ix) the financial condition or solvency of the Issuer;
 - (x) the acts or omissions of a Controller;
 - (xi) any action taken or not taken by the Trustee under this document or in relation to a Note:
 - (A) in accordance with any instructions or directions from the appropriate Noteholder(s);

- (B) in any manner, where this document does not require instructions to be given to the Trustee; or
- (xii) the registration, perfection or priority of any Security Interest in relation to this document (or any transaction in connection with that document) under the *Personal Property Securities Act 2009* (Cth) ("**PPSA**"). The Trustee is not required to:
 - (A) take any action with respect to the PPSA, other than as directed by the appropriate Noteholders; or
 - (B) monitor the PPSA or the implementation of it.
- (b) This clause 11.18 does not exempt the Trustee from liability to a Noteholder or the Issuer to the extent that the liability arose from the fraud, default or gross negligence of a Protected Person (other than the Trustee).
- (c) Failure by the Trustee to act due to lack of instructions or directions or lack of proper or clear instructions or directions from the appropriate Noteholders required to be given under this document does not amount to fraud, default or gross negligence of or on the part of the Trustee.
- (d) The Trustee is not bound by any waiver, amendment, supplement or modification of this document unless it gives its consent as Trustee under this document.
- (e) The Trustee is not liable to the Issuer if a Noteholder fails to perform its obligations under this document.

11.19 Receipts and business activities

The Trustee may:

- (a) retain for its own benefit any amount received by it for its own account; and
- (b) accept deposits from, lend money or provide services to, and generally conduct any banking or other business with, or enter into any contract or arrangement with, the Issuer or any Noteholder and any person connected with the Issuer or any Noteholder without having to account to the Noteholders or any other person (including in respect of any fee, remuneration or profit received or accruing in connection with any of the above).

11.20 Other capacities

- (a) If the Trustee also enters into any document or holds any Note in any capacity other than as Trustee, it may exercise any rights it has in such other capacities as if it were not acting as the Trustee.
- (b) The Trustee, in its capacity as a Noteholder, has the same rights and Powers under this document as any other Noteholder and may exercise the same as if it were not acting as the Trustee.
- (c) In acting as trustee for the Noteholders, the Trustee is regarded as acting through its corporate trust division which will be treated as a separate entity from any other of its divisions or departments. If information is received by another division or department of the Trustee, it may be treated as confidential to that division or department and the Trustee is taken not to have notice of it.

11.21 Nature of relationship

The Trustee is not an agent of or fiduciary for the Issuer.

11.22 Issuer not concerned with authority of Trustee

The Issuer is not entitled to enquire whether any action by the Trustee has in fact been authorised by the appropriate Noteholders and, as between the Issuer and the Noteholders, any action taken by the Trustee concerning this document or any Note is taken to be authorised by the appropriate Noteholders.

11.23 Protection of third parties

No person dealing with the Trustee is bound to enquire as to whether the Trustee has been properly appointed under this document or as to whether the Trustee has the requisite Power and may assume that anything purported to be done by the Trustee under this document or in relation to any Note has been duly authorised by this document and the appropriate Noteholders.

11.24 Application to court for direction

The Trustee may apply to a court for directions in relation to any question relating to its duties under this document or in relation to any Note or relating to its Powers.

11.25 Conflicts of interest

Each Protected Person and a Controller or other person appointed by the Trustee under this document or in relation to any Note may exercise or agree to exercise a Power even though that person may have a conflict of interest in exercising the Power.

11.26 Investment of money

The Trustee may invest any money forming part of the Trust Fund in investments in which trustees are authorised to invest funds under the law of any State or Territory of Australia.

11.27 Exclusions of law where permitted

- (a) To the maximum extent permitted by law, the Trustee's obligations, duties and responsibilities are expressly limited to those set out in this document.
- (b) All liabilities and responsibilities which may from time to time be imposed on the Trustee at law or in equity are, to the extent permitted at law or in equity, excluded and, except to the extent provided to the contrary in this document, expressly negated and waived by the other parties.

11.28 Evidence of claims

The Trustee is entitled and is authorised by the Issuer to call for (and will be entitled to accept as conclusive evidence) a certificate from any Controller or similar officer of the Issuer as to:

- (a) the amounts of the claims of the creditors which have been admitted in any liquidation, dissolution or other Winding Up and which will not have been satisfied in full out of the other resources of the Issuer; and
- (b) the persons entitled thereto and their respective entitlements.

Any such certificate given by any such Controller or officer of the Issuer will be conclusive and binding on the Trustee and all Noteholders.

12. **CHANGE OF TRUSTEE**

12.1 **Resignation of Trustee**

Subject to this clause 12 and any applicable law, the Trustee may resign as trustee by giving at least 90 days' notice (or such other period as the Trustee and the Issuer may agree in writing) in writing to the Issuer.

12.2 **Removal of Trustee**

If (and only if):

- (a) **(Trustee in default)** the Trustee has:
 - (i) not paid any moneys required to be paid by the Trustee in relation to this document within 10 Business Days of receipt of all relevant information (including bank account details, if applicable) necessary for the Trustee to effect payments; or
 - (ii) not observed or performed any of its material obligations under this document or has otherwise acted fraudulently or with gross negligence or is in wilful default (and, if such is capable of rectification, it is not rectified within 10 Business Days of notice to the Trustee of its occurrence);
- (b) **(Insolvency Event)** an Insolvency Event occurs in relation to the Trustee;
- (c) **(ceases to be eligible to be Trustee)** the Trustee ceases to be a person that can continue to act as Trustee due to section 283AC(1) or section 283AC(2) of the Corporations Act;
- (d) **(ceases to hold authorisation)** any licence, consent, authorisation or similar thing the Trustee is required to hold to carry out its obligations under this document is revoked or is not renewed;
- (e) **(Special Resolution to remove passed)** a Special Resolution of Noteholders is passed that the Trustee is to be removed from office; or
- (f) **(section 283BD of the Corporations Act)** the Issuer reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred,

the Issuer may, subject to the provisions of this clause 12 and the Corporations Act, and by at least 15 Business Days' written notice to the Trustee, remove the Trustee from office.

12.3 **Appointment of new trustee**

- (a) **(power to appoint vested in Issuer)** Subject to clause 12.3(b), the power to appoint a new trustee is vested in the Issuer.
- (b) **(in default, Trustee may appoint replacement)** Subject to the Corporations Act, if 60 days (or such other period as the Trustee and the Issuer may agree in writing) after the Trustee has given notice under clause 12.1 a new trustee has not been appointed by the Issuer pursuant to clause 12.3(a), the Trustee may appoint (or, in its discretion, apply to the court for the appointment of) a new trustee.

- (c) **(new trustee must be Trustee Company)** A new trustee appointed under this clause 12 must be a Trustee Company or otherwise authorised under the Corporations Act to act as a trustee.
- (d) **(approval of Noteholders not required)** Any appointment of a new trustee under this clause is effective without the approval of the Noteholders being necessary.
- (e) **(retirement not effective until new Trustee appointed)** The retirement of the Trustee pursuant to this clause 12 will not take effect unless and until a new trustee has been appointed and has taken office as trustee of the Trust.

12.4 **Issuer must assist in replacing the Trustee**

The Issuer must take all reasonable steps to replace the Trustee under section 283AE of the Corporations Act as soon as practicable after the Issuer becomes aware that the Trustee:

- (a) has ceased to exist;
- (b) has not been validly appointed;
- (c) is no longer a Trustee Company or otherwise authorised under the Corporations Act to act as a trustee;
- (d) has failed or refused to act as Trustee; or
- (e) has resigned as Trustee.

12.5 **Outgoing Trustee discharged**

On the retirement or removal of the Trustee taking effect:

- (a) the successor trustee succeeds to the position of the retiring or removed Trustee;
- (b) the retiring or removed Trustee is discharged from any further obligations under this document, but without affecting any accrued rights or obligations;
- (c) the indemnities under this document in favour of the retiring or removed Trustee survive concerning matters occurring before the appointment of the successor trustee, and the retiring or removed Trustee continues to have the benefit of this clause 12; and
- (d) the successor trustee, the Issuer and the Noteholders have the same rights and obligations as if the successor trustee had been a party to this document.

12.6 **ASIC to be advised of new Trustee**

The Issuer must advise ASIC of the name of the new Trustee, and any other information as required under section 283BC of the Corporations Act, within 14 days after the appointment of the new Trustee.

13. **TRUSTEE'S FEES AND EXPENSES**

13.1 **Fees**

- (a) Subject to clause 13.3, the Issuer must pay to the Trustee by way of remuneration for its services a fee (exclusive of GST) as may be agreed between the Issuer and

the Trustee in writing from time to time. The payment of such fee must be made by the Issuer by transfer to such account nominated from time to time by the Trustee to the Issuer in writing or by such other means notified by the Trustee to the Issuer in writing from time to time.

(b) If the Trustee is required at any time to:

- (i) take any enforcement action in relation to this document or the Notes, upon a default of by the Issuer or the occurrence of an Event of Default; or
- (ii) undertake duties which are agreed by the Issuer to be of exceptional nature or otherwise agreed by the Issuer to be outside the scope of the normal duties of the Trustee,

the Issuer must pay to the Trustee, on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such action, which shall be:

- (iii) in the case of paragraph (i) above, as determined by the Trustee; and
- (iv) in the case of paragraph (ii) above, from time to time, agreed between the Issuer and the Trustee.

(c) If:

- (i) paragraph (b)(i) above applies, then in any event: and
- (ii) paragraph (b)(ii) above applies, then in the absence of agreement in relation to the additional remuneration referred to in clause 13.1(b)(iv) above,

the Trustee shall be entitled to charge the Issuer reasonable hourly rates for time spent by the Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall be commensurate with and referable to the hourly rates charged at the relevant time by members of the Insolvency Practitioners Association of Australia for work of the kind performed by the Trustee's officers and employees.

13.2 Expenses

- (a) Subject to clause 13.3, the Issuer must indemnify the Trustee against, and must pay the Trustee on demand the amount of all costs, charges and expenses (including legal expenses on a full indemnity basis) properly incurred in connection with each of the following:
 - (i) the preparation, negotiation, execution, stamping and registration of this document and each other document relating to the Notes (including, but not limited to, the Prospectus);
 - (ii) the transactions that this document and each other document relating to the Notes (including, but not limited to, the Prospectus contemplates);
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this document;
 - (iv) the carrying out by the Trustee of any right, power, privilege, authority or discretion conferred expressly or impliedly on the Trustee or on any

Noteholder by this document or any other document relating to the Notes (including, but not limited to, the Prospectus);

- (v) any breach or default in the observance or performance by the Issuer of any of its obligations under this document or any other document relating to the Notes (including, but not limited to, the Prospectus);
 - (vi) the convening and holding of any meeting of Noteholders or the carrying out of any directions or resolutions of any such meeting;
 - (vii) costs and expenses incidental to the change of Trustee pursuant to clause 12 including the vesting of the property in a new trustee except where the new trustee is appointed as a result of the Trustee being compulsorily removed as Trustee pursuant to clause 12.2; and
 - (viii) all actions taken under this document by the Trustee in order to comply with any notice, request or requirement of any Government Agency and any investigation by a Government Agency into the affairs of the Issuer.
- (b) If the Issuer or any of its assets are placed in liquidation or a Controller is appointed to the Issuer or any of its assets, the Trustee is entitled to claim and receive from any Controller amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as Trustee.

13.3 Indemnity by Noteholders

The Trustee is not entitled to any additional remuneration (to the extent that this may be referred to in any agreement pursuant to clause 13.1) or to the payment of any additional costs and expenses pursuant to clause 13.2 where the Trustee is separately actually indemnified in relation thereto by the Noteholders or individual Noteholders pursuant to this document or otherwise. If, following payment by the Issuer to the Trustee of any additional remuneration pursuant to clause 13.1 or any additional costs and expenses pursuant to clause 13.2, the Trustee is indemnified by the Noteholders or individual Noteholders in relation to such remuneration, costs or expenses (as the case may be) the Trustee shall promptly repay any amounts received under clause 13.1 or clause 13.2 in respect of such remuneration, costs or expenses (as the case may be) to the Issuer.

13.4 Priority of entitlement

All amounts payable to the Trustee under this clause 13 will be paid in priority to any claim by any Noteholder and will continue to be payable until paid notwithstanding that this document or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court. This priority of the Trustee will subsist whether or not an external administrator is appointed to the Issuer or any of its assets or the Trust is in the course of administration by or under the order of any court.

14. TRUSTEE'S INDEMNITY

14.1 Corporations Act

The Trustee's right of indemnity and any limitation on the Trustee's liability under this document is subject to the Corporations Act.

14.2 Indemnity for Trustee

- (a) Subject to clause 14.2(b), and without affecting any right of indemnity given to it by law or equity (and in addition to, and without affecting, another indemnity in this document), each Protected Person is, and is entitled to be, indemnified by the Issuer, in respect of all claims, demands, actions, damages, losses, liabilities, costs, charges, expenses and Taxes (other than Excluded Taxes):
 - (i) incurred by it in the exercise of any Power or the undertaking by it of any obligations, duties or responsibilities, including:
 - (A) moneys paid or to be paid for, or incurred as a result of, the employment or appointment of an agent or Controller; and
 - (B) from acting in good faith or relying in good faith on any notice, request or instruction given by fax or telephone or given in accordance with clause 19, which purports to originate from, or which the Trustee reasonably believes to have originated from, the offices or an Authorised Representative of the Issuer or a Noteholder (as applicable); and
 - (ii) arising in relation to this document.
- (b) The indemnity in clause 14.2(a) does not apply:
 - (i) where the relevant Protected Person (except for an agent which has been appointed by the Trustee at the request of the Noteholders) has been guilty of fraud, wilful default or gross negligence; or
 - (ii) if the Protected Person is the Trustee, to the extent that the Trustee is actually indemnified by a person other than the Issuer for the matters referred to in clause 14.2(a). If, following payment by the Issuer to the Trustee of any indemnified amount pursuant to this clause 14.2, the Trustee is indemnified by any other person for the matters referred to in clause 14.2(a), the Trustee shall promptly repay any such indemnified amounts received under this clause 14.2 to the Issuer.
- (c) The Trustee may from time to time retain and pay out of any moneys forming part of the Trust Fund an amount to satisfy the indemnity given by the Issuer under clause 14.2(a) or any other right of indemnity given to a Protected Person under this document or by law or equity. The Trustee must provide details to the Noteholders of amounts so retained or paid out.
- (d) The indemnity contained in clause 14.2 is a continuing additional, separate and independent obligation of the Issuer and survives:
 - (i) the Winding Up or termination of the trusts under this document; and
 - (ii) the retirement or removal of the Trustee as trustee.

15. APPLICATION OF MONEYS

15.1 Order of priority

The Trustee must promptly pay all moneys received by it in respect of this document or the Notes for the following purposes and in the following order of priority:

- (a) **(Trustee's costs and expenses)** first, to meet all costs, charges, fees, expenses (including legal fees) and liabilities incurred or paid by the Trustee under or in connection with this document or the Notes, including all remuneration payable to the Trustee for which the Issuer is liable under this document;
- (b) **(Controller's costs and expenses)** second, in payment of all costs, charges, fees, expenses and liabilities incurred by or other amounts owing to a Controller under or in connection with this document (including all remuneration payable to that Controller);
- (c) **(Amounts due on the Notes)** third, to pay any amounts due and payable on each Note by the Issuer under this document pari passu and without preference or priority amongst Noteholders, subject to any necessary rounding;
- (d) **(the Issuer)** fourth, to pay the balance (if any) to the Issuer.

15.2 **Moneys received**

In applying any moneys towards satisfaction of the Moneys Owning, the Issuer will be credited only with so much of the moneys available for that purpose as the Trustee has actually received and is not required for whatever reason to be disgorged, such credit to date from the time of such receipt.

15.3 **Application of moneys**

Notwithstanding any principle or presumption of law to the contrary or any direction given at the time of it being received by the Trustee or, the Trustee has, subject to this document, an absolute discretion without the need to communicate its election to any person to apply any payment or credit received by it under this document in reduction of any part of the Moneys Owning.

15.4 **Investment of Funds**

Unless expressly provided in this document, all moneys received by the Trustee and not required to be immediately applied under this document may be invested by the Trustee in such investments as it thinks appropriate.

16. **MEETINGS OF NOTEHOLDERS**

16.1 **Meeting procedures**

- (a) The Trustee or the Issuer may call a meeting of Noteholders in the manner provided in the Meeting Provisions.
- (b) All meetings of Noteholders are to be conducted in accordance with the Meeting Provisions.
- (c) Subject to this document, the Noteholders may by Ordinary Resolution:
 - (i) give a direction to the Trustee as to; or
 - (ii) authorise, ratify or confirm anything done or not done by the Trustee in respect of,

the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to this document or the Notes.

16.2 **Approval**

Notwithstanding any other term of this document, the Noteholders may, by Ordinary Resolution, approve the release of the Trustee from liability for anything done or omitted to be done by the Trustee or any other person.

17. **AMENDMENTS TO THIS DOCUMENT**

17.1 **Amendments**

Subject to clause 17.2, the Issuer and the Trustee may jointly amend, add to or revoke in writing any provision of this document, including this clause (an "**Amendment**") if:

- (a) (**without consent of Noteholders**) the Issuer and the Trustee are each of the opinion that the Amendment is:
 - (i) made to cure any ambiguity or correct a manifest error;
 - (ii) of a formal, minor or technical nature;
 - (iii) necessary or expedient for the purposes of enabling the Notes to be:
 - (A) listed for quotation, or to retain quotation, on any stock exchange; or
 - (B) offered for subscription or for sale under the laws from the time being in force in any place,and, otherwise not materially prejudicial to the interests of Noteholders generally;
 - (iv) necessary to comply with:
 - (A) the provisions of any statute or the requirements of any statutory authority; or
 - (B) the Listing Rules or the listing or quotation requirements of any stock exchange on which the Issuer may propose to seek a listing or quotation of Notes,and, otherwise not materially prejudicial to the interests of Noteholders generally; or
 - (v) not, and is not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to Noteholders generally;
- (b) (**consent of Noteholders**) except as otherwise provided in paragraph (a) above or (c) below, where the Amendment is to a provision of this document (other than the Note Terms) the Amendment is authorised by an Ordinary Resolution of Noteholders;
- (c) (**Special Resolution**) in the case the Meeting Provisions require the Amendment to be approved by a Special Resolution of Noteholders, the Amendment is approved by a Special Resolution of Noteholders; and
- (d) (**Note Terms**) where the Amendment is to a provision of the Note Terms, the Amendment must be in accordance with clause 12 of the Note Terms.

17.2 Note Terms

The Issuer must provide the Trustee with a copy of any amendment to the Note Terms.

18. DISCHARGE AND RELEASE

18.1 Termination

- (a) The Trust will terminate, and the Issuer will be discharged and released from its liabilities, obligations and covenants under this document (subject to this clause 18.1), on the earlier of the following:
 - (i) on the first date after the date of this document that both of the following have occurred:
 - (A) the Redemption or Conversion of all Notes and all Moneys Owning having been paid in full (as to which the Trustee may accept as conclusive an Authorised Representative's Certificate of the Issuer); and
 - (B) the payment of all fees, costs, charges and expenses properly incurred by the Trustee and reimbursable by the Issuer; and
 - (ii) the date which is 80 years after the date of this document.
- (b) On the occurrence of all the matters referred to in clause 18.1(a)(i), the Trustee must, if required by the Issuer, execute a confirmation of release in favour of the Issuer.
- (c) On the Trust being terminated, the Issuer must keep the Trustee indemnified in respect of all unpaid fees due to it and all costs, losses, liabilities and expenses reasonably and properly incurred by it in respect of an event which occurred prior to the date of termination (other than such cost, loss, liability or expense to the extent that it arises out of the Trustee's fraud, gross negligence or wilful default).

18.2 Disposal and distribution of trust assets on termination

Subject to clause 18.3, if the Trust is terminated in accordance with clause 18.1, the Trustee will distribute the balance of the capital and income of the Trust at the direction of the Issuer.

18.3 Further declaration of Trust

If the Notes are outstanding on the date which is 79 years after the date of this document, the Trustee and the Issuer will execute a further document as soon as practicable thereafter (and in any event prior to the date which is 80 years after the date of this document) on substantially the same terms as this document (including this clause 18.3) and all of the property, rights and powers under the Trust will from the date of execution of the further document be held on and subject to the trust constituted thereunder and the terms thereof.

19. NOTICES

19.1 How to give a notice

Subject to clauses 19.3 and 19.5, a notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given in one of the following ways:
 - (i) sent by prepaid mail (by airmail, if the addressee is overseas) or delivered to that person's address;
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error;
 - (iii) given personally;
 - (iv) by electronic form (such as email); or
 - (v) given in any other manner permitted by law.

19.2 When a notice is given

Subject to clause 19.3, a notice, consent or other communication that complies with this clause is conclusively regarded as given and received:

- (a) if it is sent by fax or delivered, if received:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
- (b) if it is sent by mail, when it would be delivered in the ordinary course of post, but in any event:
 - (i) not later than three Business Days after posting within Australia; or
 - (ii) not later than seven Business Days after posting to or from a place outside Australia;
- (c) if given personally, when actually received by that person;
- (d) if it is sent in electronic form, when the addressee's email system logs the email message as having been received;
- (e) if published on a website, on the day following the date on which such notice is published by the Issuer or the Trustee (as applicable) on the website; and
- (f) if it is given in any other manner permitted by law, when actually received by that person, unless a later time of receipt is specified in it.

19.3 Notices to or from the Noteholders

- (a) Any notice, consent or other communication to be made or delivered to the Noteholders, or by a Noteholder to the Issuer, must be given in accordance with the Note Terms.

- (b) A notice may be given by the Trustee to any Noteholder, or in the case of joint Noteholders to the Noteholder whose name appears first in the Register, personally, by leaving it at the Noteholder's address as shown on the Register or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission to the Noteholder's address or fax number (as the case may be) as shown on the Register or, by publishing such notice in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia or by publishing the notice on the Issuer's or the Trustee's website or in any case, by email to an electronic address nominated by the Noteholder for such communication. If the notice is signed, the signature may be original or printed.
- (c) Where a notice is given by the Issuer to Noteholders generally, a copy of the notice must also be given to the Trustee.

19.4 Address for notices

Subject to clause 19.3, a person's address and fax number are those set out below, or as the person notifies the sender:

Clime Capital Limited

Address: Level 7, 1 Market Street, Sydney, NSW 2000
 Fax number: +61 [2] 8917 2155
 Email: bjtu@clime.com.au
 Attention: Company Secretary

Equity Trustees Limited

Address: Level 1, 575 Bourke St Melbourne VIC 3000
 Email: productteam@egt.com.au
 Attention: Corporate Trustee Services

19.5 Notices subject to Meeting Provisions requirements

These provisions in this clause 19 are subject to the notice requirements set out in the Meeting Provisions.

20. RECOVERY OF GST

- (a) Unless otherwise indicated all amounts referred to in this document are exclusive of GST.
- (b) If the Trustee makes a taxable supply under or in connection with this document for consideration that is exclusive of GST, the Issuer must:
 - (i) pay to the Trustee an amount equal to any GST for which the Trustee is liable in relation to that supply; and
 - (ii) make that payment as and when the consideration or part of it must be paid or provided.
- (c) If requested by the Issuer, the Trustee must issue a tax invoice for a taxable supply to the person to whom it made the supply.
- (d) The Issuer's obligation to reimburse the Trustee for an amount paid or payable to a third party (including an obligation to pay the Trustee's or another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the Trustee is entitled to an input tax credit for that GST. Unless

notified otherwise by the Trustee, the Issuer must assume that the Trustee is not entitled to any input tax credit for that GST.

21. CONFIDENTIALITY

21.1 Confidential information

The Trustee acknowledges that all Confidential Information is confidential to the Issuer and must not be disclosed to any person except as permitted by clause 21.2.

21.2 Permitted disclosure

The Trustee may disclose Confidential Information:

- (a) to the extent required by this document or by law, but only to the extent so required;
- (b) to the extent requested by a Government Agency but only to the extent so requested;
- (c) to its officers, employees and professional advisers, but only to the extent that such disclosure is necessary in order for the Trustee to perform its obligations (including exercising the Powers) under this document;
- (d) to the Noteholders if the Trustee reasonably considers that disclosure is necessary for it to fulfil any obligation that it has at law or under this document; and
- (e) with the prior written consent of the Issuer (which may be given or withheld in its absolute discretion).

21.3 Disclosure to third parties

The Trustee must use its best endeavours to ensure that every person to whom it provides Confidential Information under clause 21.2 gives a confidentiality undertaking in favour of the Issuer in the same terms as this clause 21 and performs its obligations under such undertaking.

22. GENERAL

22.1 Governing law

- (a) This document is governed by the laws of the State of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.
- (c) Each party irrevocably waives:
 - (i) any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
 - (ii) any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

22.2 Liability for own expenses

The Issuer is liable for its own costs and expenses in complying with this document, including where it does so at the Trustee's request or for the Trustee's benefit.

22.3 Statutory powers

The powers of the Trustee under this document are in addition to any powers the Trustee has under applicable law.

22.4 Giving effect to this document

Each party must do anything, and must ensure that its employees and agents do anything, that the other party may reasonably require to give full effect to this document.

22.5 Variation of rights

The exercise of a right does not prevent any further exercise of that right or of any other right. Neither the exercise of a right nor a failure to exercise, or a delay in the exercise of, a right operates as an election or variation of the terms of this document.

22.6 Operation of this document

- (a) Subject to clause 22.6(b), this document contains the entire agreement between the parties about their subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that the Trustee may have under this document is in addition to, and does not replace or limit, any other right that the Trustee may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

22.7 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) The Trustee may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this document is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,

a person who is not a party to this document, the Issuer agrees that the Trustee holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this document on their behalf and for their benefit.

22.8 Consents

Where this document contemplates that the Trustee may agree or consent to something (however it is described), the Trustee may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

22.9 No merger

Nothing in this document merges with any other Security Interest, or any judgment or other right or remedy, that the Trustee may hold at any time.

22.10 Exclusion of contrary legislation

Any legislation that affects an obligation of the Issuer in a manner that is adverse to the interests of the Trustee or the Noteholders, or adversely affects the exercise by the Trustee or the Noteholders of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

22.11 Inconsistency with other documents

Subject to clause 1.2, if this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

22.12 Counterparts

This document may be executed in counterparts. Delivery of a counterpart of this document by email attachment or fax constitutes an effective mode of delivery.

22.13 No representation or reliance

Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.

22.14 Stamp duties

The Issuer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this document, the performance of this document and each transaction effected by or made under this document; and
- (b) must indemnify the Trustee against any liability arising from failure to comply with clause 22.14(a).

22.15 Void or voidable transactions

If:

- (a) **(release of Issuer)** the Trustee has at any time released or discharged the Issuer from its obligations under this document in reliance on a payment, receipt or other transaction to or in favour of the Trustee or Noteholders or any payment or other

transaction to or in favour of the Trustee or Noteholders has the effect of releasing or discharging the Issuer from its obligations under this document;

- (b) **(payment void)** that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under any law relating to insolvency or the Winding Up of companies or under the general law; and
- (c) **(claim upheld)** that claim is upheld or the claim is conceded or compromised by the Trustee or a Noteholder,

then:

- (d) **(restitution of rights)** the Trustee and each Noteholder will immediately become entitled against the Issuer to all rights as it had immediately before that release or discharge;
- (e) **(restore position)** the Issuer must immediately do all things and execute all documents as the Trustee may reasonably require to restore to the Trustee and the Noteholders all those rights; and
- (f) **(indemnity)** the Issuer must indemnify the Trustee and each Noteholder against costs, losses and expenses suffered or incurred by the Trustee or Noteholder in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

22.16 Untraceable Noteholders

Subject to applicable law and the Listing Rules, where the Issuer:

- (a) is, in respect of a Note, required to pay any amount to a Noteholder; and
- (b) has made reasonable efforts to locate a Noteholder but is unable to do so, then that amount:
 - (i) If the amount has been paid to the Trustee and the Trustee has actual possession and control of such amount, must be repaid by the Trustee to the Issuer; and
 - (ii) is to be held by the Issuer for the Noteholder in a non-interest bearing deposit with a bank selected by the Issuer until the Noteholder, or any legal personal representative of the Noteholder, claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed amounts.

The Trustee is not liable to any Noteholder for any amounts paid to the Issuer under this clause 22.16. The Issuer indemnifies the Trustee for any and all costs, losses, liabilities, expenses demands or claims suffered or incurred by the Trustee in respect of any moneys paid to the Issuer under this clause 22.16.

SCHEDULE 1

Note Terms

1. FORM OF NOTES

1.1 Form

The Notes are redeemable, convertible notes of the Issuer issued under the Trust Deed. Noteholders are entitled to the benefit of and are bound by the provisions of the Transaction Documents and these Note Terms.

1.2 Face Value and Issue Price

- (a) The Notes are each issued fully paid with a Face Value of \$0.96 (**Face Value**).
- (b) Each Note will be issued by the Issuer at an issue price of \$0.96 (**Issue Price**). The Issue Price must be paid in full on application.

1.3 Currency

The Notes are denominated in Australian dollars.

1.4 Clearing System

For such time as the Notes are quoted on ASX, the rights of a person holding an interest in the Notes are subject to the rules and regulations of the Clearing System.

1.5 No certificates

No certificates will be issued to Noteholders unless the Issuer determines that certificates should be available or are required by any applicable law.

1.6 ASX quotation of Notes

The Issuer must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure that the Notes are, and until Redeemed or Converted remain, quoted on ASX.

1.7 Participating in the new issues

To the maximum extent permitted by the Corporations Act, the ASX Listing Rules and any other applicable laws, Noteholders will be eligible to participate in any future rights on the basis of Notes held at the time of any rights issue. This eligibility to participate in any rights issues is in addition to a right for a Noteholder to participate in any rights issue on the basis of Shares in the Company also held by a Noteholder.

1.8 No other rights

The Notes confer no rights on a Noteholder:

- (a) to vote at any meeting of members of the Issuer; or
- (b) to otherwise participate in the profits or property of the Issuer, except as set out in these Note Terms or the Transaction Documents.

2. INTEREST

2.1 Interest

- (a) Each Note bears interest on its Face Value from (and including) its Issue Date to (but excluding) its Maturity Date, Conversion Date or Redemption Date at the Interest Rate.
- (b) Interest is payable in arrears on each Interest Payment Date.

3. GENERAL PROVISIONS APPLICABLE TO INTEREST

3.1 Calculation of Interest Rate and Interest payable

- (a) The Issuer must, as soon as practicable in each Interest Period, calculate the amount of interest payable for that Interest Period in respect of the Face Value of each Note.
- (b) The amount of interest payable on each Note for an Interest Period is calculated according to the following formula:

$$\text{Interest Payable} = \frac{\text{Interest Rate} \times \$0.96 \times N}{365}$$

Where:

N means, in respect of:

- (A) the first Interest Payment Date in respect of a Note, the number of days from (and including) its Issue Date to (but excluding) that first Interest Payment Date; and
- (B) each subsequent Interest Payment Date, the number of days from (and including) the preceding Interest Payment Date to (but excluding) that Interest Payment Date or, as the case may be, the Maturity Date, Conversion Date or Redemption Date.

3.2 Notification of Interest Rate, Interest payable and other items

- (a) The Issuer must notify the Trustee and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of:
 - (i) for each Interest Period, the amount of interest payable; and
 - (ii) any amendment to the amount referred to in subparagraph (A) arising from any extension or reduction in any Interest Period or calculation period.
- (b) The Issuer must give notice under this clause 3.2 of the amount of interest on each Note for the Interest Period by no later than the 10th Business Day of that Interest Period.
- (c) The Issuer may amend its calculation or determination of any amount, item or date (or make appropriate alternative arrangements by way of adjustment) as a result of the extension or reduction of the Interest Period or calculation period without prior notice but must notify the Trustee and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) promptly after doing so.

3.3 **Default Interest**

If an amount is not paid under these Note Terms on or before the due date, interest accrues on the unpaid amount at eight per cent per annum from (and including) the due date to (but excluding) the date on which payment is made to the Noteholder of the full unpaid amount.

3.4 **Determination final**

The determination by the Issuer of all amounts, rates and dates falling to be calculated or determined by it under these Note Terms is, in the absence of manifest or proven error, final and binding on the Issuer, the Trustee and each Noteholder.

3.5 **Calculations**

For the purposes of any calculations required under these Note Terms:

- (a) all figures must be rounded to three decimal places (with 0.0005 being rounded up to 0.001); and
- (b) all amounts that are due and payable must be rounded to the nearest one Australian cent (with 0.5 of a cent being rounded up to 1 cent).

4. **CONVERSION**

4.1 **Notes are Convertible**

Subject to these Note Terms and the ASX Listing Rules, the Noteholder has the right (**Conversion Right**), in accordance with this clause 4, to convert some or all of its Notes into a number of Shares determined by application of the following formula:

$\frac{A}{B}$ where:

A = the Conversion Amount; and

B = the Conversion Price.

4.2 **Conversion at the Noteholder's election**

- (a) Subject to paragraph 4.2(b)(ii), a Noteholder may elect in its absolute discretion to convert some or all of its Notes into Shares by giving the Registrar notice in writing of its intention to convert some or all of its Notes (**Conversion Notice**).
- (b) In order to convert any Notes into Shares, either:
 - (i) the Face Value of the Notes the subject of a Conversion Right must be at least the lesser of \$2,000; or
 - (ii) the Noteholder must convert the entire balance of their holding of Notes.

4.3 **Conversion Notice**

- (a) A Conversion Notice must:
 - (i) be in writing (in such form as the Issuer may accept or as is required by the ASX Listing Rules);
 - (ii) specify the number of Notes to be converted; and

- (iii) be signed by the Noteholder or an authorised representative or officer of the Noteholder.
- (b) Once a Conversion Notice has been given:
 - (i) the notice cannot be withdrawn without the written consent of the Issuer;
 - (ii) the Noteholder must not deal with, transfer, dispose of or otherwise encumber any Notes the subject of the Conversion Notice; and
 - (iii) the Noteholder must provide such evidence of title to the Notes the subject of the Conversion Notice as may be reasonably required by the Issuer and the Registrar.
- (c) Despite receipt by a Noteholder of a notice issued under clause 8.3, a Noteholder may still give a Conversion Notice provided the notice is given not less than five Business Days before the Redemption Date specified in the notice issued under clause 8.3.
- (d) A Conversion Notice given to the Issuer five or more Business Days before an Interest Payment Date will be effective on such date as may be determined by the Issuer (in its absolute discretion), provided that date is not later than the next Interest Payment Date following the date the notice is given.
- (e) If a Conversion Notice is given to the Issuer less than five Business Days before an Interest Payment Date (**Date 1**), the Conversion Notice will be effective on such date as may be determined by the Issuer (in its absolute discretion), provided that date is not later than the next Interest Payment Date following Date 1.
- (f) A Conversion Notice will not be effective if it is given less than five Business Days before the Maturity Date.

4.4 **Effect of Conversion**

On the Conversion Date:

- (a) the Noteholder's Notes which are the subject of a Conversion Notice will be Redeemed for the Conversion Amount, and the Noteholder will be taken to have agreed to pay the Conversion Amount to the Issuer by way of subscription for new Shares (**Conversion Shares**) at an issue price per Conversion Share that is equal to the Conversion Price, with each obligation to pay the Conversion Amount to be satisfied by way of mutual set-off;
- (b) the Issuer will issue to the Noteholder, and must register the Noteholder as the holder of, the Conversion Shares;
- (c) the Noteholder agrees to be registered as the holder of the Conversion Shares in the register of Members;
- (d) a holding notice in respect of the Conversion Shares is to be sent to the Noteholder at its registered address in respect of the relevant Notes;
- (e) the Issuer must use all reasonable endeavours to procure and maintain quotation of the Conversion Shares on ASX; and
- (f) upon issue of the Conversion Shares, all other rights conferred or restrictions imposed by the Note under these Note Terms will no longer have effect.

4.5 Ranking of Shares

Shares issued on conversion of the Notes will be fully paid and will in all respects rank *pari passu* with all other fully paid Shares on issue on the relevant Conversion Date, except that they will not be entitled to any dividend or any other distribution or entitlement that has not been paid as at the Conversion Date but for which the record date was prior to the Conversion Date.

4.6 No fractional shares

No fractional Shares will be issued on conversion of a Note. If the calculation under this clause results in an entitlement to a number of Shares which includes a fraction of a Share, the fraction will be disregarded.

4.7 Adjustments for reorganisation of capital

Subject to the ASX Listing Rules, if there is a reconstruction (including consolidation, subdivision, reduction or return) of the issued capital of the Issuer, the basis for conversion of the Notes will be reconstructed in the same proportion as the issued capital of the Issuer is reconstructed and in a manner which will not result in any additional benefits being conferred on the Noteholders which are not conferred on Shareholders (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of Shareholders approving the reconstruction of capital) but in all other respects the terms for conversion of the Notes will remain unchanged.

5. REDEMPTION

5.1 Scheduled redemption on Maturity Date

Each Note is Redeemable by the Issuer on the Maturity Date at its Face Value unless:

- (a) the Note has been previously Converted;
- (b) the Note has been previously Redeemed; or
- (c) the Note has been purchased by the Issuer and cancelled.

5.2 Purchase

Subject to compliance with any applicable law or requirement of ASX (and any stock exchange or other relevant authority on which the Notes are quoted):

- (a) the Issuer and any of its Related Bodies Corporate (or any third party nominated by the Issuer) may, at any time, purchase Notes in the open market or otherwise and at any price;
- (b) if purchases are made by tender for the Notes by the Issuer or any of its Related Bodies Corporate, tenders must be available to all Noteholders alike; and
- (c) Notes purchased under this clause 5.2 may be held, resold or cancelled at the discretion of the purchaser (and, if the Notes are to be cancelled, the Issuer).

6. STATUS, SECURITY AND RANKING

6.1 Status

The Notes at all times constitute unsecured debt obligations of the Issuer.

6.2 **No Security**

The Notes are unsecured.

6.3 **Ranking of Notes**

- (a) Each Note ranks for payment in a Winding Up of the Issuer:
 - (i) equally with each other Note;
 - (ii) equally with all present and future unsubordinated and unsecured debt obligations of the Issuer (subject to the laws and principles of equity affecting creditor rights or obligations preferred by mandatory provisions of applicable law); and
 - (iii) ahead of all Shares.
- (b) Without in any way limiting the Issuer's obligations to Redeem the Notes as set out herein, in order to give effect to the ranking specified in clause 6.3, in any Winding Up of the Issuer, the Noteholders agree that their claims are limited to the extent necessary to ensure that Noteholders of the Notes receive payments on a pro-rata basis.
- (c) Without in any way limiting the Issuer's obligations to Redeem the Notes as set out herein, neither the Trustee nor any Noteholder has any right to prove in a Winding Up of the Issuer in respect of the Notes, except on the basis set out in clauses 6.1 and 6.2.
- (d) Neither the Trustee nor any Noteholder may exercise voting rights as a creditor in respect of the Notes in a Winding Up of the Issuer to defeat the subordination in this clause.
- (e) The ranking of Notes is not affected by the date of registration of any Noteholder in the Register.

7. **NEGATIVE COVENANTS**

For so long as any of the Notes remain outstanding, the Issuer must not, without the approval of an Ordinary Resolution, incur any indebtedness that would cause the Issuer's total indebtedness to exceed 40% of the Issuer's total assets.

8. **EVENTS OF DEFAULT**

8.1 **Events of Default**

An Event of Default occurs in relation to the Notes if:

- (a) **(non-issue of Shares)** the Issuer fails to issue Shares on Conversion in accordance with these Note Terms within 10 Business Days after the date on which such issue is to be made;
- (b) **(non-payment)** the Issuer fails to pay any amount payable by it under the Note Terms and such default is not remedied within 3 Business Days;
- (c) **(breach of Negative Covenants)** the Issuer fails to comply with clause 7 and such failure remains unremedied for a period of 10 Business Days;
- (d) **(breach of other obligations)** the Issuer fails to comply with any of its other obligations under the Note Terms or the Transaction Documents and such failure

remains unremedied for a period of 10 Business Days after the earlier of (A) the Issuer receiving written notice from the Trustee in respect of the failure to comply and (B) the Issuer becoming aware of the failure to comply;

- (e) **(insolvency)** an Insolvency Event occurs in respect of the Issuer;
- (f) **(delisting)** a Delisting Event occurs in respect of the Issuer;
- (g) **(cessation of business)** the Issuer ceases or suspends (or threatens to cease or suspend) the conduct of all of its business or a substantial part of its business;
- (h) **(unlawfulness)** at any time, it is unlawful for the Issuer to perform any of its payment obligations under the Notes;
- (i) **(Government Agency)** all or substantially all of the assets of the Issuer are resumed or compulsory acquired by any Government Agency; or
- (j) **(vitiation)** all or any rights or obligations of the Issuer, Noteholders or the Trustee under the Trust Deed or the Note Terms are terminated or are or become void, illegal, invalid, unenforceable or of limited force and effect.

8.2 Notification

If an Event of Default occurs, the Issuer must, promptly after becoming aware of it but in any event no later than two Business Days after the Event of Default occurs, notify the Trustee of the occurrence of the Event of Default (specifying details of it) and use its reasonable endeavours to promptly notify the Noteholders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the occurrence of the Event of Default. The Trustee is taken not to have knowledge of the occurrence of an Event of Default unless the Trustee has received written notice from the Issuer or a Noteholder stating that an Event of Default has occurred and describing it. Nothing contained in the Trust Deed imposes on the Trustee an obligation to inform any Noteholder of any breach by the Issuer of any provision of the Trust Deed.

8.3 Consequences of an Event of Default

- (a) If an Event of Default occurs and is continuing in relation to the Notes, the Trustee may:
 - (i) declare by notice to the Issuer (with a copy to the Noteholders and the Registrar) that all the Notes are to be Redeemed at their Face Value (together with any accrued Interest) immediately (but not earlier than 10 Business Days after the date the Trustee gives notice under this clause) or on such other date specified in that notice; or
 - (ii) take enforcement action against the Issuer in relation to the Event of Default in accordance with the Transaction Documents.
- (b) The Trustee shall not be bound to take the action referred to in paragraph (i) above to enforce the obligations of the Issuer in respect of the Notes or any other proceedings or action pursuant to or in connection with the Transaction Documents unless:
 - (i) it shall have been so directed by a Special Resolution of the Noteholders of the relevant Notes;

- (ii) It is indemnified, to its satisfaction, against all costs, charges, liabilities and expenses which may be incurred by it (including legal costs on a solicitor and own client basis) in connection with that action;
- (iii) it is first placed in funds sufficient to cover the costs that it may incur as a result of doing so; and
- (iv) it is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Trustee forms the view that such action is or could be inconsistent with these Note Terms, the Transaction Documents or the Corporations Act or any applicable law, it must take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction given by Special Resolution, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take by Special Resolution.

8.4 No enforcement by Noteholders

Unless the Trustee, having become obliged to take action to enforce the rights of the Noteholders under the Transaction Documents and these Note Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing, the rights of each Noteholder to enforce the obligations of the Issuer under the Notes are limited to the exercise of its rights to enforce and seek due administration by the Trustee of the Trust Deed. In particular, unless the Trustee, having become obliged to take action to enforce the rights of the Noteholders under the Transaction Documents and these Note Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing, no Noteholder may, with respect to payment of any amount due under the Notes held by it:

- (a) sue the Issuer;
- (b) obtain judgment against the Issuer; or
- (c) apply for or seek Winding Up of the Issuer.

9. TITLE AND TRANSFER OF NOTES

9.1 Title

Title to a Note passes when details of the transfer are entered in the Register.

9.2 Effect of entries in Register

Each entry in the Register in respect of a Note constitutes:

- (a) an unconditional and irrevocable undertaking by the Issuer to the Noteholder to pay principal, interest and any other amount in accordance with these Note Terms; and
- (b) an entitlement to the other benefits given to Noteholders under these Note Terms and the Transaction Documents in respect of the Note.

For the avoidance of doubt, an entry in the Register does not make the Noteholder a Member of the Issuer or confer rights on a Noteholder to attend or vote at meetings of Members of the Issuer.

9.3 Register conclusive as to ownership

Entries in the Register in relation to a Note constitute conclusive evidence that the person so entered is the absolute owner of the Note, subject to correction for fraud or manifest error.

9.4 Non-recognition of interests

Except as required by law, the Issuer, the Trustee and the Registrar must treat the person whose name is entered in the Register as the holder of a Note as the absolute owner of that Note. This clause 9.4 applies whether or not a Note is overdue and despite any notice of ownership, trust or interest in the Note.

9.5 Joint holders

Where two or more persons are entered in the Register as the joint holders of a Note, then they are taken to hold the Note as joint tenants with rights of survivorship, but the Registrar is not bound to register more than four persons as joint holders of any Note.

9.6 Transfers in whole

The Notes may be transferred in whole but not in part.

9.7 Transfer

A Noteholder may, subject to this clause 9, transfer any Notes:

- (a) by a proper ASTC transfer according to the ASX Settlement Operating Rules;
- (b) by a proper transfer under any other computerised or electronic system recognised by the Corporations Act;
- (c) under any other method of transfer which operates in relation to the trading of securities on any securities exchange outside Australia on which the Notes are quoted; or
- (d) by any proper or sufficient instrument of transfer of marketable securities under applicable law.

The Issuer must not charge any fee on the transfer of a Note.

9.8 Market obligations

The Issuer must comply with all Applicable Regulations and any other relevant obligations imposed on it in relation to the transfer of a Note.

9.9 Issuer may request holding lock or refuse to register transfer

If the Notes are quoted on ASX, and if permitted to do so by the ASX Listing Rules and the Corporations Act, the Issuer may:

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Notes approved by and registered on the CS Facility's electronic sub-register or Notes registered on an issuer-sponsored sub-register, as the case may be; or
- (b) refuse to register a transfer of Notes.

9.10 Issuer must request holding lock or refuse to register transfer

- (a) The Issuer must request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Notes approved by and registered on the CS Facility's electronic sub-register or Notes registered on an issuer-sponsored sub-register, as the case may be, if the Corporations Act, the ASX Listing Rules or the terms of a Restriction Agreement require the Issuer to do so.
- (b) The Issuer must refuse to register any transfer of Notes if the Corporations Act, the ASX Listing Rules or the terms of a Restriction Agreement require the Issuer to do so.
- (c) During a breach of the ASX Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the Noteholder of the Restricted Securities is not entitled to any Interest (or other distribution on), or voting rights in respect of, the Restricted Securities.

9.11 Notice of holding lock and refusal to register transfer

If, in the exercise of its rights under clauses 9.9 and 9.10, the Issuer requests the application of a holding lock to prevent a transfer of Notes or refuses to register a transfer of Notes, it must, within five Business Days after the date the holding lock is requested or the refusal to register a transfer, give written notice of the request or refusal to the Noteholder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

9.12 Delivery of instrument

If an instrument is used to transfer the Notes according to clause 9.7, it must be delivered to the Registrar, together with such evidence (if any) as the Issuer and/or the Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Notes.

- (a)

9.13 Transferor to remain Noteholder until registration

A transferor of a Note remains the Noteholder in respect of that Note until the transfer is registered and the name of the transferee is entered in the Register.

9.14 Effect of transfer

Upon registration and entry of the transferee in the Register the transferor ceases to be entitled to future benefits under the Transaction Documents and the Note Terms in respect of the transferred Notes and the transferee becomes so entitled in accordance with clause 9.2.

9.15 Estates

A person becoming entitled to a Note as a consequence of the death or bankruptcy of a Noteholder or of a vesting order or a person administering the estate of a Noteholder may, upon producing such evidence as to that entitlement or status as the Registrar considers sufficient, transfer the Note or, if so entitled, become registered as the holder of the Note.

9.16 Transfer of unidentified Notes

Where the transferor executes a transfer of less than all the Notes registered in its name, and the specific Notes to be transferred are not identified, the Registrar may register the transfer in respect of such of the Notes registered in the name of the transferor as the Registrar thinks fit, provided the aggregate of the Face Value of all the Notes registered as having been transferred equals the aggregate of the Face Value of all the Notes expressed to be transferred in the transfer.

10. PAYMENTS

(a) Summary of payment provisions

Payments in respect of the Notes will be made in accordance with this clause 10.

(b) Record Date

All payments under or in respect of a Note will be made only to those persons registered as the holder of that Note at the nominated time on the relevant Record Date.

(c) Payments subject to law

All payments are subject to applicable law, but without prejudice to the provisions of clause 11.

(d) Payments on Business Days

If a payment:

- (i) is due on a Note on a day which is not a Business Day then the due date for payment will be postponed to the first following day that is a Business Day; or
- (ii) is to be made to an account on a Business Day on which banks are not open for general banking business in the place in which the account is located, then the due date for payment will be the first following day on which banks are open for general banking business in that place,

and, in either case, the Noteholder is not entitled to any additional payment in respect of that delay.

(e) Payments to accounts

Moneys payable by the Issuer to a Noteholder may be paid in any manner the Issuer decides, including by direct credit into a nominated account of the Noteholder at an Australian branch of a financial institution.

(f) Payments by cheque

- (i) The Issuer may decide that payments in respect of the Notes will be made by cheque sent by prepaid post on the payment date to the Noteholder (or to the first named joint holder of the Notes) at its address appearing in the Register.
- (ii) Cheques sent to the nominated address of a Noteholder will be at the risk of the registered Noteholder and will be taken to have been received by the Noteholder on the payment date and, no further amount will be payable by

the Issuer in respect of the Notes as a result of the Noteholder not receiving payment on the due date.

(g) Unsuccessful attempts to pay

Subject to applicable law and the ASX Listing Rules, where the Issuer:

- (i) decides that an amount is to be paid to a Noteholder by a method of direct credit and the Noteholder has not nominated an account to which amounts are to be paid by that method;
- (ii) attempts to pay an amount to a Noteholder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful;
- (iii) has made reasonable efforts to locate a Noteholder but is unable to do so; or
- (iv) has issued a cheque which has not been presented within six months of its date and, as a consequence, the Issuer has cancelled such cheque,

then, in each case:

- (v) the amount will be taken to have been duly paid to the Noteholder and will not bear Interest; and
- (vi) the amount will be held by the Issuer for the Noteholder in a non-interest bearing deposit with a bank selected by the Issuer until the Noteholder (or any legal personal representative of the Noteholder) nominates an account for payment or otherwise claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

(h) Payment to joint Noteholders

A payment to any one of the joint Noteholders of a Note will discharge the Issuer's liability in respect of the payment.

11. DEDUCTIONS

(a) No set-off, counterclaim or deductions

All payments in respect of the Notes must be made in full without set-off or counterclaim, and without any withholding or deduction for or in respect of Taxes, unless such withholding or deduction is required by law.

(b) Withholding and other taxes

- (i) The Issuer may withhold or deduct from any amount payable to a Noteholder in respect of the Notes an amount in respect of any Tax which a qualified legal or taxation advisor advises that it is required by law to withhold or deduct from that payment.
- (ii) The Issuer must pay the full amount required to be withheld or deducted to the relevant revenue authority within the time allowed for such payment (without incurring penalty under the applicable law) and must, if required by a Noteholder, deliver to that Noteholder a copy of the relevant receipt issued by the relevant revenue authority without unreasonable delay after it is received by the Issuer.

- (iii) If an amount is deducted or withheld under clause 11(b)(i) from a payment to a Noteholder in respect of any Tax, the full amount payable to the Noteholder will be deemed to have been duly paid and satisfied by the Issuer, and the Issuer will have no obligation to pay any additional amount to the Noteholder on account of the deduction or withholding.

12. **AMENDMENT OF THE NOTE TERMS**

12.1 **Amendment without the approval of the Noteholders**

At any time, and from time to time, the Note Terms (which, for the avoidance of doubt include this clause) may be modified, altered, cancelled, amended or added to (collectively **Modified**), without the consent of the Noteholders, if:

- (a) such modification, alteration, cancellation, amendment or addition (collectively **Modification**) is:
 - (i) of a formal or technical nature or made to cure any ambiguity or correct any manifest error;
 - (ii) necessary or expedient for the purpose of listing the Notes on ASX or to comply with the applicable ASX Listing Rules or the listing or quotation requirements of any other any securities exchange on which the Issuer may propose to seek a listing of the Notes;
 - (iii) necessary or expedient for the purpose of enabling the Notes to be offered for issue or for sale under the laws for the time being in force in any place;
 - (iv) necessary or expedient to comply with the provisions of any law or regulation or the requirements of any statutory authority; or
 - (v) necessary or advisable following the introduction of, or any amendment to, clarification of, or change (including any announced prospective change) in, any law or regulation of the Commonwealth of Australia or an announcement, action or decision or a proposal to introduce, amend, clarify or change any such law or regulation or any official administrative pronouncement or action or judicial decision interpreting or applying any such law or regulation which is likely to cause the Notes to cease to be treated as debt for tax or accounting purposes; and
 - (vi) in respect of a Modification sought by a party in reliance on:
 - (A) any one of clauses 12.1(a)(i) to 12.1(a)(iv) above - the Issuer and the Trustee have either jointly or separately obtained a legal opinion from legal advisers of recognised standing in New South Wales, which opinion is in a form satisfactory to the Issuer and the Trustee, as applicable (each acting reasonably) and is addressed to or is otherwise able to be relied on by each of the Issuer and the Trustee, as applicable, to the effect that such Modification (taken as a whole and in conjunction with all other Modifications) is:
 - (aa) a Modification within the scope of any one or more of clauses 12.1(a)(i) to 12.1(a)(iv); and
 - (bb) not materially prejudicial to the interests of Noteholders of the Notes (taken as a whole); or

(B) clause 12.1(a)(v) above - the Issuer and the Trustee have either jointly or separately obtained an opinion from an accountancy or taxation adviser of recognised standing in New South Wales, which opinion is in a form satisfactory to the Issuer and the Trustee, as applicable (each acting reasonably) and is addressed to or is otherwise able to be relied on by each of the Issuer and the Trustee, as applicable, to the effect that such Modification (taken as a whole and in conjunction with all other Modifications) is:

(aa) a Modification within the scope of clause 12.1(a)(v); and

(bb) not materially prejudicial to the interests of Noteholders of the Notes (taken as a whole).

12.2 Amendment with the approval of the Noteholders

(a) At any time, and from time to time, but subject to clauses 12.2(b), 12.2(c) and 12.3 of the Note Terms, the Note Terms (which, for the avoidance of doubt, includes this clause) may be Modified if such Modification is authorised by an Ordinary Resolution.

(b) If the Trustee considers the Modification will materially and adversely affect the rights of all Noteholders, then the Modification must be authorised by a Special Resolution.

(c) If a clause in the Note Terms provides for Noteholders to give a direction to the Trustee by a Special Resolution, then that clause may only be Modified if such Modification is authorised by a Special Resolution.

12.3 Amendment with the approval of the Noteholders but not the Trustee

If a Modification to the Note Terms (which, for the avoidance of doubt includes this clause) is proposed by the Issuer under clause 12.2 and the Trustee will not consent to the Modification, the Note Terms may be Modified in the manner proposed by the Issuer if such Modification is authorised by a Special Resolution, provided that such amendment does not adversely affect the rights and obligations of the Trustee.

13. GENERAL

13.1 Reporting

In addition to any requirements of the Corporations Act and the ASX Listing Rules, each Noteholder (if requested by that Noteholder) will be provided with copies of all annual and half-yearly reports and financial statements provided to holders of Shares.

13.2 Time limit for claims

A claim against the Issuer for a payment under a Note is void unless made within 5 years from the date on which payment first became due.

13.3 Voting

The Trust Deed contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests including certain variations of these Note Terms which require the consent of the Noteholders.

13.4 Notices

The Trust Deed contains provisions for the giving of notices.

13.5 Further documents

The Issuer may require the Trustee to execute, on behalf of all Noteholders, such documents as the Issuer considers necessary or desirable (provided that the Trustee is indemnified to its satisfaction, acting reasonably, against any Taxes, fees, costs, charges, expenses or liabilities (including solicitor and client as well as party and party costs) which it may suffer or incur as a result of doing so, and provided that the Trustee will only be required to execute such documents if the Noteholders give a direction to the Trustee by a Special Resolution passed in favour of such execution to do so).

13.6 Governing law and jurisdiction

- (a) The Note Terms and the Notes are governed by the laws of New South Wales.
- (b) The Issuer and each Noteholder submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales in connection with matters concerning the Notes or these Note Terms.
- (c) The Issuer and each Noteholder waives any right they have to object to an action being brought in those courts, or to claim that the action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.

14. INTERPRETATION AND DEFINITIONS

14.1 INTERPRETATION

In these Note Terms, except where the context otherwise requires:

- (a) if there is inconsistency between the Note Terms and the Trust Deed, then, to the maximum extent permitted by law, the Note Terms will prevail;
- (b) a reference to a clause or paragraph is to a clause or paragraph of the Note Terms;
- (c) the Directors may exercise all powers of the Issuer under these Note Terms as are not, by the Corporations Act or by the Constitution of the Issuer required to be exercised by the Issuer in a general meeting;
- (d) if a calculation is required under these Note Terms, unless the contrary intention is expressed, the calculation will be rounded to four decimal places;
- (e) calculations, elections and determinations made by the Issuer under these Note Terms are binding on Noteholders in the absence of manifest error;
- (f) if an event under these Note Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (g) a singular word includes the plural, and vice versa;
- (h) a word which suggests one gender includes other genders;
- (i) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;

- (j) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (k) a reference to "**dollars**" or "\$" is to an amount in Australian currency.

14.2 Non Business Days

If the day on or by which a person must do something under this document is not a Business Day:

- (a) If the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

14.3 Definitions

Note Terms defined in the Trust Deed have the same meanings in these Note Terms. In addition, the following terms have the following meanings unless the contrary intention appears:

Applicable Regulations means such provisions of the ASX Listing Rules, the ASX Settlement Operating Rules, the Corporations Act and any regulations or rules pursuant under or pursuant to any such provisions as may be applicable to the transfer of a Note.

Change of Control Event means each of:

- (a) a takeover bid is made to acquire all of the Shares and the offer under the takeover bid is, or becomes, unconditional and:
 - (i) the bidder has acquired at any time during the offer period a relevant interest in more than 50% of the Shares on issue; or
 - (ii) the Directors of the Issuer unanimously recommend acceptance of the offer under the takeover bid, and acceptance of that offer would result in the bidder having a relevant interest in 100% of the Shares on issue; or
- (b) a court approves a proposed scheme of arrangement which, when implemented, will result in a person having a relevant interest in 100 per cent of the Shares on issue.

Constitution means the constitution of the Issuer, as amended from time to time.

Conversion Amount means the aggregate Face Value of the total number of Notes the subject of the relevant Conversion Notice plus, at the option of the Issuer, such amount of the Interest accrued but unpaid on those Notes (as determined by the Issuer) on the Conversion Date.

Conversion Price means an amount equal to the Face Value of the Note.

CS Facility has the same meaning as 'prescribed CS Facility' in the *Corporations Act*.

CS Facility Operator means the operator of a CS Facility.

Delisting Event will occur if:

- (a) the Shares cease to be quoted on ASX;

- (b) the Notes cease to be quoted on ASX; or
- (c) trading of the Shares or Notes on the ASX is suspended for a period of more than 20 consecutive Business Days.

Directors means some or all of the directors of the Issuer acting as a board.

Face Value means the nominal principal amount of each Note, being \$0.96.

Interest means the interest payable from time to time in respect of a Note, including interest payable under in clause 3.1 and, as applicable, default interest payable under clause 3.3.

Issue Price means the issue price of each Note, being \$0.96.

Issuer means Clime Capital Limited ACN 106 282 777.

Meeting Provisions means the rules relating to meetings of Noteholders contained in Schedule 2.

Member or Shareholder means a person entered in the register of members as a member, for the time being, of the Issuer.

Ordinary Resolution means:

- (a) a resolution passed at a meeting of the Noteholders duly called and held under the Meeting Provisions:
 - (i) by at least 50 per cent of the persons voting on a show of hands (unless paragraph (ii) below applies); or
 - (ii) if a poll is duly demanded, then by a majority consisting of at least 50 per cent of the votes cast; or
- (b) a resolution passed by postal ballot or circular written resolution by Noteholders representing (in aggregate) at least 50 per cent of the principal amount then outstanding of all of the Notes.

Record Date means, in relation to any payment to be made under or in respect of the Notes:

- (a) subject to sub-paragraphs (b) and (c), the date which is eight calendar days before the applicable due date for payment; or
- (b) such other date as is determined by the Issuer in its absolute discretion, and communicated to ASX not less than eight calendar days before the record date which would have been determined under paragraph (a) above; or
- (c) such other date as may be required by, or agreed with, ASX.

Restriction Agreement means an agreement which is required to be concluded under Chapter 9 of the ASX Listing Rules or in voluntarily concluded between the Issuer and one or more Noteholders.

Restricted Securities has the same meaning as in the ASX Listing Rules and extends to Notes which are subject to voluntary restrictions by agreement between the Issuer and one or more Noteholders.

Trust Deed means the trust deed entitled 'Convertible Notes Trust Deed' between the Issuer and the Trustee and dated on or about

VWAP means the average of the daily volume weighted average sale prices of the Shares sold on ASX during the period specified in these Note Terms, excluding any transaction defined in the ASX Operating Rules as 'special', crossings prior to the commencement of normal trading, crossings during the after hours adjust phase and any overseas trades or exchange traded option exercises, subject to the following adjustments:

- (a) where, on some or all of the Business Days in the relevant period, Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement which is not extended to the Noteholder, and the Notes will convert into Ordinary Shares after the date those Shares no longer carry that entitlement, then the VWAP on the Business Days on which those shares have been quoted cum dividend, or cum any other distribution or entitlement shall be reduced by an amount (Cum Value) equal to:
- (b) in the case of a dividend or other distribution, the amount of that dividend or distribution (with no value included for any franking credits);
- (c) in the case of an entitlement which is traded on ASX on any of those Business Days, the volume weighted average price of all such entitlements sold on ASX during the relevant period on the Business Days on which those entitlements were traded; or
- (d) in the case of an entitlement not traded on ASX during the relevant period, the value of the entitlement as reasonably determined by the Directors; and
- (e) where, on some or all of the Business Days in the relevant period, Shares have been quoted ex dividend, ex distribution or ex entitlement, and Notes will convert into Ordinary Shares which would be entitled to receive the relevant dividend, distribution or entitlement, the VWAP on the Business Days on which those Shares have been quoted ex dividend, ex distribution or ex entitlement shall be increased by the Cum Value.

SCHEDULE 2

Provisions for Meetings of Noteholders

1. DEFINITIONS

In this schedule, unless the context requires otherwise:

"Noteholder" means the person or persons named as Noteholder in the Register 1 Business Day prior to the date that the notice of the meeting is given.

"Representative" means:

- (a) in relation to a Noteholder, a person appointed as a proxy for that Noteholder pursuant to clause 3.3 of this schedule; and
- (b) without limiting the generality of paragraph (a), in relation to a Noteholder that is a body corporate, a person appointed as a representative of that Noteholder pursuant to clause 3.4 of this schedule.

2. CALLING OF MEETINGS

2.1 Who may call a meeting

- (a) **(Issuer and Trustee)**: The Issuer or the Trustee may at any time call a meeting of Noteholders.
- (b) **(meeting on request by Noteholders)**: The Issuer must call a meeting of Noteholders if:
 - (i) Noteholders who together hold 10% or more of the Face Value of the Notes outstanding request the Issuer to do so; and
 - (ii) the direction is given to the Issuer in writing at its registered office; and
 - (iii) the purpose of the meeting is to:
 - (A) consider the financial statements that were laid before the last AGM of the Issuer; and/or
 - (B) give the Trustee directions in relation to the exercise of any of its powers.
- (c) **(When otherwise required by law)**: The Issuer must call a meeting of Noteholders whenever required to do so by law.

2.2 Method of calling a meeting

- (a) **(by notice)**: The Issuer or the Trustee may call a meeting of Noteholders by notice given:
 - (i) to the other in accordance with this document at least 14 days before the date of the meeting exclusive of the day on which the notice is served or deemed to be served and of the day on which it is given; and

- (ii) each Noteholder at least 14 days before the date of the meeting exclusive of the day on which the notice is served or deemed to be served and of the day on which it is given:
 - (A) by posting it to the Noteholder's address as recorded on the Register on the Business Day prior to the date that the notice is given;
 - (B) by providing it to the Noteholder personally;
 - (C) by sending it to the fax number or electronic address nominated by the Noteholder;
 - (D) by publishing an advertisement in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia; or
 - (E) if delivered to CHES (or any other applicable securities clearance and settlement system through which the Notes are cleared and/or settled) for communication by them to persons shown in their respective records as having interests therein.

If the notice is posted to the Noteholder, the Noteholder is taken to have received it 3 days after it is posted, or if the notice is sent electronically or by fax, the Noteholder is taken to have received it on the Business Day after it is sent.

- (b) **(contents of notice)**: A notice under clause 2.2(a) of this schedule must:
 - (i) state the date, commencement time and place of the meeting;
 - (ii) describe the general nature of the business to be considered and, where a resolution to amend the Note Terms is proposed, must specify the terms of the proposed amendment (but, in other cases, not specify the precise terms of the resolutions proposed); and
 - (iii) provide that Noteholders may attend personally or through a Representative appointed and notified to the Trustee.
- (c) **(notice to the Issuer's auditor)**: If the Issuer is required to call a meeting in accordance with clauses 2.1(b) or 2.1(c) of this schedule then it must also give prior notice of the meeting to the Issuer's auditor.

2.3 Corporations Act

The Issuer and the Trustee must comply with the requirements of the Corporations Act when calling meetings.

2.4 Failure to notify Noteholder need not invalidate a meeting

Any:

- (a) **(Accidental omission to give notice)**: accidental omission to give notice to, or the non-receipt of notice by, any person other than the Issuer or the Trustee; or
- (b) **(Change in the identity of the Noteholders)**: any change in the identity of the Noteholders from that recorded on the Register on the Business Day before the notice of meeting is given, will not invalidate a meeting nor any resolution passed at that meeting.

2.5 **Consequences of failure to notify the Issuer or the Trustee**

An omission to give notice to, or the non-receipt of notice by, the Trustee or the Issuer under clause 2.2(a)(i) of this schedule, within the period specified in that clause, invalidates a meeting unless:

- (a) **(Recipient has refused delivery)**: the Trustee or the Issuer (as the case may be) refuses to accept delivery of that notice; or
- (b) **(Recipient waives compliance)**: the Trustee or the Issuer (as the case may be), by notice to the other, waives its right to compliance with clause 2.2(a)(i).

2.6 **Meeting in more than one place**

A meeting of Noteholders may, if the Trustee so determines, be held at two or more meeting venues linked together by audio-visual communication equipment which, by itself or in conjunction with other arrangements:

- (a) **(Participate in proceedings)**: gives the Noteholders in the separate venues a reasonable opportunity to participate in the proceedings;
- (b) **(Chairman aware of proceedings)**: enables the chairman to be aware of proceedings in each such venue; and
- (c) **(Vote)**: enables the Noteholders in each such venue to vote on a show of hands and on a poll.

A Noteholder at one of the separate meeting venues is taken to be present at the meeting of the Noteholders and is entitled to exercise all rights which a Noteholder has under the this document and this schedule in relation to a meeting of Noteholders. Where a meeting of Noteholders is held at two or more meeting venues pursuant to this clause that meeting will be regarded as having been held at the venue determined by the chairman of the meeting.

3. **ATTENDANCE AT MEETINGS**

3.1 **By Issuer and Trustee**

The Issuer and the Trustee (in each case, personally or through their respective representatives and financial and legal advisers) may attend and speak at any meeting of Noteholders.

3.2 **By Noteholders**

A Noteholder (whether it received notice of the meeting or not) may attend, and speak and vote at, a meeting either personally or through its Representative.

3.3 **Appointment of proxy**

A Noteholder (whether a body corporate or not) by an instrument may appoint a proxy to attend, speak and vote on the Noteholder's behalf at a specified meeting or at meetings generally of Noteholders.

3.4 **Appointment of representative by body corporate**

A Noteholder that is a body corporate, may authorise a person to act as its representative at a specified meeting or at meetings generally of Noteholders.

3.5 **Form of Instrument appointing representative**

An instrument appointing a Representative must be:

- (a) **(Approved form)**: in a form acceptable to the Trustee and the Issuer;
- (b) **(Lodged with Trustee)**: lodged at such places in Australia as the Trustee or the Issuer (with the approval of the Trustee) direct in the notice convening the meeting (or if no such place is appointed then with the Trustee at least 48 hours before the meeting, adjourned meeting or taking of a poll at which it is to be relied on; and
- (c) **(Proof of attorney's power)**: in the case of an Instrument appointing a proxy which is under the hand of an attorney, accompanied by proof acceptable to the Trustee of the attorney's authority.

3.6 **Waive requirements**

The Trustee or the Issuer (with the approval of the Trustee) may in its sole discretion waive any of the requirements in relation to the appointment of a Representative and approve as valid any Instrument appointing a Representative despite that it does not comply with those requirements or is received or produced at the wrong place or the wrong time.

3.7 **Appointment applies for meeting**

Unless the instrument provides otherwise, an instrument appointing a Representative is valid for the meeting to which it relates and for any adjournment of that meeting.

3.8 **Qualifications of representative**

A Representative need not be a Noteholder. The Trustee and any officer of the Trustee may be appointed a Representative.

3.9 **Continuing appointment**

Action taken at a meeting, adjourned meeting or on the taking of a poll by a representative appointed and notified to the Trustee is valid despite:

- (a) **(Death etc)**: any death, unsoundness of mind or dissolution of the Noteholder;
- (b) **(Revocation)**: any revocation of the instrument of appointment (or of the authority under which it was executed); or
- (c) **(Transfer)**: any transfer of the Note in respect of which the appointment was made, unless the Issuer or the Trustee has received notice of this at its registered office before the meeting or adjourned meeting commences.

3.10 **Rights of representative**

A Representative has the right to demand or join in demanding a poll and (except and to the extent to which the Representative is specially directed to vote for or against any proposal) has power generally to act at a meeting for the Noteholder concerned.

3.11 **Voting by person of unsound mind**

A Noteholder of unsound mind or in respect of whom an order has been made by any court having jurisdiction in respect of mental health may vote whether on a show of hands or on a poll by his committee or trustee or other person who properly has the management of the Noteholder's estate.

3.12 **Objection to voter's qualification**

An objection may only be raised to the entitlement of a person to attend or vote at a meeting of Noteholders at the meeting in question (or adjournment of it). Any such objection is to be considered by the chairperson of the meeting whose decision will be final and conclusive. The chairperson may consult with any representative of the Issuer and the Trustee present at the meeting.

4. **PROCEDURE AT MEETINGS**

4.1 **Quorum**

- (a) **(No business unless quorum present at commencement):** No business may be transacted at a meeting of Noteholders unless a quorum is present at the time the meeting proceeds to business.
- (b) **(Calculation of quorum):** The quorum for a meeting of Noteholders, which is to be calculated by reference to Noteholders who:
 - (i) are present in person or by Representative (even if by the same Representative); and
 - (ii) are entitled to vote at that meeting,holding in aggregate Notes representing at least 10% of the aggregate Face Value of the Notes outstanding when the meeting proceeds to business.
- (c) **(Quorum not present):** If a quorum is not present within 15 minutes of the announced commencement time for a meeting, the meeting:
 - (i) if convened pursuant to clause 2.1(b) of this schedule, is dissolved; or
 - (ii) in any other case, stands adjourned to such day, and to such time and place, as the chairperson determines (and at such meeting the percentage Notes of Noteholders referred to in clause 4.1(b) of this schedule will be ignored when determining whether there is a quorum under that clause).

4.2 **Chairperson**

- (a) **(Appointment by Trustee):** The Trustee may appoint a person to be chairperson at a meeting of Noteholders.
- (b) **(Ordinary Resolution in default of Trustee):** If the Trustee does not appoint a person to be chairperson of a meeting, or the person is not present within 15 minutes of the announced commencement time for a meeting or is unwilling to act, the Noteholders must appoint a person by Ordinary Resolution to be chairperson of that meeting.
- (c) **(Qualifications of chairperson):** The chairperson:
 - (i) need not be a Noteholder; and
 - (ii) may be an officer of the Issuer or the Trustee.
- (d) **(Casting Vote):** The chairperson has a casting vote, both on a show of hands and on a poll.

4.3 Voting procedure

- (a) **(In the first instance by a show of hands):** Every question submitted to a meeting must be decided in the first instance by a show of hands of Noteholders or their Representatives. Unless a poll is demanded in accordance with this clause 4.3, a declaration by the chairperson that a resolution has been carried, carried by a particular majority, lost or not carried is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (b) **(Call for a Poll):** Each of:
 - (i) the chairperson;
 - (ii) the Issuer or the Trustee; or
 - (iii) a Noteholder or Noteholders holding in aggregate at least 5 per cent of the Face Value of the Notes outstanding when the meeting proceeds to business (or its or their Representatives), may call for a poll on a resolution before or on the declaration of the result of the show of hands. A demand for a poll may be withdrawn.
- (c) **(Taking of a Poll):** A poll on the election of a chairperson or a question of adjournment must be taken immediately. A poll on other matters must be taken in the manner, at the time and in the place determined by the chairperson. The result of a poll is to be taken to be the resolution of the meeting at which the poll was demanded, passed on the day the poll is taken.
- (d) **(Continuation of business):** The demand for a poll may not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) **(Number of votes):** In the case of a vote:
 - (i) on a show of hands, each person present and entitled to vote has one vote; and
 - (ii) on a poll, each person who is present and entitled to vote has one vote in respect of each Note in respect of which that person is the Noteholder or in respect of which that person is otherwise entitled to vote.

Without prejudice to the obligations (if any) imposed by a Noteholder on its Representative, any person entitled to more than one vote need not exercise all those votes in the same way.

- (f) **(Vote of joint Noteholders):** If a Note is held by joint Noteholders, only the vote of the most senior such person who tenders a vote (whether in person or by Representative) may be accepted as a vote, to the exclusion of any attempted votes of the other joint Noteholders of that Note (which may not be regarded as valid votes for any purpose). For this purpose, seniority is determined by the order in which names are recorded in the Register in respect of that Note.

4.4 Resolutions

- (a) **(Ordinary Resolutions):** Except to the extent provided in this document or the Corporations Act, a resolution may be passed as an ordinary resolution of the Noteholders which requires approval by Ordinary Resolution.

- (b) **(Special Resolutions):** A resolution which if passed would:
 - (i) release any party from any liability to the Noteholders;
 - (ii) adversely affect the rights of any Noteholder;
 - (iii) require the resignation or removal of the Trustee; or
 - (iv) approve an amendment to the Note Terms,
 requires a Special Resolution, unless this document expressly provides otherwise.
- (c) **(Resolutions bind Noteholders):** A resolution passed at a meeting of Noteholders convened and held in accordance with this schedule binds all Noteholders whether present at the meeting or not.
- (d) **(Declaration of result conclusive):** At a meeting of Noteholders, a declaration by the chairperson that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.
- (e) **(Written Resolutions):** Despite the other provisions in this schedule, an Ordinary Resolution and a Special Resolution may be passed, without any meeting or previous notice being required, by an instrument or instruments in writing signed by Noteholders holding the relevant proportion of the Moneys Owing to pass the relevant resolution and any such instrument is effective upon presentation to the Issuer for entry in the minutes referred to in clause 5 of this schedule.

4.5 **Adjournment**

- (a) **(Who may adjourn):** Each of:
 - (i) the chairperson;
 - (ii) the Trustee; and
 - (iii) the Noteholders (or their Representatives) by Ordinary Resolution,
 may adjourn a meeting (including an adjourned meeting) to such time and place as the Trustee or that resolution (as appropriate) determines. The only business which may be transacted at an adjourned meeting is business which might lawfully have been transacted at the meeting from which the adjournment took place.
- (b) It is not necessary to give notice of an adjourned meeting.

4.6 **Court order**

A meeting of Noteholders ordered to be held by a court will be conducted, in accordance with the provisions of this document, unless the court otherwise directs.

5. **GENERAL**

5.1 **Minutes**

Minutes of all resolutions and proceedings at every meeting must be made and duly entered in the books to be provided for that purpose by the Trustee. Any such minutes if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings transacted or by the chairman of the next succeeding meeting (if any) of Noteholders, are conclusive evidence of the matters stated in them. Every such meeting in respect of the proceedings of which minutes have been made and signed are

deemed to have been duly convened and held and all resolutions passed and proceedings conducted at such meetings are deemed to have been duly passed and conducted.

5.2 Further procedures for meetings

Subject to all other provisions of this document and this schedule, the Trustee may without the consent of the Noteholders prescribe such further regulations regarding the holding of meetings of the Noteholders and attendance and voting at such meetings as the Trustee may in its sole discretion determine including particularly (but without prejudice to the generality of the foregoing) such regulations and requirements as the Trustee thinks reasonable:

- (a) **(Regarding entitlement to vote):** so as to satisfy itself that persons who purport to attend or vote at any meeting of Noteholders are entitled to do so in accordance with this schedule and the other provisions of this document; and
- (b) **(Regarding representatives):** as to the form of appointment of a Representative.

SCHEDULE 3

Conversion Notice

To: Company Secretary
Clime Capital Limited
Level 7
1 Market Street
Sydney
NSW 2000

NOTICE OF CONVERSION OF CONVERTIBLE NOTES

I/WE _____
Name of Noteholder

of _____
Address of Noteholder

hereby request conversion of _____ Notes into fully paid ordinary shares in the capital of Clime Capital Limited in accordance with the Note Terms of the Convertible Notes Trust Deed dated _____.

I/WE agree to be bound by the constitution of Clime Capital Limited.

Signature: _____
Noteholder/Director/Sole Director

Name (please print): _____

Signature: _____

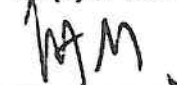
Name (please print): _____

Dated: _____

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

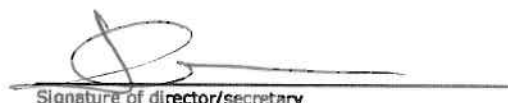
SIGNED, SEALED AND DELIVERED by
CLIME CAPITAL LIMITED ABN 99 106
282 777 in accordance with section
127(1) of the Corporations Act:



Signature of director

Brett Spork

Name



Signature of director/secretary

John Abernethy

Name

SIGNED by **EQUITY TRUSTEES LIMITED**, by its duly authorised agent, in the presence of:



Signature of Authorised Officer

Russell Beasley
Authorised Person - Schedule II
Equity Trustees Limited
ACN 004 031 298

Name



Signature of Authorised Officer

Alan O'Brien
Authorised Person - Schedule III
Equity Trustees Limited
ACN 004 031 298

Name