

NAOS EMERGING  
OPPORTUNITIES  
COMPANY LIMITED  
(ASX: NCC)

ABN 58 161 106 510



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15 April 2021

ASX Market Announcements  
ASX Limited  
20 Bridge Street  
Sydney NSW 2000

**NAOS EMERGING OPPORTUNITIES COMPANY LIMITED (ASX: NCC)  
COMPLETES LISTED, UNSECURED CONVERTIBLE NOTES ISSUE**

NAOS Emerging Opportunities Company Limited (**ASX: NCC**) is pleased to announce the successful completion of the offer of its listed, redeemable, unsecured, unsubordinated, convertible notes (**NCC Notes**).

*Trading on ASX*

The NCC Notes were issued today on 15 April 2021 and are expected to begin trading on a normal settlement basis on the ASX on 20 April 2021. The NCC Notes will trade under the ASX code 'NCCGA'.

*Trust Deed*

Please also find enclosed a copy of the trust deed relating to the NCC Notes.

Authorised by:

Rajiv Sharma  
Company Secretary



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## Trust Deed

relating to the NCC Convertible Note Trust (2021)

NAOS Emerging Opportunities Company Limited (ABN 58 161 106 510)  
(Issuer)

Melbourne Securities Corporation Ltd (ABN 57 160 326 545)  
(Trustee)

*The Notes have not been nor will be, registered under the U.S. Securities Act of 1933 as amended (**Securities Act**) or the securities laws of any state of the United States or any other jurisdiction. The Notes may not be offered or sold at any time within the United States or to, or for the account or benefit of, U.S. persons (within the meaning of Regulation S under the Securities Act), unless the Notes are registered under the Securities Act or an exemption from the registration requirements of the Securities Act is available and other than in accordance with all applicable securities laws of any state of the United States and each other jurisdiction in which the Notes are offered or sold.*

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Date: 11 March 2021

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## Parties

- 1 NAOS Emerging Opportunities Company Limited (ABN 58 161 106 510) of Level 34, MLC Centre, 19 Martin Place, Sydney, New South Wales 2000 (Issuer); and
  - 2 Melbourne Securities Corporation Ltd (ABN 57 160 326 545) of Level 2, 395 Collins Street, Melbourne, Victoria 3000 (Trustee).
- 

## Background

- A The Issuer wishes to issue redeemable, unsecured, convertible notes denominated in Australian dollars on the terms under this deed.
- B The Notes will be issued in registered uncertificated form by inscription in the Register to be maintained by the Registrar.
- C The Trustee has agreed to act as trustee of the Trust on the terms and conditions of this deed and to hold the Trust Fund for the benefit of the Noteholders.

The parties agree to the following terms.

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression in this deed starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (Dictionary), has the meaning given to it in the Dictionary;
- (b) which is defined in the Note Terms, has the meaning given to it in the Note Terms;
- (c) which is defined in the Corporations Act but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (d) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

### 1.2 Interpretation

The interpretation clause in Schedule 1 (Dictionary) sets out rules of interpretation for this deed.

### 1.3 Compliance with law

- (a) This deed applies subject to all applicable laws including without limitation the Corporations Act and the Trustee Act. Without limiting the generality of this clause 1.3(a), a provision of this deed which is inconsistent with any requirement of the law (including a provision of the Corporations Act or the Trustee Act), does not operate to the extent of that inconsistency.
- (b) This clause 1.3 is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this deed.

- (c) Without limiting the generality of this clause 1.3, to the extent a provision of this deed breaches or contravenes, or if complied with would result in a breach or contravention of any requirement of the law, this deed is taken not to contain that provision.
- (d) Without limiting the generality of this clause 1.3, this deed is to be construed so as not to:
  - (i) exempt the Trustee's liability for breach of section 283DA of the Corporations Act; or
  - (ii) entitle the Trustee to be indemnified against that liability,
 to any extent if doing so would be void under section 283DB(1) of the Corporations Act.
- (e) This clause 1.3 prevails over all other provisions of this deed including any that are expressed to prevail over it.

#### **1.4 Inconsistency with ASX Listing Rules**

- (a) Despite anything to the contrary in this clause 1.4, this clause 1.4 has effect subject to clause 1.3.
- (b) So long as the Notes are quoted on the ASX, this deed is to be interpreted subject to the ASX Listing Rules and the ASX and the ASX Settlement Operating Rules and accordingly the following clauses apply:
  - (i) despite anything contained in this deed, if the ASX Listing Rules or the ASX Settlement Operating Rules prohibit an act being done, the act will not be done;
  - (ii) nothing contained in this deed prevents an act being done that the ASX Listing Rules or the ASX Settlement Operating Rules require to be done;
  - (iii) if the ASX Listing Rules or the ASX Settlement Operating Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the ASX Listing Rules or the ASX Settlement Operating Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
  - (v) if the ASX Listing Rules or the ASX Settlement Operating Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
  - (vi) If any provision of this deed is or becomes inconsistent with the ASX Listing Rules, this deed is taken not to contain that provision to the extent of the inconsistency.
- (c) The obligations imposed by this clause 1.4 are additional to those imposed by any other clause of this deed.

### **1.5 Clearing System acknowledgements**

The parties acknowledge and agree, and each Noteholder is taken to have acknowledged and agreed, that the Notes which are lodged or approved for entry on a Clearing System are subject to the rules and regulations of that Clearing System.

### **1.6 Unsecured notes**

The Notes are "unsecured notes" for the purposes of section 283BH of the Corporations Act.

### **1.7 NCC Convertible Note trust deed**

This trust deed;

- (a) is the trust deed for the Trust; and
- (b) is the trust deed in respect of Notes required by Chapter 2L of the Corporations Act.

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## **2 Declaration of Trust**

### **2.1 Constitution of Trust**

The Trust is constituted on the execution of this deed by the Issuer and the Trustee.

### **2.2 Name of Trust**

The Trust will be known as the "NCC Convertible Note Trust (2021)".

### **2.3 Appointment**

The Trustee is appointed as trustee for the Noteholders in respect of the Trust, and the Trustee agrees to such appointment.

### **2.4 Declaration of Trust**

The Trustee declares that on execution of this deed, it holds the sum of A\$10, and that it will hold the Trust Fund on trust at any time for the benefit for itself and the Noteholders from time to time, subject to and on the terms of this deed.

### **2.5 Duration**

The Trust commences on the date of this deed and ends on the earlier of:

- (a) the day immediately before the date which is 80 years from the date of this deed; and
- (b) the day on which this deed is terminated under clause 18.

### **2.6 Beneficiaries**

Subject to the rights of the Trustee, the Noteholders are the persons beneficially entitled to the Trust Fund on the terms of this deed. They hold that beneficial entitlement as equitable tenants in common, provided that joint holders of a Note will hold the Note as between themselves and the Issuer as joint tenants.

## 2.7 Noteholders bound

- (a) Noteholders and any persons claiming through any of them are taken to have notice of, and be bound by, this deed and the Note Terms. No Noteholder or person claiming through a Noteholder may claim any benefit under this deed and the Note Terms unless it agrees to be so bound.
- (b) Noteholders and any persons claiming through any of them are taken to have irrevocably authorised the Trustee to enter into this deed, and to exercise its rights under this deed, the Note Terms and Chapter 2L of the Corporations Act, in its capacity as trustee of the Trust.
- (c) It is a fundamental condition of a Noteholder receiving any of the rights or benefits in connection with this deed or the Note Terms that the Noteholder performs all of the obligations and complies with all restrictions and limitations applicable to it under this deed and the Note Terms.

## 2.8 Notes constituted under this deed

The Notes are direct, unsubordinated and (subject to clause 6.1 (*Negative pledge*) of the Note Terms) unsecured debt obligations of the Issuer constituted by, and owing under, this deed and issued on and subject to the Note Terms. The obligations of the Issuer in respect of each Note:

- (a) constitute separate and independent acknowledgements of the indebtedness of the Issuer;
- (b) rank equally with each other and without any preference amongst themselves and at least equally with all other unsubordinated and unsecured obligations of the Issuer (other than any obligations preferred by mandatory provisions of applicable law) as described in the Note Terms; and
- (c) are subject to the terms of this deed and the Note Terms.

## 2.9 Covenant to pay

- (a) The Issuer covenants to the Trustee (on behalf of the Noteholders and for the benefit of the Noteholders) to pay the Moneys Owing to the Noteholders from time to time as and when due and payable, in accordance with this deed and the Note Terms, and to otherwise comply with this deed and the Note Terms. The Trustee hereby directs the Issuer to pay the Moneys Owing to the Noteholders directly to the relevant Noteholders, unless:
  - (i) a Controller has been appointed to the Issuer; or
  - (ii) the Issuer is directed by the Trustee by the giving of notice to that effect not less than 5 Business Days' prior to the scheduled date for the making of the payment; or
  - (iii) the Issuer advises the Trustee that it is not likely to meet its obligations under this deed,in which event the payment must be made to the Trustee.
- (b) The payment of an amount due under a Note to either the Noteholder at the time the amount is due, or to the Trustee, discharges the obligation of the Issuer to pay that amount under that Note.

## 2.10 Application of money received by the Trustee

All money received by the Trustee in respect of amounts payable under the Notes and this deed must be held by the Trustee upon trust to be applied in the following order:

- (a) *firstly*, in payment of all fees, costs, charges, expenses and liabilities incurred by, or other amounts owing to, the Trustee in carrying out its functions and/or exercising its powers, rights or remedies under and in accordance with this deed, the Note Terms and the Notes (including rights of remuneration under this deed), but remaining unpaid;
- (b) *secondly*, in payment of all fees, costs, charges, expenses and liabilities incurred by, or other amounts owing to, a Controller in carrying out its duties, discretions or functions under or in connection with the Notes, the Note Terms and this deed, but remaining unpaid;
- (c) *thirdly*, in or towards payment *pari passu* and rateably of all Moneys Owing to the Noteholders in respect of the Notes, but remaining unpaid; and
- (d) *fourthly*, in payment of the balance (if any) to the Issuer.

## 2.11 Safe custody of this trust deed

The Trustee will hold its counterparts of this deed in safe custody for itself and the Noteholders.

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# 3 Enforcement of this deed

## 3.1 Limit on Noteholders' rights

All of the rights, powers and remedies against the Issuer in connection with the Notes are held by the Trustee on trust for the benefit of the Noteholders. Accordingly, subject to clause 3.4:

- (a) no Noteholder is entitled to directly enforce any rights, powers or remedies under this deed or the Note Terms directly against the Issuer; and
- (b) the rights, powers or remedies of the Trustee under and in respect of this deed and the Note Terms 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).

## 3.2 Enforcement

Subject to this deed, the Note Terms and section 283DA(h) of the Corporations Act, the Trustee in its sole and absolute discretion:

- (a) may waive or authorise (on any terms or conditions or without imposing any terms and conditions) any breach or default (if the Trustee is reasonably satisfied that the breach or the default will not materially prejudice the Noteholders' interests);
- (b) may decide whether or not to take any action to enforce this deed or the Note Terms, including:

- (i) if the Issuer breaches any of its obligations under this deed or the Note Terms, the Trustee may, at its discretion and without further notice, bring such legal proceedings as it may think fit to enforce such obligations;
  - (ii) exercise any powers, rights, authority, trusts, remedies or privileges conferred by law or equity under this deed or the Note Terms;
  - (iii) exercise any of its powers, rights, authority, trusts, remedies or privileges under the Corporations Act;
  - (iv) issue a notice to the Issuer requiring that a default by the Issuer be remedied; and
  - (v) take such other action as the Noteholders deem appropriate to recover the Moneys Owning to the Noteholders;
- (c) may decide not to inform Noteholders of any breach or default (if the Trustee is reasonably satisfied that the breach or default will not materially prejudice the Noteholders' interests);
- (d) may, despite the Trustee having knowledge of any breach or default by the Issuer of a covenant, obligation, condition or provision of this deed or the Note Terms, not take any action or proceeding against the Issuer to enforce the observance or performance of any such covenant, obligation, condition or provision (including enforcement of the payment of the Notes and recovery of any other Moneys Owning to the Noteholders under this deed or the Note Terms), unless in any such case:
- (i) the Trustee is directed to take action by a Noteholder Resolution (or, if required by, a Special Resolution) (ignoring any Notes held by or on behalf of the Issuer and not cancelled); and
  - (ii) the Trustee is indemnified and/or secured to its satisfaction against all losses, liabilities, actions, proceedings, claims and demands to which the Trustee may become liable as a result of such direction and all fees, costs, charges and expenses (including rights of remuneration under this deed) which may be incurred by the Trustee in connection with such directions, action or proceedings;
- (e) is not obliged to take any action in relation to any breach or default by the Issuer (including the issuing of any notice under this deed) unless it has actual knowledge of the breach or default or is advised in writing by the Issuer, a Noteholder or any other person of the breach or default, and until such a time the Trustee may assume that no such breach or default by the Issuer has occurred (and will incur no liability of any kind as the result of such assumption); and
- (f) may do such things as are necessary or appropriate to convene a meeting of Noteholders in accordance with clause 15.

### **3.3 Enforcement at the direction of Noteholders**

- (a) The Trustee must take action to enforce this deed and/or the Note Terms where all of the following conditions are satisfied:
- (i) it is directed to take such action by a Noteholder Resolution (or, if required by, a Special Resolution) (ignoring any Notes held by or on behalf of the Issuer and not cancelled);

- (ii) its liability for taking such action is limited in a manner consistent with section 283DC of the Corporations Act;
  - (iii) it is indemnified and/or secured to its satisfaction against:
    - (A) all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action; and
    - (B) all costs, charges, fees, expenses and liabilities which the Trustee may incur in accordance with clauses 9.1, 9.2 and 10.2 in taking such action;
  - (iv) such action is permitted under this deed and the Note Terms; and
  - (v) the Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.
- (b) If the Trustee forms the view that such action is or could be inconsistent with this deed, the Note Terms, the Corporations Act, the ASX Listing Rules 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 the direction given by Noteholder Resolution (or, if required, 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 such Noteholder Resolution or Special Resolution (as applicable).

### 3.4 Noteholders' right to take action

No Noteholder is entitled to commence action or proceedings directly against the Issuer to enforce any right, power or remedy under this deed or the Note Terms unless:

- (a) the Trustee, having become bound to proceed in accordance with this deed and the Note Terms, fails to do so within 14 days of being obliged to do so and such failure is continuing; or
- (b) 30 Business Days have lapsed since the date on which one or more Noteholders gave notice to the Trustee that they intend to commence such action or proceedings (with such notice to specify the details, including legal basis for, such action or proceedings, and to be copied to the Issuer) and the Trustee has not commenced such action or proceedings notwithstanding a request from such Noteholders to do so,

in which case any such Noteholder may itself institute such actions or proceedings against the Issuer to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so. Any such proceedings must be brought in the name of the Noteholders and not the Trustee.

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## 4 Representations and warranties

### 4.1 Representations and warranties by the Issuer

The Issuer makes the following representations and warranties in favour of the Trustee:

- (a) (validity) it is a company duly incorporated and validly existing under the laws of its place of incorporation and has power and authority to carry on its business as it is now being conducted;

- (b) **(power)** it has the power to enter into this deed and to issue the Notes and to comply with its obligations under each of them;
- (c) **(corporate authority)** it has taken all action that is necessary or desirable to authorise its entry into this deed and to issue the Notes, and the performance of all its obligations under those documents and to carry out the transactions contemplated by them;
- (d) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this deed and to issue the Notes, to comply with its obligations and exercise its rights under them, and to allow them to be enforced;
- (e) **(legally binding obligations)** the obligations assumed by it under this deed are, and under the Notes, when issued, will be, valid, binding and (subject to their respective terms and insolvency and other laws generally affecting creditors' rights and the discretionary nature of equitable remedies) enforceable;
- (f) **(no contravention)** this deed, the Note Terms and each transaction under this deed and the Note Terms which involve it do not contravene:
  - (i) any applicable laws, directives, judgments, ruling, orders or decrees binding on it or its assets; or
  - (ii) its constitution or other constitutional documents;
- (g) **(immunity)** neither it nor any of its assets has any immunity from set off, suit or execution;
- (h) **(accounts)** its most recent audited financial statements lodged with ASIC:
  - (i) were prepared in accordance with the Australian Accounting Standards for the relevant financial year; and
  - (ii) are a true and fair statement of its financial position as at the date to which they are prepared;
- (i) **(no Event of Default)** no Event of Default has occurred and is subsisting or will result from the issue of the Notes; and
- (j) **(solvency)** it is solvent (as that term is defined in the Corporations Act).

#### 4.2 Representations and warranties by the Trustee

The Trustee makes the following representations and warranties in favour of the Issuer:

- (a) **(status)** it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) **(Corporation Act requirements)** it meets the requirements for a trustee under sections 283AC(1) and 283AC(2) of the Corporations Act;
- (c) **(power)** it has the power to enter into this deed and to act as trustee of the Notes and to comply with its obligations under each of them;
- (d) **(corporate authority)** it has taken all action that is necessary or desirable to authorise its entry into this deed and to act as trustee of the Notes, and the



performance of all its obligations under those documents and to carry out the transactions contemplated by them; and

- (e) **(execution and performance)** this deed, the Note Terms and each transaction under this deed and the Note Terms which involve it do not contravene:
  - (i) any applicable laws, directives, judgments, ruling, orders or decrees binding on it or its assets; or
  - (ii) its constitution or other constitutional documents.

#### **4.3 Representations and warranties repeated and reliance**

- (a) Each representation and warranty in clause 4.1 and 4.2 is taken to be repeated by the Issuer and the Trustee on the date the Notes are issued with reference to the facts and circumstances existing on that date.
- (b) The Issuer and the Trustee acknowledge that they have each entered into this deed in reliance on the representations and warranties in clauses 4.1 and 4.2.

#### **4.4 No other representation or reliance**

The Trustee confirms 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 deed, except for representations or inducements expressly set out in this deed.

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## **5 Issuer's covenants**

### **5.1 General covenants**

The Issuer must:

- (a) make all of its financial and other records available for inspection by:
  - (i) the Trustee;
  - (ii) an officer or employee of the Trustee authorised by the Trustee to carry out the inspection; or
  - (iii) a registered company auditor appointed by the Trustee to carry out the inspection,

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

- (b) for so long as any of the Notes remain outstanding:
  - (i) notify the Trustee promptly after it becomes aware of an Event of Default or a breach by the Issuer of Chapter 2L of the Corporations Act;
  - (ii) carry on and conduct its business in a proper and efficient manner;
  - (iii) keep proper books of account (in accordance with current Australian Accounting Standards and practice);

- (iv) if requested by a Noteholder or the Trustee, promptly provide a copy of this deed (without charge) to that Noteholder or the Trustee (as applicable); and
- (v) maintain, or cause to be maintained, a Register;
- (c) if the Issuer creates a security interest (as defined in the Corporations Act), provide the Trustee with written details of the security interest within 21 days after it is created and, if the total amount to be advanced on the security of the security interest is indeterminate and advances are not merged in a current account with bankers, trade creditors or anyone else, provide the Trustee with written details of the amount of each advance within seven days after it is made;
- (d) comply with this deed and the Note Terms;
- (e) provide to the Trustee (without charge):
  - (i) within 120 days after the close of each financial year, a copy of its audited financial statements lodged with ASIC in respect of that financial year;
  - (ii) within 90 days after the close of each applicable financial half year, a copy of its unaudited financial statements lodged with ASIC in respect of that half year;
  - (iii) promptly, copies of all documents and notices given to Noteholders and any annual reports produced; and
  - (iv) all other information or reports reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this deed, the Corporations Act (or any other laws binding on the Trustee with respect to the Trust or the Notes) or the ASX Listing Rules,

and, if requested by a Noteholder, provide copies of any of the above to such Noteholder within a reasonable time of such request;
- (f) promptly obtain and renew all necessary consents, filings and authorisations required for it to enter into and perform its obligations under this deed and the Note Terms;
- (g) promptly, after redeeming or cancelling any Notes in full, give the Trustee details of that redemption or cancellation; and
- (h) do any other thing reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this deed, the Corporations Act (or any other laws binding on the Trustee with respect to the Trust or the Notes) or the ASX Listing Rules.

## 5.2 Reporting covenant

The Issuer must comply with its reporting obligations to the Trustee, to the Noteholders and ASIC under the Corporations Act (including sections 283BF and 318), the ASX Listing Rules and the ASX Settlement Operating Rules. For the purpose of subsection 283BF(2) of the Corporations Act, the Issuer fixes 30 June 2021 as the last day of the relevant first quarter.

### **5.3 Publication on website**

For so long as any of the Notes remain outstanding, the Issuer undertakes that it will publish on its website (via a password-protected section of the Issuer's website or otherwise), or by such other means as the Issuer and the Trustee agree from time to time, a copy of each quarterly report it has prepared for the purpose of section 283BF of the Corporations Act (as soon as practicable after providing such report to the Trustee) and the following information as at the end of each quarter (in reasonable detail together with supporting computations):

- (a) the LTV Ratio; and
- (b) the Conversion Price.

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## **6 Trustee's general powers, rights and obligations**

### **6.1 Powers**

Subject to this deed, the Trustee has all the powers, rights and remedies of a natural person or corporation in connection with the exercise of its powers, rights and remedies and compliance with its duties and obligations under this deed and the Note Terms.

### **6.2 Exercise of powers**

Subject to this deed, the Trustee may exercise its rights and comply with its obligations under this deed and the Note Terms in any manner it thinks fit.

### **6.3 Exclusions of duties imposed by law where permitted**

The Trustee has no obligations or duties except those expressly set out in this deed, the Note Terms and those imposed on it by Chapter 2L of the Corporations Act and any other law that cannot be excluded. The obligations of the Trustee to act, or refrain from acting, are at all times subject to the Corporations Act.

### **6.4 Trustee's duties**

The Trustee must:

- (a) fulfil its duties under Chapter 2L of the Corporations Act;
- (b) act honestly and in good faith and comply with all applicable laws in performing its duties and in the exercise of its discretions under this deed and the Note Terms;
- (c) exercise such diligence and prudence as a person carrying on the business of a professional trustee would exercise in performing its duties and in the exercise of its discretions under this deed and the Note Terms;
- (d) if and to the extent the Trustee holds Trust assets, keep accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee of the Trust; and
- (e) if and to the extent the Trustee holds Trust assets, keep the assets of the Trust separate from all other assets of the Trustee which it holds in a capacity other than as trustee of the Trust.

### **6.5 Trustee not to interfere**

The Trustee must not interfere with the conduct of the ordinary business of the Issuer unless required to do so in order to comply with its duties under the Corporations Act, this deed or the Note Terms.

### **6.6 Excluded roles and duties**

The appointment of the Trustee as trustee does not mean that the Trustee:

- (a) is a trustee for the benefit of;
- (b) is a partner of; or
- (c) has a fiduciary duty to, or other fiduciary relationship with,

any Noteholder (other than in its capacity as a Noteholder), the Issuer or any other person, except as provided in this deed or the Note Terms.

### **6.7 Binding nature of relationship**

Each Noteholder is bound by anything properly done or not done by the Trustee in accordance with this deed and the Note Terms, whether or not the Trustee is acting on the directions of the Noteholders, and whether or not the Noteholder gave a direction or approved of the thing done or not done.

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## **7 Trustee discretions**

### **7.1 Trustee exercise of discretions**

Subject to this deed, the Trustee may determine:

- (a) whether to exercise (and the manner, mode and time of exercise of) its powers, authorities and discretions under this deed and the Note Terms in its absolute and sole discretion; and
- (b) whether to give any instructions, directions or consents on such terms as it thinks fit, and whether to agree to any amendments to or waivers of this deed or the Note Terms or any agreements referred to in this deed or the Note Terms on such terms as it thinks fit, in each case without the approval of the Noteholders.

### **7.2 Interest of Noteholders**

In exercising its powers, authorities and discretions under this deed and the Note Terms, the Trustee will have regard to (subject to this deed (including the Note Terms)) the interests of the Noteholders as a class and will not have regard to the interests of, and be responsible for the consequences of such exercise for, individual Noteholders and the Trustee will not be entitled to require, nor will any Noteholder be entitled to claim, from the Issuer or the Trustee, any indemnification, security or payment in respect of any Tax consequences of any such exercise upon individual Noteholders pursuant to this deed or the Note Terms.

### **7.3 Power to delegate**

- (a) Subject to clause 7.3(b), the Trustee may (without notice to the Issuer or any Noteholder) employ agents and attorneys, and may delegate, by power of attorney or otherwise, to one or more persons being:

- (i) a Related Body Corporate of the Trustee; or
- (ii) any other person whether or not being the Issuer or persons related to or associated with the Issuer,

any matter or thing that the Trustee may lawfully delegate, including holding any trust property and executing documents on the Trustee's behalf, or exercising any right, power, authority or discretion conferred on the Trustee by this deed, the Note Terms or by law, in each case on such terms and conditions as the Trustee may think fit (including the power to sub-delegate).

- (b) The Trustee may only exercise its rights to employ, engage, authorise or delegate under this clause 7.3 if it reasonably believes that it is fit, proper, appropriate and in the interests of the Noteholders to do so.
- (c) Any person dealing with the Trustee or any agent, attorney or delegate appointed under clause 7.3(a), is entitled to assume without further enquiry that such delegate has been duly appointed and such appointment remains in full force and effect.

### **7.4 Trustee may rely on expert advice**

The Trustee may engage and rely and act upon (without enquiry) the advice or opinion of or information provided by any legal, accounting, taxation or other professional adviser engaged or appointed by it or by any one or more of the Noteholders, provided that it believes that the adviser so engaged or appointed is fit, proper and appropriate to provide the relevant advice, opinion or information. The Trustee is not responsible for any loss occasioned by so engaging, relying or acting.

### **7.5 Trustee may rely on communications**

The Trustee may (without enquiry) rely on any communication or document, provided it has had no reasonable grounds to believe it is not genuine and correct and to have been signed or sent by the appropriate person, in each case in the absence of the Trustee's knowledge of any manifest or proven error.

### **7.6 Court directions**

The Trustee may apply to any court of competent jurisdiction for directions in relation to any question and assent to and approve or oppose any application to any court made by or at the instance of any Noteholder.

### **7.7 Dispute or ambiguity**

If there is any dispute or ambiguity in relation to any matter connected with the Notes, this deed or the Note Terms, the Trustee may (but need not) do one or both of the following:

- (a) obtain and rely on advice from any person referred to in clause 7.4; or

- (b) apply to a court for any direction or order the Trustee considers appropriate and comply with any such directions or orders.

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 matters affected by the dispute or ambiguity.

#### **7.8 Reliance on Issuer certificate or other information supplied by the Issuer**

- (a) The Trustee is entitled to:
  - (i) accept and rely upon a certificate which purports to be signed by a director or secretary of the Issuer as to any fact or matter as conclusive evidence of it, including whether any particular dealing or transaction or step or thing is in the opinion of the person so certifying commercially desirable and not detrimental to the interests of the Noteholders or whether any circumstance exists entitling the Issuer to Redeem the Notes prior to the Redemption Date;
  - (ii) accept, rely upon and act upon any certificate, report, financial accounts or other document supplied by the Issuer or any duly authorised officer of the Issuer, as conclusive evidence of the contents of such; and
  - (iii) accept, rely upon and act upon the statements (including statements given to the best of a person's knowledge and belief or similarly qualified) and opinions contained in certificate, report, financial accounts or other document given pursuant to the provisions of, or in relation to, this deed as conclusive evidence of the contents of it,

In each case in the absence of the Trustee's knowledge of any manifest or proven error.

- (b) The Trustee is not required to enquire as to the accuracy of, or call for further evidence or information in addition to, the certificates or other documents referred to in clause 7.8(a), and is not responsible for any costs, losses, liabilities, expenses, demands or claims that may be occasioned by it accepting or relying or acting upon such certificates or other documents (to the extent it is so entitled), provided the Trustee has no knowledge, or reasonable grounds to believe, that they are not genuine and correct or, as the case may be, signed or sent by the appropriate person.

#### **7.9 Evidence of claims**

The Trustee will be entitled and is authorised by the Issuer to call for (and will be entitled to accept as conclusive evidence thereof) a certificate from any receiver, trustee or liquidator 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 assets of the Issuer; and
- (b) the persons entitled to any amount under clause 2.10 and their respective entitlements.

Any such certificate given by any such receiver, trustee or liquidator of the Issuer will be conclusive and binding on the Trustee and all Noteholders.

### 7.10 Determinations

The Trustee may determine, as between itself and the Noteholders, all questions and matters of doubt arising in relation to this deed or the Note Terms, and every such determination made in good faith (whether made upon a question actually raised or implied in acts or proceedings of the Trustee) will be conclusive and will bind all Noteholders, unless a court of competent jurisdiction otherwise orders.

### 7.11 Waivers

- (a) The Trustee may, at its sole and absolute discretion and without the consent of the Noteholders, so long as it is in writing, and any time and on any terms or conditions, waive any breach or proposed breach (including an Event of Default or other default) by the Issuer of this deed or the Note Terms if, in the opinion of the Trustee, the interests of the Noteholders will not be materially prejudiced by such waiver provided that, where the relevant breach or proposed breach is the failure of the Issuer to pay Interest on, or to Redeem or repay, any Notes in accordance with the Note Terms, the Trustee may waive the breach or proposed breach only if the Noteholders have, by a Noteholder Resolution, consented to the waiver.
- (b) The Trustee's agreement to any waiver may be subject to it being indemnified and/or secured to its satisfaction and to any other condition which the Trustee requires, including obtaining advice from or an opinion of any investment bank or legal or other expert and a certificate signed by authorised signatories.
- (c) Any such waiver will be binding on the Noteholders and, unless the Trustee agrees otherwise, will be notified by the Issuer to the Noteholders as soon as reasonably practicable after such waiver has been given.

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## 8 Trustee protections

### 8.1 Trustee not responsible for certain matters

Except to the extent required by the Corporations Act or otherwise provided by this deed, the Trustee has no responsibility:

- (a) in respect of moneys subscribed by applicants for Notes or to oversee the application of those moneys;
- (b) for the form or contents of this deed and the Note Terms and will have no liability arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this deed or the Note Terms except insofar as it relates to the Trustee or to any representation or warranty given by the Trustee; or
- (c) to exercise any power, right, remedy, authority or discretion conferred on it by this deed or the Note Terms in a particular manner or at all.

### 8.2 No monitoring obligation

Except to the extent required by the Corporations Act or otherwise provided by this deed:

- (a) the Trustee has no obligation to monitor compliance by the Issuer of its covenants and obligations under this deed or the Note Terms or any other activities, financial condition or status of the Issuer or provide to any person (including a Noteholder) any information with respect to the Issuer (whenever coming into its possession);

- (b) the Trustee need not take any steps to ascertain whether there has occurred (and will not be taken to have knowledge that such has occurred until it has received written notice from the Issuer or a Noteholder in relation to such) any Event of Default or 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; and
- (c) the Trustee is not required to:
  - (i) keep itself informed as to the performance or observance by the Issuer of its obligations under this deed (or any other document to which the Issuer is a party). This includes no requirement to inspect the books or review the credit worthiness of the Issuer or investigate whether a default has occurred; or
  - (ii) except as specifically required under this deed, furnish any notices, information, reports or accounts to a Noteholder but may in its discretion do so.

### **8.3 No action unless indemnified, secured or placed in funds**

The Trustee is not obliged to act or give any consent, approval or authorisation under this deed or the Note Terms or make any request of, or give a direction to, another party to this deed unless the Trustee is satisfied that it is, or will be, in fact indemnified and/or secured either by the Noteholders or from the Trust Fund against any loss or liability that it may incur as a result or, at the election of the Trustee.

### **8.4 Knowledge of Trustee**

The Trustee will only be considered to have knowledge or awareness of, or notice of, any matter or thing, or grounds to believe any matter or thing, by virtue of the officers of the Trustee having day to day responsibility for the administration or management of the Trustee's obligations under this deed having actual knowledge, actual awareness or actual notice of that matter or thing, or grounds or reason to believe that matter or thing (and similar references will be interpreted in this way). In addition, notice, knowledge or awareness of a default (howsoever described) means notice, knowledge or awareness of the occurrence of the events or circumstances constituting that default (as the case may be).

### **8.5 Trustee not bound to give notice of default**

The Trustee is not bound to give notice to any person of the execution of this deed, the occurrence of any breach of this deed or an Event of Default, and the Trustee is not bound to take any steps to ascertain whether any event has happened (despite the Trustee's knowledge of such event) upon the happening of which the Notes become immediately payable.

### **8.6 Confidential information**

Nothing in this deed requires the Trustee to disclose information or provide documents relating to any person if the Trustee reasonably believes that to do so would or may constitute a breach of law or duty of confidentiality.

### **8.7 Trustee may assume certain matters**

The Trustee may assume, subject to its obligations under the Corporations Act, that:

- (a) any representation or statement made by a person in this deed and the Prospectus is and remains true; and



- (b) 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.

#### 8.8 Trustee refraining from acting

The Trustee may:

- (a) refrain from doing anything that would, or in its reasonable opinion might, contravene any applicable law or regulation; and
- (b) do anything that, in its opinion, is necessary to comply with any applicable law or regulation.

#### 8.9 Exclusions of liability

- (a) Subject to clause 8.9(b), neither the Trustee nor any of its directors, officers, employees or attorneys 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 powers, authorities, discretions, rights or remedies under this deed or the Note Terms;
  - (ii) any Event of Default or the financial condition or solvency of the Issuer;
  - (iii) the value, validity, effectiveness, genuineness, execution, enforceability or sufficiency of this deed, the Note Terms, a Note or any document or agreement referred to or provided for in, or received by any of them under, this deed or the Note Terms;
  - (iv) a failure by the Issuer to perform its obligations under this deed or the Note Terms;
  - (v) any recital, statement, representation or warranty contained in this deed, the Note Terms, the Prospectus or in any document or agreement referred to or provided for in, or received by any of them under, this deed or the Note Terms, in each case, made by any person other than the Trustee;
  - (vi) the acts or omissions of a Controller; or
  - (vii) any action taken or not taken by the Trustee under this deed or the Note Terms:
    - (A) in accordance with any instructions or directions from the appropriate Noteholders, with which the Trustee is required to comply; or
    - (B) in any manner, where this deed or the Note Terms do not require instructions to be given to the Trustee.
- (b) This clause 8.9 does not exempt the Trustee nor any of its directors, officers, employees or attorneys from liability to a Noteholder or the Issuer:
  - (i) if the Trustee fails to follow the lawful directions of the appropriate Noteholders given in accordance with under this deed or the Note Terms;
  - (ii) if the Trustee fails to seek the required consent of the appropriate Noteholders, in any circumstance where that consent is required under this deed or the Note Terms; or

- (iii) to the extent arising out of any fraud, negligence or wilful default attributable to the Trustee or any of its directors, officers, employees or attorneys.
- (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 deed or the Note Terms does not amount to fraud, negligence or wilful default on the part of the Trustee.
- (d) The Trustee is not bound by any waiver, amendment, supplement or modification of this deed or the Note Terms unless it gives its consent or approval as Trustee under this deed or the Note Terms (as the case may be).

#### **8.10 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 deed or the Note Terms is taken to be authorised by the appropriate Noteholders.

#### **8.11 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 deed or the Note Terms or as to whether the Trustee has the requisite power to act as trustee of the Trust and may assume that anything purported to be done by the Trustee under this deed or the Note has been duly authorised by this deed, the Note Terms and the appropriate Noteholders.

#### **8.12 Exclusions of law where permitted**

- (a) To the maximum extent permitted by law and subject to the Corporations Act, the Trustee's obligations, duties and responsibilities are expressly limited to those set out in this deed and the Note Terms.
- (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 deed, the Note Terms or the Corporations Act, expressly negated and waived by the Issuer and the Noteholders.
- (c) Subject to the Corporations Act, 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 deed is excluded to the full extent permitted by law.

#### **8.13 Independent rights**

The Trustee and any Related Body Corporate of the Trustee, subject to the Corporations Act and to always acting in good faith to the Noteholders, may, without in any such case being liable to account to any trust, the Issuer or to any Noteholder:

- (a) hold, in any capacity, Notes, or any other Marketable Securities in or of the Issuer;
- (b) in any capacity, represent or act for, or contract with, individual Noteholders;
- (c) deal in any capacity with the Issuer or with any Related Body Corporate of the Issuer;

- (d) retain for its own benefit any amount received by it for its own account;
- (e) 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); or
- (f) act in any capacity in relation to any other trusts,

but the Trustee may not act in a manner which would preclude the Trustee from acting as trustee of the Trust for the purposes of Chapter 2L of the Corporations Act.

#### **8.14 Capacity as Noteholder**

If the Trustee is also a Noteholder, then in its capacity as a Noteholder it:

- (a) has the same rights and obligations as the other Noteholders; and
- (b) may exercise those rights and agrees to comply with those obligations independently from its role as Trustee as if it were not the Trustee.

#### **8.15 Void or voidable transactions**

If any payment, conveyance, transfer or other transaction relating to or affecting any money payable by the Issuer under this deed is:

- (a) void, voidable or unenforceable in whole or in part; or
- (b) claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part,

the liability of the Issuer under this deed is the same as if:

- (c) that payment, conveyance, transfer or transaction (or the void, voidable or unenforceable part of it); and
- (d) any release, settlement or discharge made in reliance on anything referred to in clause 8.15(c),

had not been made, and the Issuer must promptly take all action and sign all documents necessary or required by the Trustee or a Noteholder to restore to the Trustee or that Noteholder (as the case may be) the rights under this deed (and the Note Terms) held by them immediately before the payment, conveyance, transfer or transaction.

#### **8.16 Individual responsibility of Noteholders**

Each Noteholder is taken to have acknowledged for the benefit of the Trustee that the Noteholder has:

- (a) made and will continue to make its own independent investigation of the financial condition and affairs of the Issuer based on documents and information which it considers appropriate;
- (b) made its own appraisal of the creditworthiness of the Issuer; and

- (c) made its own assessment and approval of the rate of interest, risks associated with repayment of principal and other returns in relation to the Notes,

without relying on the Trustee (in that capacity) or any representation made by it.

#### **8.17 Noteholders' own decision to invest**

Each Noteholder by purchasing a Note will be taken to have confirmed and acknowledged that, as between itself and the Trustee:

- (a) it has purchased such Note on the basis of the Prospectus (and the Trustee is not responsible for the Prospectus);
- (b) it was not induced by the Issuer or the Trustee to purchase the Notes (except, in the case of the Issuer only, as disclosed in the Prospectus); and
- (c) the Trustee has no monitoring duty as set out in clause 8.2.

#### **8.18 Materially prejudicial to the interests of Noteholders as a whole**

For the purposes of determining whether any matter or thing is not materially prejudicial to the interests of Noteholders as a whole, the taxation consequences to a Noteholder and other special consequences or circumstances which are personal to a Noteholder do not need to be taken into account by the Issuer, the Trustee or their respective legal advisers.

#### **8.19 Survival**

The provisions of this clause 8 will survive the termination of this deed and the Note Terms and any retirement or removal of the Trustee as trustee of the Trust.

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## **9 Fees and expenses**

### **9.1 Fee**

- (a) The Issuer must pay to the Trustee a fee as agreed from time to time between the parties in respect of the Trustee's services. Fees payable by the Issuer to the Trustee are exclusive of GST.
- (b) If the Trustee takes any action which is beyond the scope of work that a trustee of the Trust would ordinarily be expected to perform (having regard to the terms of this deed), including any services performed by it in relation to any Event of Default or restructure of the arrangements under this deed, the Issuer must pay to the Trustee its costs in respect of all management time spent by the Trustee's officers and employees in relation to such action, which will be charged at the standard hourly rates agreed in writing from time to time between the Issuer and the Trustee.

### **9.2 Expenses**

The Issuer must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed and the Note Terms and, without prejudice to any other right of indemnity given by law to trustees, must reimburse the Trustee on demand for, and indemnifies the Trustee against:

- (a) all expenses (including legal fees, costs and disbursements) the Trustee reasonably incurs or incurred in connection with negotiating, preparing, performing

and executing this deed, the Note Terms and any subsequent consent, agreement, approval, waiver or amendment relating to this deed or the Note Terms;

- (b) all expenses (including legal fees, costs and disbursements) the Trustee reasonably incurs or incurred in connection with exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this deed or the Note Terms; and
- (c) all expenses (including legal fees, costs and disbursements) the Trustee reasonably incurs or incurred in connection with:
  - (i) any breach or default in the observance or performance by the Issuer of any of its obligations under this deed or the Note Terms;
  - (ii) the convening and holding of any meeting of Noteholders or the carrying out of any directions or resolutions of any such meeting; or
  - (iii) all actions taken under this deed or the Note Terms in relation to complying with any notice, request or requirement of any Government Agency and any investigation by a Government Agency into the affairs of the Issuer.

### **9.3 Liquidation**

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 in connection with any enforcement or other action taken by it as trustee of the Trust.

### **9.4 Priority of entitlement**

All amounts payable to the Trustee under this clause 9 will be paid in priority to any claim by any Noteholder and will continue to be payable until paid notwithstanding that this deed 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.

### **9.5 Goods and Services Tax**

If GST is payable on a Supply that is made in connection with this deed, the Note Terms or the Notes then subject to the recipient of a Tax Invoice, the recipient of the Supply agrees to pay to the party making the Supply (**Supplier**) an additional amount equal to the consideration payable for the Supply multiplied by the prevailing GST rate.

### **9.6 Refund**

If the actual amount of GST paid or payable by the Supplier on a Supply made in connection with this deed is less than the amount paid by the recipient of the Supply under clause 9.5, then the Supplier agrees to refund the difference to the recipient of the Supply. The Supplier agrees to make the refund promptly after the actual amount of GST on the Supply is paid or can be fully ascertained by the Supplier, whichever is the earliest.

### **9.7 Reimbursement**

Despite any other provision in this deed, if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by

reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party (or its Representative Member) is entitled in respect of that Amount Incurred.

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## **10 Trustee indemnity**

### **10.1 Indemnity subject to Corporations Act**

The Trustee's right of indemnity under this deed and the Note Terms is subject to the Corporations Act.

### **10.2 Indemnity**

- (a) To the maximum extent permitted by section 283DB of the Corporations Act, each of the Trustee and its officers, directors, employees and attorneys will be indemnified by the Issuer and, without limitation, out of the property of the Trust Fund in respect of all fees, costs, losses, liabilities, claims, demands, Taxes and expenses incurred by the Trustee in the execution of the Trust, the performance of, or the exercise of any of the powers, rights, authorities or discretions vested in the Trustee under this deed or the Note Terms, but this indemnity does not extend to:
  - (i) such costs, losses, liabilities, claims, demands, Taxes and expenses that arise out of the Trustee's fraud, negligence or wilful default or breach of section 283DA of the Corporations Act; or
  - (ii) any Taxes (excluding any GST) imposed on the Trustee's remuneration for its services as trustee.
- (b) Any indemnity to which the Trustee is entitled under this deed is in addition to, and without prejudice to, any indemnity allowed by law or equity to trustees.

### **10.3 Indemnity unaffected by unrelated breaches**

To the maximum extent permitted by section 283DB of the Corporations Act, where a cost, loss, liability, demand or claim is suffered or incurred pursuant to a proper exercise of the Trustee's powers under this deed, the Note Terms or at law, the Trustee may exercise any of its rights of indemnification or reimbursement out of the Trust Fund or as against the Issuer to satisfy that cost, loss, liability, expense, demand or claim, despite any loss the Trust Fund may have suffered or any diminution in the value of the Trust Fund as a consequence of any unrelated act or omission by the Trustee or by any person or entity acting on behalf of the Trustee.

### **10.4 Retention of money**

The Trustee may retain and pay out of any moneys in its hands arising from this deed all sums necessary to give effect to the Trustee's right of indemnity under clause 10.2.

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## **11 Trustee limitation of liability**

### **11.1 Limitation of liability subject to Corporations Act**

The limitation on the Trustee's liability under this deed is subject to the Corporations Act.

## 11.2 Limitation

- (a) To the maximum extent permitted by section 283DB of the Corporations Act, the Issuer and Noteholders agree that the liability of the Trustee to the Issuer, the Noteholders or any other person under or arising out of this deed or the Note Terms is limited to the amount that the Trustee actually receives in the exercise of its right of indemnity against the property of the Trust.
- (b) Neither the Issuer nor any Noteholders may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), 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 property of the Trust).
- (c) The Issuer and each Noteholder waives their rights and release 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 deed or the Note Terms, which cannot be paid or satisfied out of any property of the Trust.
- (d) The provisions of this clause 11.2 does not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or wilful default or breach of section 283DA of the Corporations Act. For these purposes, no act or omission of the Trustee will be considered fraud, negligence or wilful default on the part of the Trustee or a breach of section 283DA of the Corporations Act to the extent to which the act or omission was caused or contributed to by a failure of the Issuer or Noteholders to fulfil their obligations under this deed or the Note Terms or by any other act or omission of the Issuer, the Noteholders or any other person.
- (e) No attorney, agent or delegate appointed in accordance with deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default, or a breach of section 283DA of the Corporations Act, by the Trustee for the purpose of clause 11.1.
- (f) This clause 11 applies despite any other provision in this deed or the Note Terms and extends to all liabilities and obligations of the Trustee in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this deed or the Note Terms.

## 11.3 No obligation to act

The Trustee is not obliged to do or refrain from doing anything under this deed or the Note Terms (in each case, including incur any liability) unless the Trustee's liability is limited in the same manner as set out in this clause 11.

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# 12 Retirement and removal of Trustee

## 12.1 Retirement

Subject to the Corporations Act and clause 12.6, the Trustee may retire (without giving any reason for its retirement) as Trustee at any time upon giving not less than 60 days' notice (or such other period as the Trustee and the Issuer may agree) in writing to the Issuer of its intention to do so.

## **12.2 Appointment of new Trustee by the Issuer**

- (a) The power to appoint a new Trustee (which new Trustee must be an Eligible Trustee) is vested in the Issuer.
- (b) If the Issuer appoints a new Trustee which is a Related Body Corporate of the Trustee, such appointment will not take effect unless the Trustee consents in writing to the appointment (such consent not to be unreasonably withheld).

## **12.3 Trustee may appoint Eligible Trustee**

- (a) Subject to the Corporations Act, if 60 days (or such other period as the Trustee and the Issuer may agree) after the Trustee has given notice in writing to the Issuer of its desire to retire, a new Trustee has not been appointed, the retiring Trustee may appoint (or, in its discretion, apply to the court for the appointment of) an Eligible Trustee as the new Trustee and any such appointment will be effective without the approval of the Issuer or the Noteholders being required.
- (b) In lieu of exercising the power conferred by this clause 12.3, the Trustee may call a meeting of Noteholders for the purpose of appointing, by the passing of a Noteholder Resolution, a person nominated either by the Trustee or by any Noteholder (but if by a Noteholder, such person must have been approved by the Issuer) as the new Trustee.

## **12.4 Removal for breach or by Noteholders' Resolution**

Subject to the Corporations Act, the Issuer may by written notice to the Trustee, remove the Trustee and appoint a new Trustee in accordance with the provisions of this deed if:

- (a) the Trustee is in material breach of its obligations under this deed or the Notes and has not rectified the breach within 10 Business Days of receiving a notice from the Issuer specifying the breach and requesting that it be remedied;
- (b) the Trustee ceases to carry on business or ceases or refuses to act as Trustee under this deed;
- (c) an Insolvency Event occurs in relation to the Trustee;
- (d) any licence, consent, authorisation, permit or similar thing the Trustee is required to hold to carry out its obligations under this deed is revoked or is not renewed;
- (e) the Issuer becomes aware that any of the things referred to in section 283BD of the Corporations Act have occurred;
- (f) the Trustee ceases to be a person who can be appointed a trustee under section 283AC(1) of the Corporations Act; or
- (g) the Trustee cannot continue to act as Trustee because of the operation of section 283AC(2) of the Corporations Act.

## **12.5 Removal under statutory provisions**

The Issuer must take all reasonable steps to replace the Trustee under section 283AE of 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 not an Eligible Trustee; or
- (d) has failed or refused to act as trustee in accordance with the provisions of this deed.

#### **12.6 Appointment of a successor**

- (a) The appointment of a successor Trustee may be made:
  - (i) by instrument in writing executed by or on behalf of the person or persons authorised to make the appointment;
  - (ii) by deed of appointment; or
  - (iii) by any other method permitted by law.
- (b) On the appointment of a successor Trustee and on execution by the outgoing Trustee and the successor Trustee of all documentation which is required for the outgoing Trustee to effect the appointment of the successor Trustee and to transfer to the successor Trustee the benefit of all rights and obligations (but not the pre-existing liabilities) of the outgoing Trustee under this deed:
  - (i) the successor Trustee will have all the rights and obligations (but not the pre-existing liabilities) of the outgoing Trustee; and
  - (ii) the outgoing Trustee will be discharged from its rights and obligations, provided that it will remain liable for anything done or omitted to be done by it while it was acting as Trustee.
- (c) Subject to clause 12.6(d), the Issuer and the outgoing Trustee agree to do all things and execute all documents reasonably necessary or desirable to permit or facilitate the appointment of the successor Trustee that the successor Trustee reasonably requests. Without limitation, the outgoing Trustee must as soon as reasonably practicable upon termination of its appointment becoming effective, deliver to the successor Trustee (or at its direction) all books documents, records, accounts and property relating to the Trust Fund. The outgoing Trustee may, at its own expense, take and keep copies of such books, documents, records, accounts and property delivered under this clause 12.6.
- (d) When a successor Trustee is appointed, the successor Trustee and each other party to this deed has the same rights and obligations among themselves as they would have had if the successor Trustee had been an original party to this deed (other than in relation to any accrued rights against the terminated Trustee for default under this deed).
- (e) The cost of the appointment of a successor Trustee is to be borne by the Issuer, except where the Trustee is removed by a Noteholder Resolution in which case the cost is to borne by the Noteholders.
- (f) No removal or retirement of the Trustee under this clause 12 is effective unless and until a successor Trustee has accepted its appointment.
- (g) The indemnities under this deed in favour of the Trustee survive in respect of matters occurring before the appointment of the successor Trustee, and the retiring or removed Trustee continues to have the benefit of this clause 12.

#### **12.7 Notice of change of offices**

If a successor Trustee is appointed under clause 12.6, the successor Trustee must promptly notify the Noteholders and the Issuer of any change in its details for the purposes of receiving notices or other communications under this deed.

#### **12.8 Notice to ASIC**

The Issuer must advise ASIC of the name of the Trustee within 14 days after the Trustee (or any new trustee) is appointed and confirm to the Trustee in writing that it has done so. If there is any change to the information related to the Trustee or this deed that is prescribed by the regulations (as defined by the Corporations Act), the Issuer must, within 14 days of the change, lodge with ASIC a notice containing the changed information.

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### **13 Note Terms, issue, ownership, transfer and payments**

#### **13.1 Terms of Issue**

The Notes are issued on and subject to the terms and conditions set out in the Note Terms and the Issuer undertakes to perform its obligations in respect of each Note under the Note Terms.

#### **13.2 Entry in the Register**

- (a) The Issuer may create and issue Notes by registering or causing the registration of the relevant applicants (or their nominees) in the Register as the Noteholder of the relevant number of Notes on or about the Issue Date for those Notes.
- (b) A Note is issued to a person when that person is entered in the Register as the Noteholder in respect of that Note.
- (c) All Notes in respect of which an entry is made in the Register are (subject to rectification for fraud or manifest or proven error) taken to have been validly issued under this deed, regardless of any non-compliance by the Issuer with the provisions of this deed.

#### **13.3 Title and transfer**

Title to all Notes will be determined, and the Notes may be transferred, as provided in this deed and the Note Terms. Except as provided in this deed or the Note Terms or required by law, the Issuer will not recognise any person other than the registered Noteholder as having any title to, or interest in, a Note.

#### **13.4 Payments**

Any payment to be made in respect of the Notes by the Issuer or the Trustee must be made in the manner provided in this deed and the Note Terms.

#### **13.5 Unpaid monies**

- (a) If clause 9.8 (*Unsuccessful attempts to pay*) of the Note Terms applies and the Trustee has actual possession and control of such moneys, then such moneys must be paid by the Trustee to the Issuer to be held in accordance with clause 9.8 (*Unsuccessful attempts to pay*) of the Note Terms.

- (b) The Trustee may rely on a certificate from the Issuer to the effect that the matters set out in clause 9.8 (*Unsuccessful attempts to pay*) of the Note Terms are satisfied. The Trustee is not liable to any Noteholder for any moneys paid to the Issuer under this clause 13.5.
- 

## **14 Register**

### **14.1 Register**

The Issuer must establish and maintain, or cause to be established and maintained, the Register.

### **14.2 Particulars**

The Issuer must enter into the Register in respect of a Note and each Noteholder:

- (a) the name of the Noteholder on the application form or Transfer Form for such Note, but the Registrar is not bound to register more than four persons as joint holders of a Note;
- (b) the address of the Noteholder or, in the case of joint Noteholders, the address of each Noteholder whose name first appears on the application form or Transfer Form for such Note;
- (c) the number and amount of the Notes held by each Noteholder;
- (d) the Issue Date for the Notes and the Maturity Date;
- (e) the account to which payments in respect of the Notes are to be paid or the address to which payments are to be posted;
- (f) if provided, their Australian tax file number or evidence of any exemption from the need to provide an Australian tax file number;
- (g) if provided, their Australian Company Number, Australian Business Number or other identifying registration number; and
- (h) such other particulars as the Issuer thinks fit and are required by this deed, the Note Terms, the Corporations Act or by law.

### **14.3 Location of Register**

- (a) The Register will be kept at:
  - (i) the Registrar's principal place of business in New South Wales;
  - (ii) such other place in Australia approved by the Issuer, the Trustee and the Registrar where the work involved in maintaining the Register is done; or
  - (iii) another place in Australia approved by ASIC,provided that a Register must not be located in South Australia.
- (b) The Issuer must notify the Trustee in writing of the location of the Register.

#### **14.4 Appointment of Registrar**

The Issuer may cause the Register to be maintained by a third party on its behalf and require that person to:

- (a) discharge the Issuer's obligations under this deed in connection with the Register and transfers of Notes; and
- (b) assist it in the supply and delivery of the information, records and reports required by law.

Neither the Issuer nor the Trustee is liable for any act or omission of any person appointed by the Issuer under this clause 14.4, provided that the Issuer will be liable unless it has taken reasonable steps to select a person competent to perform the intended functions. If the Issuer is not establishing or maintaining the Register, the Issuer must immediately notify the Trustee of the name of any entity (and relevant contact details, including the location of the Register) that the Issuer has appointed to establish or maintain the Register under this clause 14.4.

#### **14.5 Replacement of Registrar**

If the Issuer is actually aware that the Registrar is not performing its duties, the Issuer will take reasonable steps to remove the Registrar and replace them with a person it reasonably believes is competent to perform the intended functions.

#### **14.6 Rectification of Register**

If:

- (a) an entry is omitted from a Register;
- (b) an entry is made in a Register otherwise than under this deed;
- (c) an entry wrongly exists in a Register;
- (d) there is an error or defect in any entry in a Register; or
- (e) a default is made or an unnecessary delay takes place in entering into a Register that any person has ceased to be the Noteholder or any other information,

the Issuer may rectify the same. None of the Issuer or the Trustee is liable for any loss, costs, charges, expenses or liability incurred as a result of any of the above occurring.

#### **14.7 Registered owners**

The persons whose names are inscribed in the Register as the registered owners of the Notes from time to time will be treated by the Issuer and the Trustee as the absolute owners of such Notes for all purposes.

#### **14.8 No notice of any trust**

Except as provided by statute or as required by an order of a court of competent jurisdiction, no notice of any trust (whether express, implied or constructive or otherwise) may be entered in the Register in respect of a Note and neither the Issuer nor the Trustee is obliged to recognise any such trust.

#### **14.9 Inscription conclusive**

Subject only to correction for fraud or manifest error, each inscription in the Register in respect of a Note constitutes:

- (a) sufficient and conclusive evidence to all persons and for all purposes that the person whose name is so inscribed, is the absolute owner of the Note;
- (b) an unconditional and irrevocable undertaking and promise by the Issuer to the person whose name is so inscribed that, for value received, the Issuer will make all payments of Moneys Owing in respect of the Note in accordance with this deed and the Note Terms; and
- (c) an entitlement to the other benefits given to the Noteholders under the Note Terms and this deed in respect of the Note.

#### **14.10 Inspection**

- (a) The Register will be available for inspection by the Trustee and persons authorised by the Trustee during Business Hours and at any other times approved by the Trustee and the Registrar.
- (b) The Register will be available for inspection by the Trustee and the Noteholders to which it relates during Business Hours and by any other persons authorised in writing by the Trustee or relevant Noteholders.

#### **14.11 Closure of Register**

On giving a notice by advertisement or otherwise as may be required by law, or the requirements of an applicable ASX Listing Rule, the Issuer may from time to time close any Register for any period or periods not exceeding in any one year the maximum period permitted by law or those requirements in aggregate in any calendar year.

#### **14.12 Change of details**

Any change of the name or address of a Noteholder must be notified immediately by the Noteholder in writing to the Issuer accompanied, in the case of a change of name, by any evidence the Issuer requires and the Register will be altered accordingly. The Issuer is not however obliged to change the information contained in a Register while it is closed.

#### **14.13 Trustee may accept correctness**

In the absence of manifest or proven error, a Register is conclusive evidence of the ownership of the Notes and the Trustee is entitled to accept the correctness of all information contained in a Register without investigation and is not liable to any person for any error in it.

#### **14.14 Copy to the Trustee**

The Issuer will give, or cause to be given, to the Trustee a complete copy of the Register (which may be in electronic or written form as the Issuer so determines) within three Business Days after the Trustee so requests.

#### **14.15 Manifest error**

The making of, or giving effect to, a manifest error in the Register will not void the constitution, issue or transfer of a Note. The Issuer must correct, or cause to be corrected, any manifest error of which it becomes aware.

#### **14.16 Clearing System Sub-register**

If the Notes are lodged or approved for entry on a Clearing System which involves the maintenance of a sub-register, then the rules and regulations of that Clearing System with respect to that sub-register prevail to the extent of any inconsistency with this clause 14 in connection with the Notes.

#### **14.17 Property in Notes situated where Register is**

The property in the Notes will for all purposes be regarded as situated at the place where the Register is for the time being situated and not elsewhere.

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## **15 Meetings of Noteholders**

### **15.1 Meetings of Noteholders**

- (a) Subject to the Corporations Act, the Trustee or the Issuer may at any time convene a meeting of Noteholders under the Meetings Provisions.
- (b) The provisions of Part 2L.5 of the Corporations Act and the Meeting Provisions apply to any meeting of Noteholders.
- (c) The Trustee may do all things (including executing documents) it reasonably considers necessary or desirable under or in connection with any Noteholder Resolution or Special Resolution.

### **15.2 Passing of resolution**

A resolution passed at a meeting of Noteholders held in accordance with this deed and the Meeting Provisions is binding on all Noteholders.

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## **16 Amendments**

### **16.1 Amendments without the consent of the Noteholders**

Subject to the Note Terms and compliance with the Corporations Act and all other applicable laws, the Issuer may at any time and from time to time, with the approval of the Trustee, but without the consent of the Noteholders, amend this deed or the Note Terms if the Trustee agrees with the Issuer that such amendments are:

- (a) of a formal or minor or technical nature;
- (b) made to cure any ambiguity or correct any manifest error;
- (c) necessary to facilitate the listing or quotation of the Notes on the ASX;
- (d) necessary to comply with any laws, regulations, legislation or the ASX Listing Rules; or

- (e) not materially prejudicial to the interests of Noteholders as a whole.

#### **16.2 Amendments with the consent of the Noteholders**

Without limiting clause 16.1, subject to the Note Terms and compliance with the Corporations Act and all other applicable laws, the Issuer may at any time and from time to time, amend this deed or the Note Terms if a Noteholder Resolution or (where required under the Meeting Provisions or the Note Terms) a Special Resolution is passed in favour of such amendment. If the amendment sought alters or conflicts with any of the personal rights or obligations of the Trustee, it will not be effective without the prior written consent of the Trustee.

#### **16.3 Interpretation**

In this clause 16, "amend" includes modify, vary, cancel, amend or add to and "amendment" has a corresponding meaning.

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### **17 Confidentiality**

#### **17.1 Financial information of Issuer**

The Trustee has no duty or obligation to provide any Noteholder with any financial information relating to the Issuer.

#### **17.2 Confidential Information**

The Trustee must keep confidential all Confidential Information of the Issuer except:

- (a) as (but only to the extent) required by this deed, the Note Terms or in connection with any obligation or duty of the Trustee under this deed or the Note Terms;
- (b) as (but only to the extent) required by law or any judicial or regulatory authority or body;
- (c) to those officers, employees, delegates and professional advisers of the Trustee to whom it is absolutely necessary to reveal the information or any part of it; or
- (d) to a person approved in writing by the Issuer, such approval to be given or withheld in the Issuer's sole and absolute discretion and, if given, may be given by the Issuer on such conditions as it deems fit.

#### **17.3 Confidentiality undertaking**

The Trustee agrees to use its best endeavours to ensure that every person to whom it provides Confidential Information under this clause 17 (except clauses 17.2(a) or 17.2(b)) gives and performs obligations under a confidentiality undertaking in the same terms as this clause 17 except professional advisers who owe a professional duty of confidentiality to the Trustee in connection with the Confidential Information.

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### **18 Termination and release**

#### **18.1 Termination of Trust**

This deed terminates, and the Issuer will immediately be discharged and released from its liabilities, obligations and covenants under this deed, on the earlier of:

- (a) the date the last of the following occurs:
  - (i) the Conversion or Redemption of all Notes;
  - (ii) all amounts of principal, interest and payments due on Notes have all been paid in full;
  - (iii) the Issuer has furnished to the Trustee a certificate signed by a director or secretary of the Issuer stating that the outstanding principal amount of each Note, interest and any accrued but not yet due and payable interest and any unpaid interest as at that date have been paid in full or otherwise Converted, Redeemed or satisfied;
  - (iv) the Issuer has furnished to the Trustee a statement in writing that it does not intend to, and will not, issue any Notes in the future under this deed; and
  - (v) all costs suffered or incurred by the Trustee under this deed and all other amounts which are payable or reimbursable by the Issuer to the Trustee under this deed have been paid in full;
- (b) the date on which Noteholders unanimously determine that the Trust be wound up provided that all costs suffered or incurred by the Trustee under this deed and all other amounts which are payable or reimbursable by the Issuer to the Trustee under this deed have been paid in full; and
- (c) the date required by law.

## **18.2 Confirmation of release**

The Trustee must then, if required by the Issuer, execute a confirmation of release in favour of the Issuer (which includes a statement that the requirements of this clause 18 have been satisfied).

## **18.3 Distribution of assets**

If the Trust is terminated in accordance with clause 18.1, the Trustee must distribute the balance of any income and capital in accordance with clause 2.10.

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# **19 Notices**

## **19.1 Service of notices**

- (a) All notices, certificates, demands, consents, approvals or other communications under this deed must be in writing, in English and, if required by this deed or the Note Terms, signed by a person duly authorised by the sender and marked for the attention of the addressee as provided in clause 19.2.
- (b) Communications sent by email need not be marked for attention in the way stated in clause 19.1(a). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

## **19.2 Service of notices on the Issuer and the Trustee**

All notices, certificates, demands, consents, approvals or and other communications to the Issuer or the Trustee or any other person (other than Noteholders) under this deed



or under the Note Terms may be delivered by hand or sent by prepaid post (airmail if appropriate) or email to the recipient's address specified in this clause 19.2, as varied by any notice given by the recipient to the sender.

(a) If to the Issuer:

Address: Level 34, MLC Centre, 19 Martin Place, Sydney NSW 2000

Attention: Chief Financial Officer

Email: enquiries@naos.com.au

(b) If to the Trustee:

Address: Level 2, 395 Collins Street, Melbourne, VIC 3000, Australia

Attention: MSC Trustees

Email: trustee@msc.group

### 19.3 Noteholders

(a) All notices, certificates, demands, consents, approvals and other communications to a Noteholder must be in writing and may be given by the Issuer:

- (i) by hand delivery to the address of the Noteholder (as shown in the Register at the close of business on the day which is five Business Days before the date of the relevant notice or communication);
- (ii) by prepaid post (airmail if appropriate) to the address of the Noteholder (as shown in the Register at the close of business on the day which is five Business Days before the date of the relevant notice or communication);
- (iii) by email to an electronic address nominated by the Noteholder for such communication (as shown in the Register at the close of business on the day which is five Business Days before the date of the relevant notice or communication);
- (iv) by an advertisement published in The Australian Financial Review, The Australian or any other newspaper of national circulation in Australia;
- (v) so long as the Notes are quoted on the ASX, given by publication of an announcement on the ASX; or
- (vi) subject to applicable law and the ASX Listing Rules, by any other means that the Issuer and the Trustee agree in writing and notify to the Noteholders.

If any notice is published by the Issuer in accordance with any of paragraphs (iv) or (v) above, the Issuer must promptly provide a copy to the Trustee.

- (b) The Issuer must, at the request of the Trustee, post notices to Noteholders on its own internet website but such action will not discharge the Issuer's obligation to give Noteholders a notice under this deed.
- (c) Where a notice is given by the Issuer to Noteholders generally, a copy of the notice must also be given to the ASX.

#### **19.4 Notice to transferor binds transferee**

Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the Noteholder of any of the Notes is bound by every notice which, prior to the person's name and address being entered in the Register, was properly given to the person from whom the person derived title to those Notes.

#### **19.5 Joint Noteholders**

A notice given to any one of any joint Noteholders is sufficient notice to all of those joint Noteholders.

#### **19.6 Service on deceased Noteholders**

A notice served on a Noteholder in accordance with this clause 19 is (despite the fact that the Noteholder is then deceased and whether or not the Issuer has notice of the Noteholder's death) considered to have been properly served in respect of any of the Notes, whether held solely or jointly with other persons by the Noteholder, until some other person is registered in the Noteholder's place as the Noteholder or Joint Noteholder. The service is sufficient service of the notice or document on the Noteholder's legal personal representative and any person jointly interested with the Noteholder in the Notes.

#### **19.7 Effective on receipt**

All notices and other communication given in accordance with clause 19.1 take effect when it is received or taken to be received (whichever happens first), or at a later time specified in it, and is taken to be received:

- (a) if hand delivered, on the date it is left at the address of the Noteholder (as shown in the Register at the close of business on the day which is five Business Days before the date of the relevant notice or communication);
- (b) if sent by prepaid post, on the next succeeding Business Day in the place of the addressee after the date of posting (or on the fifth Business Day in the place of the addressee after the date of posting, if posted to or from a place outside Australia);
- (c) if sent by email:
  - (i) when the sender receives an automated message confirming delivery;
  - (ii) when the sender receives any other proof that the email has been received; or
  - (iii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,whichever happens first;
- (d) if published in a newspaper, on the first date that publication has been made in all the required newspapers; or
- (e) if published by an announcement on the ASX, communications are taken to be received when the announcement is made on the ASX.

### **19.8 Deemed receipt - general**

Despite clause 19.7, if notices or other communications are received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day in the place of receipt.

### **19.9 Copies of notices**

If this deed requires a notice or other communication to be copied to another person, a failure to so deliver the copy will not invalidate the notice or other communication.

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## **20 Governing law**

- (a) This deed is governed by, and is to be construed in accordance with, the laws of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals from these courts.
- (c) The Issuer, the Trustee, and each Noteholder waives any right they have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.
- (d) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 19.

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## **21 General provisions**

### **21.1 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

### **21.2 Stamp duty**

The Issuer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed and the performance of this deed, other than any stamp duty payable on the issue, Conversion, Redemption or any other dealing of Notes which will be borne by the Noteholders; and

- (b) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 21.2.

### **21.3 Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

### **21.4 Counterparts**

This deed may be executed in any number of counterparts, each of which (whether kept in electronic or paper form) will be taken as an original and all of which taken together will constitute one and the same document. Signatures may be electronic or handwritten, both of which being of equal effect whether kept in electronic or paper form. Without limiting the foregoing, if the signatures on behalf of one party are on different counterparts, this will be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this deed.

### **21.5 Indemnities**

- (a) Each indemnity given by the Issuer in this deed is a continuing obligation, separate and independent from the other obligations of the Issuer or from any other liability of the Issuer under this deed or any other agreement, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for the Trustee to incur any cost, liability, loss or expense or to make any payment before enforcing a right of indemnity conferred by this deed.

### **21.6 Continuing performance**

- (a) The provisions of this deed do not merge with any action performed or deed executed by any party for the purposes of performance of this deed.
- (b) Any representation in this deed survives the execution of any deed for the purposes of, and continues after, performance of this deed.

### **21.7 Invalid or unenforceable provisions**

Any provision of this deed or the Note Terms which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction only, be read down or severed to the extent of that invalidity or unenforceability provided that the remaining provisions of this deed are properly and effectively self-sustaining and capable of separate enforcement without regard to the read down or severed provision in that jurisdiction. Such remaining provisions continue to be valid and enforceable in accordance with their terms.

### **21.8 Remedies**

The right, power, trust, authority, discretion or remedy of a party under this deed or the Note Terms are cumulative and not exclusive of any right, power, trust, authority, discretion or remedy provided by law.

### **21.9 Further action**

Each party must do all things necessary to give full effect to this deed.

#### 21.10 Privacy

The Issuer must take all action necessary to comply, and to enable the Trustee to comply, with the *Privacy Act 1988* (Cth) and all regulations passed pursuant to that Act. Without limiting this clause 21.10, the Issuer agrees to obtain sufficient authorisations from people providing personal information to the Issuer to enable the issuer to:

- (a) transfer that personal information to the Trustee; and
- (b) permit the Trustee and its agents to collect, use, handle and disclose that personal information for the purposes of carrying out the Trustee's obligations under this deed.

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## Schedule 1 Dictionary

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### 1 Dictionary

In this deed, unless expressly stated otherwise, the following terms have the following meanings:

**Additional Amount** has the meaning given to it in the Note Terms.

**ASIC** means the Australian Securities & Investments Commission.

**ASX** means ASX Limited (ABN 98 003 624 691) or the securities market operated by it, as the context requires.

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

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532), the body which administers CHESS.

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

**Australian Accounting Standards** has the meaning given to it in the Note Terms.

**Business Day** means a day which is a business day within the meaning of the ASX Listing Rules, but where used in connection with any Redemption, Conversion or payment on the Notes, excludes a day on which major trading banks are not open for business in Sydney.

**Business Hours** means between 9.00am and 5.00pm on a Business Day.

**CHESS** means the Clearing House Electronic Sub-register System operated by ASX Settlement.

**Clearing System** means CHESS or any other applicable securities trading and/or clearance system through which the Notes are cleared and/or settled.

**Confidential Information** means all information and other material provided to or obtained by the Trustee, a delegate or any officer, employee, professional adviser or other consultant of the Trustee under, in connection with or related to this deed or any obligation, duty or power of the Trustee under this deed, but excludes any information or other material obtained independently by the Trustee or that is already public knowledge other than as a result of a breach of clause 17.

**Controller** has the meaning given to it in the Corporations Act.

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

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

**Eligible Trustee** means a body corporate eligible to act as a trustee for the purposes of sections 283AA and 283AC of the Corporations Act.

**Event of Default** has the meaning given to it in the Note Terms.

**FATCA** means sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended, or any consolidation, amendments, re-enactment or replacement of those sections, and including any current or future regulations or official interpretations issued, agreements entered into (whether by the Issuer, a Related Body Corporate of the Issuer or any other person) or non-US laws enacted in relation to those sections.

**Financial Indebtedness** has the meaning given to it in the Note Terms.

**Government Agency** means the Crown, a government, a government department or a governmental, semi-governmental, statutory, administrative, parliamentary, provincial, public, municipal, local, judicial or quasi-judicial body.

**GST** means GST as defined in the GST Act.

**GST Act** means *A New Tax System (Goods & Services Tax) Act 1999* (Cth), as amended.

**GST Law** has the meaning given to it in the GST Act.

**an Insolvency Event** occurs in relation to a body corporate if:

- (a) it is (or states that it is) insolvent (as defined in the Corporations Act);
- (b) it has had a Controller appointed to it, or is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the creditors);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is otherwise unable to pay its debts when they fall due; or
- (g) something having a substantially similar effect to (a) to (f) happens in connection with it under the law of any jurisdiction.

**Interest** has the meaning given to it in the Note Terms.

**Issue Date** has the meaning given to it in the Note Terms.

**Marketable Securities** has the meaning given to it in the Note Terms.

**Maturity Date** means has the meaning given to it in the Note Terms.

**Meeting Provisions** means the rules relating to meetings of Noteholders contained in Schedule 3 (Meeting Provisions).

**Moneys Owed** means all money which the Issuer (whether alone or not) owes or is at any time liable to pay to or for the account of the Trustee, a Noteholder or the Trustee on a Noteholder's

behalf (whether alone or not) for any reason whatsoever under or in connection with this deed and the Note Terms. It includes:

- (a) the aggregate principal amount of the Notes outstanding and any Interest payable on the Notes and any other moneys payable to the Noteholders under or pursuant to this deed (and the Note Terms); and
- (b) money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with this deed and the Note Term, or as a result of a breach of or default under or in connection with this deed and the Note Term,

and in relation to a Noteholder means that portion of moneys which is owing to or in relation to that Noteholder. Where the Issuer would be liable but for an Insolvency Event, it will be taken to still be liable.

**Note** means each redeemable, unsecured, convertible note issued by the issuer on the terms of this deed and the Note Terms.

**Note Terms** means the Note Terms and clauses set out in Schedule 2 (Note Terms of Convertible Notes) or any other clauses as the case may be, under which Notes are issued from time to time pursuant to this deed.

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

**Noteholder Resolution** means:

- (a) a resolution passed at a meeting of the Noteholders duly called and held under the Meeting Provisions:
  - (i) by more than 50% 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 more than 50% of the votes cast; or
- (b) a resolution passed by postal ballot or written resolution, then by Noteholders representing (in aggregate) more than 50% of the principal amount of the Notes outstanding as at the Notification Date or (in the case of resolutions passed by postal ballot) outstanding as at the date determined by the Issuer, with the Trustee's approval.

**Prospectus** means a prospectus under which Notes are offered for issue as supplemented from time to time and includes any replacement prospectus in respect of such prospectus.

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

**Register** means the register of Noteholders established and maintained in accordance with this deed and, where appropriate, includes:

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



**Registrar** means Boardroom Pty Limited (ABN 14 003 209 836) or any other person appointed by the Issuer to maintain the Register and perform any payment and other duties in relation to the Notes.

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

**Special Resolution** means:

- (a) a resolution passed at a meeting of the Noteholders duly called and held under the Meeting Provisions:
  - (i) by more than 66⅔% 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 more than 66⅔% of the votes cast; or
- (b) a resolution passed by postal ballot or written resolution, then by Noteholders representing (in aggregate) more than 66⅔% of the principal amount of the Notes outstanding as at the Notification Date or (in the case of resolutions passed by postal ballot) outstanding as at the date determined by the Issuer, with the Trustee's approval.

**Statement of Holding** means a statement of holding (in the form determined by the Issuer and the Registrar from time to time) which sets out details of the number of Notes inscribed in the Register in the Noteholder's name as at the date specified in the statement.

**Tax** means any tax (including any consumption tax, goods and services tax (including GST) and value added tax), levy, impost, charge, withholding, deduction, fee or duty (including stamp and transaction duties) assessed, levied, imposed or collected by a government authority and any related interest, penalty, fine or expense in connection with it, except if imposed on, or calculated having regard to, the net income of a Noteholder or the Trustee.

**Transfer Form** means a transfer form substantially in the form determined by the Issuer.

**Trust** means the "NCC Convertible Note Trust (2021)" established under this deed.

**Trust Fund** means any property acquired or held by the Trustee including:

- (a) the amount of A\$10 held by the Trustee under clause 2.4;
- (b) the right to enforce the Issuer's duty to repay the Notes;
- (c) the right to enforce the Issuer's obligation to pay all other Moneys Owing in respect of the Notes;
- (d) the right to enforce any other duties that the Issuer has under this deed, the Note Terms or Chapter 2L of the Corporations Act;
- (e) any property representing the proceeds of sale or enforcement of any property forming part of the Trust Fund;
- (f) any property representing the proceeds of any insurance claims payable to the Trustee in that capacity;
- (g) any property into which any other property forming part of the Trust Fund is converted or invested and the property representing the proceeds of any such property; and

- (h) any other property held by the Trustee on the Trust established under this deed (including, without limitation, the benefit of any covenants, undertakings, representations, warranties, rights, powers, benefits or remedies in favour of the Trustee under this deed) and any other property which the Trustee receives, has vested in it or otherwise acquires to hold in respect of the Trust.

**Trustee** means Melbourne Securities Corporation Ltd (ABN 57 160 326 545) in its capacity as trustee of the Trust or such other person appointed under this deed as trustee of the Trust.

**Trustee Act** means the *Trustee Act 1925* (NSW).

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## 2 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) another grammatical form of a word or expression defined in this deed has a corresponding meaning;
- (d) a reference to a document or instrument (including this deed) includes the document or instrument as novated, altered, supplemented or replaced from time to time and all schedules, annexures, attachments or exhibits to it;
- (e) a schedule, annexure, attachment or exhibit to this deed forms part of this deed
- (f) a reference to a party, clause or paragraph is to a reference to a party, clause or paragraph of this deed provided that a reference to a clause in the Note Terms is to the correspondingly numbered term and a reference in the Note Terms to the 'trust deed' is to this deed;
- (g) a reference to '\$', 'Australian dollars', 'A\$', 'AUD' or 'Australian cent' is a reference to the lawful currency of Australia;
- (h) a reference to time is to Sydney time;
- (i) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (j) a reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its or functions;
- (k) a reference to a person includes:
  - (i) a reference to the person's executors, administrators, successors and permitted assigns and substitutes; and

- (ii) 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, including a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
- (l) the meaning of general words is not limited by specific examples introduced by words "such as", "including", "particularly" including, "for example" or other similar expressions;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) an Event of Default is subsisting if it has not been remedied or waived in writing by the Trustee;
- (o) headings (including those in brackets at the beginning of paragraphs) and footnotes are for convenience only and do not affect the interpretation of this deed;
- (p) use of a term (including Moneys Owing or any right) denoting subject matter which comprises more than one part or aspect includes a reference to each or any part or aspect of the subject matter;
- (q) a law includes a constitutional provision, a statutory provision, treaty, decree, convention, statute, regulation, ordinance, code, by-law, judgment, rule of common law or equity, whether inside or outside Australia, and is a reference to that law as amended, extended, re-enacted consolidated or replaced;
- (r) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, modification, extended, re-enacted, consolidated or replaced, and includes any subordinate legislation issued under it;
- (s) a document (including this deed), instrument or agreement, or a provision of a document (including this deed), instrument or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated from time to time;
- (t) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
- (u) 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;
- (v) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it;
- (w) if a calculation is required under this deed, 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; and
- (x) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

## **2.1 Capacity of Trustee**

In this deed, except where expressly provided to the contrary:

- (a) a reference to the Trustee is a reference to the Trustee in its capacity as trustee of the Trust only, and in no other capacity. Subject to clause 11.1 of this deed, the Trustee is not liable to the Issuer, the Noteholders or any other person in any capacity other than as trustee of the Trust; and
- (b) a reference to the undertaking, assets, business, money or any other thing of or in relation to the Trustee is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustee only in its capacity as trustee of the Trust, and in no other capacity.

## **2.2 Business Day**

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

## **2.3 References to principal and interest**

In this deed, unless the contrary intention appears:

- (a) any reference to "principal" is taken to include the aggregate principal amount of the Notes outstanding, any Additional Amounts in respect of principal which may be payable under the Note Terms and any other amount in the nature of principal payable in respect of the Notes under the Note Terms; and
- (b) any reference to "interest" is taken to include any Additional Amounts in respect of interest and any other amount in the nature of interest payable in respect of the Notes under the Note Terms.

**1 Form of Notes****1.1 Constitution and status**

The Notes are unsecured and unsubordinated debt obligations of the Issuer constituted by, and owing under, the Trust Deed. Noteholders are entitled to the benefit of and are bound by the provisions of the Trust Deed and these Note Terms.

**1.2 Form**

The Notes are redeemable, unsecured, convertible notes of the Issuer issued in registered form by entry in the Register.

**1.3 Face Value and Issue Price**

- (a) Each Note is issued fully paid and with a Face Value of A\$100.
- (b) The issue price of each Note will be determined by the Directors in their absolute discretion and may be the Face Value, more than the Face Value or less than the Face Value (**Issue Price**). The Issue Price must be paid in full on application.

**1.4 Currency**

The Notes are denominated in Australian dollars.

**1.5 Quotation of Notes**

The Issuer must use all reasonable endeavours and furnish any documents, information and undertakings as may be reasonably necessary in order to procure official quotation of:

- (a) the Notes; and
- (b) the Ordinary Shares issued on conversion of Notes,

on the ASX and to ensure such quotation of Notes is maintained until Redeemed, Converted or purchased by the Issuer and cancelled.

**1.6 Clearing System**

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

**1.7 Evidence of holdings**

- (a) The Issuer or the Registrar (as applicable) must issue to each Noteholder a Statement of Holding in respect of the Notes inscribed in the Register in the relevant Noteholder's name, as soon as reasonably practicable after the Issue Date for those Notes. A Statement of Holding is no assurance or guarantee that any amounts will be paid to the Noteholder.

- (b) Certificates in respect of the Notes will not be issued unless the Issuer determines that certificates should be made available or are required to be made available by law.

#### **1.8 Provision of information by Noteholders**

If requested by the Issuer, the Noteholders must provide information required by the Issuer or the Trustee in order to comply with any applicable law, including FATCA.

#### **1.9 Unsecured notes**

The Notes are unsecured notes for the purposes of section 283BH of the Corporations Act.

#### **1.10 No other rights**

*Subject to these Note Terms and the Trust Deed, the Notes confer no rights on a Noteholder:*

- (a) to become a Member of the Issuer;
- (b) to attend or vote at any meeting of Members of the Issuer, unless provided for by the ASX Listing Rules or the Corporations Act;
- (c) to subscribe for or participate in any new issue of securities by the Issuer; or
- (d) to otherwise participate in the profits or property of the Issuer, except as set out in these Note Terms or the Trust Deed.

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## **2 Interest**

### **2.1 Interest**

Subject to and in accordance with this clause 2, each Note bears interest (**Interest**) at the Interest Rate.

### **2.2 Period of accrual of Interest**

Subject to clause 2.6, Interest accrues on the Face Value of each Note on and from the Issue Date for the Note at the applicable Interest Rate, and ceases to accrue Interest on the Maturity Date for the Note (or if the Note is Redeemed or Converted earlier, on the date the Note is so Redeemed or Converted).

### **2.3 Calculation of Interest payable**

The Interest payable on each Note in respect of each Interest Period is the amount calculated in accordance with the following formula:

$$\text{Interest} = \frac{I \times \text{Face Value} \times N}{365}$$

Where:

**N** means the number of days in the Interest Period; and

I means the Interest Rate in respect of the Interest Period, subject to adjustment in accordance with clause 2.6,

provided that in respect of any Interest Period during which an LTV Ratio Event or an Event of Default has occurred or ceased to occur, the Interest Rate in respect of that Interest Period will be determined through the use of straight-line interpolation by reference to two rates based on the relevant Interest Rate, one of which shall be determined as if "N" were the number of days in the relevant Interest Period prior to the occurrence (or ceasing to occur) of the relevant LTV Ratio Event or Event of Default (as applicable), and the other of which shall be determined as if "N" were the number of days in the relevant Interest Period from and including the occurrence (or ceasing to occur) of the relevant LTV Ratio Event or Event of Default (as applicable).

#### **2.4 Interest payments**

The Interest payable in respect of each Interest Period is payable in arrears on the Interest Payment Date on which the relevant Interest Period ends. Any Interest payable on the Redemption Date or Conversion Date of a Note, will be payable as part of the Redemption Price or Conversion Amount (as applicable), for such Note.

#### **2.5 Determination and notification of Interest Rate, Interest payable and other items**

- (a) The Issuer must provide notice to the Trustee, the Registrar and the ASX of the following:
  - (i) the amount of Interest payable in respect of each Interest Period, which notice must not be less than 4 Business Days before the Record Date in relation to the payment of that Interest; and
  - (ii) any amendment to the amount referred to in sub-paragraph (i) above arising from any extension or reduction in an Interest Period or calculation period, which notice must be provided as soon as practicable after the relevant amendment.
- (b) 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 any Interest Period or calculation period without prior notice but must notify the Trustee, the Registrar and the ASX after doing so.

#### **2.6 Default interest**

- (a) Other than where clause 2.6(b) applies, if an LTV Ratio Event occurs and is continuing, Interest accrues on the Face Value of each Note at the sum of the most recent Interest Rate plus a default rate of 2.00 per cent. per annum while the LTV Ratio Event continues.
- (b) If an Event of Default occurs and is continuing, Interest accrues on the Face Value of each Note at the sum of the most recent Interest Rate plus a default rate of 2.00 per cent. per annum while the relevant Event of Default continues.

#### **2.7 Determination final**

The determination by the Issuer of all amounts, rates and dates 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.

## 2.8 Rounding

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

- (a) all percentages resulting from the calculations must be rounded, if necessary, to the nearest ten-thousandth of a percentage point (with 0.00005% being rounded up to 0.0001%);
- (b) all figures resulting from the calculations must be rounded to four decimal places (with 0.00005 being rounded up to 0.0001); and
- (c) all amounts that are due and payable to a Noteholder in respect of the Noteholder's aggregate holding of Notes must be rounded to the nearest one Australian cent (with 0.5 of a cent being rounded up to one cent).

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## 3 Conversion

### 3.1 Conversion Right into Ordinary Shares

Subject to these Note Terms, each Noteholder has the right (**Conversion Right**) to convert any Note that it holds into a number of Ordinary Shares determined by the application of the following formula:

$$\frac{A}{B}$$

where:

A means the Conversion Amount in relation to the relevant Note; and

B means the Conversion Price.

### 3.2 Conversion at Noteholder's election

- (a) Subject to clauses 3.2(b), 3.3 and 3.4, on any Business Day during the Conversion Period or after a Tax Redemption Notice has been given by the Issuer, a Noteholder may elect in its absolute discretion to convert some or all of the Notes held by it into Ordinary Shares by giving the Issuer (with a copy to the Registrar and the Trustee) a notice in writing (**Conversion Notice**):
  - (i) specifying its intention to convert some or all of the Notes held by it; and
  - (ii) in the form set forth in Schedule 4 of the Trust Deed or as otherwise determined by the Issuer or required by the ASX Listing Rules.
- (b) The aggregate Face Value of Notes which are the subject of a Conversion Notice given by a Noteholder must be at least A\$10,000, or the aggregate Face Value of all Notes held by that Noteholder.

### 3.3 Conversion Notice

- (a) A Conversion Notice must:
  - (i) be in writing;
  - (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 by a Noteholder:
  - (i) the notice cannot be withdrawn without the written consent of the Issuer;
  - (ii) the Noteholder must not deal with, transfer, dispose or otherwise encumber any Notes which are the subject of the Conversion Notice; and
  - (iii) the Noteholder must provide such evidence of title to the Notes which are the subject of the Conversion Notice as may be reasonably required by the Issuer and the Registrar.

### 3.4 Restrictions on Conversion Notices

- (a) Following receipt by a Noteholder of a Noteholder Redemption Event Notice or an Issuer Redemption Event Notice, a Noteholder may only give a Conversion Notice (for some or all of its Notes) if the relevant notice is:
  - (i) a Noteholder Redemption Event Notice that specifies a Change of Control Event or a Delisting Event; or
  - (ii) a Tax Redemption Notice.
- (b) A Conversion Notice received by the Issuer 10 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 such date is no later than the Interest Payment Date immediately following the date on which the Issuer has received the Conversion Notice.
- (c) If a Conversion Notice is received by the Issuer less than 10 Business Days before an Interest Payment Date, the Conversion Notice will be effective on such date as may be determined by the Issuer (in its absolute discretion), provided such date is no later than the second Interest Payment Date after the date on which the Issuer has received the Conversion Notice.
- (d) In no circumstances will a Conversion Notice be effective if:
  - (i) prior to the Noteholder giving the Conversion Notice, a Noteholder has received a Tax Redemption Notice and the Conversion Notice is received by the Issuer less than 10 Business Days before the earlier of the last day of the Conversion Period and the Redemption Date specified in such Tax Redemption Notice;
  - (ii) prior to the Noteholder giving the Conversion Notice a Noteholder has exercised its rights under clause 4.6(a) to require the Notes to be Redeemed following a Change of Control Event or a Delisting Event, and the Conversion Notice is received by the Issuer less than 10 Business Days before the earlier of the last day of the Conversion Period and the relevant Noteholder Redemption Event Date; or
  - (iii) otherwise, the Conversion Notice is received by the Issuer less than 10 Business Days before the last day of the Conversion Period.

### 3.5 Effect of Conversion

On the Conversion Date of a Note held by a Noteholder:

- (a) the Note will be taken to have been Redeemed, and the Noteholder will be taken to have paid the Conversion Amount for that Note to the Issuer by way of subscription for the number of new Ordinary Shares into which the Notes are to be converted in accordance with clause 3.1 (**Conversion Shares**) at an issue price per Conversion Share that is equal to the Conversion Price in effect on the relevant Conversion Date;
- (b) the Issuer will be taken to have issued to the Noteholder, and must register the Noteholder as the holder of, the Conversion Shares, and will notify the Trustee and Registrar accordingly;
- (c) the Noteholder will be deemed to have consented to be registered as the holder of the Conversion Shares in the register of Members;
- (d) the Issuer (or the Registrar, on the Issuer's behalf) will send a holding notice in respect of the Conversion Shares to the Noteholder at the address for the Noteholder shown in the Register at the close of business on the day which is five Business Days before the Conversion Date;
- (e) the Issuer must use all reasonable endeavours to procure and maintain quotation of the Conversion Shares on the 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.

### 3.6 Ranking of Conversion Shares

Each Conversion Share issued on a Conversion Date will be fully paid and rank *pari passu* in all respects with all other fully paid Ordinary Shares on issue on the relevant Conversion Date, except the holder of the Conversion Share will not be entitled to any dividend or other distribution to which holders of Ordinary Shares are entitled that has not been paid as at the Conversion Date, where the applicable record date for determining such entitlements or other distributions occurred prior to the Conversion Date.

### 3.7 No fractional shares

No fractional Ordinary Shares will be issued on Conversion of a Note and no cash adjustment will be made. If the calculation under this clause 3 results in an entitlement to a number of Ordinary Shares which includes a fraction of a Share, the fraction will be disregarded.

### 3.8 Adjustments to Conversion Price for bonus issues

- (a) Subject to clause 3.8(b), if the Issuer makes a bonus issue of Ordinary Shares to the Shareholders generally, the Conversion Price will be adjusted immediately under the following formula:

$$CP = CP_0 \times \frac{RD}{(RD + RN)}$$

where:

**CP** means the Conversion Price applying immediately after the application of this formula;

**CPo** means the Conversion Price applying immediately before the application of this formula;

**RD** means the number of Ordinary Shares on issue immediately before the issue of new Ordinary Shares under the bonus issue;

**RN** means the number of Ordinary Shares issued under the bonus issue.

- (b) For the purpose of clause 3.8(a), an issue will be regarded as a bonus issue notwithstanding that the Issuer does not make offers to some or all Shareholders with registered addresses outside Australia, provided that in so doing the Issuer is not in contravention of the applicable ASX Listing Rules.
- (c) Such adjustment shall become effective on the date of the relevant bonus issue.

### **3.9 Adjustments to Conversion Price for off market buy-backs**

- (a) Subject to clause 3.9(b), if the Issuer undertakes an off market buy-back under a buy-back scheme which but for any applicable restrictions on transfer would be generally available to Shareholders (or otherwise cancels Ordinary Shares for consideration), the Conversion Price will be adjusted immediately using the following formula:

$$CP = CPo \times \frac{1}{P} \times \frac{(BD \times P) - (BN \times A)}{(BD - BN)}$$

where:

**CP** means the Conversion Price applying immediately after the application of this formula;

**CPo** means the Conversion Price applying immediately before the application of this formula;

**P** means the VWAP during the 20 Business Days before the announcement to the ASX of the buy-back (or cancellation);

**BD** means the number of Ordinary Shares on issue immediately before the buy-back (or cancellation);

**BN** means the number of Ordinary Shares bought back (or cancelled); and

**A** means the buy-back (or cancellation) price per Ordinary Share.

- (b) No adjustment to the Conversion Price will occur if P exceeds A.
- (c) Such adjustment shall become effective on the date of the relevant buy-back (or cancellation).

### **3.10 Adjustment to Conversion Price for issues at less than current market price**

- (a) If and whenever the Issuer will issue (otherwise than as mentioned in clauses 3.8 or 3.11) any Ordinary Shares (other than Conversion Shares issued or other Ordinary Shares issued on the exercise of any rights of conversion into, or

exchange or subscription for or purchase of, Ordinary Shares) wholly for cash or for no consideration at a price per Ordinary Share which is less than 90% of the VWAP during the five Business Days immediately preceding the date of the first public announcement of the terms of such issue, the Conversion Price will be adjusted immediately using the following formula:

$$CP = CPo \times \frac{1}{P} \times \frac{(RD \times P) + (RN \times A)}{(RD + RN)}$$

where:

**CP** means the Conversion Price applying immediately after the application of this formula;

**CPo** means the Conversion Price applying immediately before the application of this formula;

**P** means the VWAP during the five consecutive Business Days up to the announcement of the terms of such issue or grant to the ASX;

**RD** means the number of Ordinary Shares on issue immediately before the issue of new Ordinary Shares under the rights or bonus issue;

**RN** means the number of Ordinary Shares issued at a price per Ordinary Share which is less than 90% of the VWAP during the five Business Days immediately preceding the date of the first public announcement of the terms of such issue or grant; and

**A** means the subscription price per Ordinary Share for the issue.

- (b) Such adjustment shall become effective on the date of the relevant issue of Ordinary Shares.

### **3.11 Adjustment to Conversion Price for issues under a share purchase plan or dividend reimbursement plan at a discount**

- (a) If and whenever the Issuer will issue any new Ordinary Shares under a share purchase plan or dividend reinvestment plan where the pricing of new Ordinary Shares under that plan is expressly calculated as a discount to a market price and that discount is greater than 10%, the Conversion Price will be adjusted immediately using the following formula:

$$CP = CPo \times \frac{(RD + ((1-D) \times RN))}{(RD + RN)}$$

where:

**CP** means the Conversion Price applying immediately after the application of this formula;

**CPo** means the Conversion Price applying immediately before the application of this formula;

**RD** means the number of Ordinary Shares on issue immediately before the issue of new Ordinary Shares under the share purchase plan or dividend reinvestment plan;

**RN** means the number of Ordinary Shares issued under the plan; and

**D** means the discount at which new Ordinary Shares are issued under the plan.

- (b) Such adjustment shall become effective on the date of the relevant issue of new Ordinary Shares.

### 3.12 Adjustment to Conversion Price for return of capital

- (a) If the Issuer makes a pro rata return of capital to holders of Ordinary Shares without cancellation of any Ordinary Shares, the Conversion Price will be adjusted under the following formula:

$$CP = CP_0 \times \frac{P-C}{P}$$

where:

**CP** means the Conversion Price applying immediately after the application of this formula;

**CP<sub>0</sub>** means the Conversion Price applying immediately before the application of this formula;

**P** means the VWAP during the period from (and including) the first Business Day after the announcement to the ASX of the return of capital up to and including the last Business Day of trading cum the return of capital (or if there is no period of cum return of capital, an amount reasonably determined by the Directors as representing the value of an Ordinary Share cum the return of capital); and

**C** means with respect to a return of capital (other than by way of extraordinary distribution, special dividend (being a dividend that is paid other than in accordance with the Issuer's dividend policy from time to time), or special distribution), the amount of the cash and/or the value (as reasonably determined by the Directors) of any other property distributed to holders of Ordinary Shares per Ordinary Share (or such lesser amount such that the difference between P and C is greater than zero).

- (b) Such adjustment shall become effective on the date of the relevant return of capital, or if later, the first date upon which the amount of the relevant cash and/or the value of property distributed to holders of Ordinary Shares is capable of being determined as provided in this clause 3.12.

### 3.13 Adjustments for a Change of Control Event

Where a Change of Control Event occurs, then upon any exercise of Conversion Rights where the Conversion Date falls during the Change of Control Period, the Conversion Price will be the Change of Control Conversion Price, as calculated using the following formula:

$$COCCP = \frac{SSP}{(1 + (Premium \times c/t))}$$

where:

**COCCP** means the Change of Control Conversion Price;

**SSP** means the Conversion Price in effect on the relevant Conversion Date, disregarding the application of this clause 3.13;

**Premium** (expressed as a decimal) means the premium of 0.15;

**c** means the number of days from (and including) the date the Change of Control Event occurs to (but excluding) the Maturity Date; and

**t** means the number of days from (and including) the Initial Issue Date to (but excluding) the Maturity Date.

#### **3.14 Notice of amendment**

*Any adjustment of the Conversion Price under this clause 3 will be notified to the Trustee, the Noteholders and the ASX promptly after such adjustment has been determined.*

#### **3.15 On market buy-backs**

No adjustment to the Conversion Price shall occur as a result of an on market buy-back of Ordinary Shares.

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## **4 Redemption and buy-back**

### **4.1 Redemption on Maturity Date**

Each Note must be Redeemed by the Issuer on the Maturity Date by payment of the Redemption Price 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 under clause 4.2 and cancelled.

### **4.2 Buy-back**

Subject to compliance with any applicable law or requirement of the ASX:

- (a) the Issuer may at any time purchase Notes in the open market or otherwise and at any price;
- (b) the Notes purchased under this clause 4.2 may be held, resold, dealt with or cancelled at the discretion of the Issuer; and
- (c) the Notes so purchased, while held by or on behalf of the Issuer, will not entitle the Noteholder to vote at any meetings of the Noteholders and will not be taken to be outstanding for certain purposes set out in clause 7 and the Meeting Provisions, including without limitation, calculating quorums at meetings of the Noteholders.

### **4.3 Redemption at the option of the Issuer – Optional Early Redemption**

The Issuer may on the First Step-up Date or on any Interest Payment Date after the First Step-up Date, elect to Redeem all (but not some) of the Notes in whole before the Maturity Date at the Redemption Price for each such Note by giving not less than 15 nor more than 45 days' notice in writing of such Redemption (an **Optional Early Redemption**).

Notice) to the Noteholders, the Trustee, the Registrar and the ASX, nominating the Redemption Date upon which the Issuer proposes to Redeem the relevant Notes.

#### 4.4 Redemption at the option of the Issuer – Tax Event

- (a) If a Tax Event occurs prior to the Maturity Date, the Issuer may elect to Redeem all (but not some) of the Notes in whole before the Maturity Date at the Redemption Price for each such Note by giving not less than 15 nor more than 45 days' notice in writing of such Redemption (a **Tax Redemption Notice**) to the Noteholders, the Trustee, the Registrar and the ASX, nominating the Redemption Date upon which the Issuer proposes to Redeem the Notes.
- (b) Prior to the giving of any Tax Redemption Notice pursuant to this clause 4.4, the Issuer will deliver to the Trustee:
  - (i) a certificate signed by two directors of the Issuer specifying details of the relevant Tax Event; and
  - (ii) an opinion of independent legal or tax advisors of recognised standing in Australia, and experienced in such matters, confirming that the Tax Event has occurred.
- (c) The Trustee will be entitled to accept and conclusively rely upon such certificate and opinion as sufficient evidence thereof in which event it will be conclusive and binding on the Noteholders. Upon the expiry of the Tax Redemption Notice, the Issuer must redeem the Notes at the Redemption Price.

#### 4.5 Redemption at the option of the Issuer - Clean-Up Event

If a Clean-Up Event occurs prior to the Maturity Date, the Issuer may elect to Redeem all (but not some) of the Notes in whole before the Maturity Date at the Redemption Price for each such Note by giving not less than 15 nor more than 45 days' notice in writing of such Redemption (a **Clean-Up Event Redemption Notice**) to the Noteholders, the Trustee, the Registrar and the ASX, nominating the Redemption Date upon which the Issuer proposes to Redeem the Notes.

#### 4.6 Noteholder Redemption Event

- (a) If a Noteholder Redemption Event occurs:
  - (i) a Noteholder may require the Issuer to Redeem all (but not some) of the Notes held by that Noteholder in whole; and
  - (ii) where the relevant Noteholder Redemption Event is a Change of Control Event, the Issuer may Redeem all (but not some) of the Notes, on the Noteholder Redemption Event Date at the applicable Redemption Price for each such Note.
- (b) As soon as reasonably practicable after the occurrence of a Noteholder Redemption Event, the Issuer must give notice of the Noteholder Redemption Event to the Trustee with a copy to the Noteholders, the Registrar and the ASX (**Noteholder Redemption Event Notice**). The Noteholder Redemption Event Notice must contain:
  - (i) a statement informing Noteholders of:

- (A) their entitlement to require the Notes to be Redeemed pursuant to this clause 4.6 or Converted pursuant to clause 3.2; or
  - (B) where the relevant Noteholder Redemption Event is a Change of Control Event, whether the Issuer will elect to Redeem the Notes,
- and will also specify:
- (ii) details of the relevant Noteholder Redemption Event;
  - (iii) the closing price of the Notes on the day that the Notes were trading on the ASX immediately prior to the occurrence of the relevant Noteholder Redemption Event; and
  - (iv) the last day of the Noteholder Redemption Event Period.
- (c) A Noteholder may exercise its rights under clause 4.6(a) to require the Notes to be Redeemed by delivering a Noteholder Redemption Election Notice to the Issuer at any time on or prior to the last day of the Noteholder Redemption Event Period.
  - (d) If a Noteholder delivers a Noteholder Redemption Election Notice to the Issuer in accordance with clause 4.6(c), the Issuer must Redeem all Notes the subject of the Noteholder Redemption Election Notice on the relevant Noteholder Redemption Event Date.

#### **4.7 Effect of notice**

Any notice given under this clause 4 is irrevocable once given. The accidental or inadvertent failure to give notice to an individual Noteholder will not invalidate a Noteholder Redemption Event Notice or an Issuer Redemption Event Notice.

#### **4.8 Failure to Redeem**

If the Issuer fails to Redeem the Notes when due, Interest will continue to accrue on the Notes at the rate applicable to them on their Redemption Date and must be paid to the relevant Noteholders upon Redemption of the Notes.

#### **4.9 Cancellation**

Notes that have been Redeemed will be cancelled by the Issuer and may not be resold.

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## **5 Status and ranking**

### **5.1 Status**

The Notes at all times constitute direct, unsubordinated and (subject to clause 6.1) unsecured obligations of the Issuer.

### **5.2 Ranking**

- (a) The Notes rank equally with each other and without any preference amongst themselves and at least equally with all other present and future unsubordinated and unsecured obligations of the Issuer (other than any obligations preferred by mandatory provisions of applicable law).



- (b) The ranking of Notes is not affected by the date of registration of any Noteholder in the Register.
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## **6 Covenants**

### **6.1 Negative pledge**

For so long as any Notes remain outstanding, the Issuer must not create or permit to subsist any Security Interest upon the whole or any part of its present or future assets to secure any Financial Indebtedness other than a Permitted Security Interest, unless in any such case, before or at the same time as the creation of the Security Interest:

- (a) all amounts payable by the Issuer under the Notes and the Trust Deed are secured equally and rateably with the Financial Indebtedness; or
- (b) such other Security Interest is provided in respect of all amounts payable by the Issuer under the Notes and the Trust Deed as the Trustee shall in its absolute discretion determine to be not materially less beneficial to the interests of the Noteholders as a whole.

### **6.2 Limit on the incurrence of Financial Indebtedness**

For so long as any Notes remain outstanding, the Issuer must not, without the approval of the Noteholders by way of Special Resolution, incur any Financial Indebtedness other than Permitted Financial Indebtedness.

### **6.3 Limit on making Distributions**

For so long as any Notes remain outstanding, the Issuer must not without the approval of the Noteholders by way of Special Resolution make:

- (a) any In-specie Distribution; or
- (b) any other Distribution which would result in an LTV Ratio Event immediately after such Distribution.

### **6.4 Other covenants**

So long as any Notes remain outstanding, the Issuer must:

- (a) do everything necessary to maintain its corporate existence;
- (b) do everything necessary to maintain the authorisations it is required to maintain in order to conduct its business;
- (c) comply with all laws binding on it where a failure to comply would have a Material Adverse Effect; and
- (d) not, without the approval of the Noteholders by way of Special Resolution, substantially change its core business activity of being a listed investment company with the value of the unlisted Marketable Securities that it holds, as at the time of their acquisition, being no greater than 15% of the value of all Marketable Securities then held by the Issuer.

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## 7 Events of Default

### 7.1 Events of Default

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

- (a) **(non-payment)** the Issuer fails to pay or repay any amount payable by it under these Note Terms within 10 Business Days after the date on which it is due and, where the sole reason for the default is a technical or administrative difficulty within the banking system being used to effect payment, such default is not remedied within five Business Days;
- (b) **(non-issue of Ordinary Shares)** the Issuer fails to issue Ordinary Shares on Conversion in accordance with these Note Terms within 10 Business Days after the date on which such issue is to be made;
- (c) **(breach of other obligations)** the Issuer fails to comply with any of its other material obligations under these Note Terms or the Trust Deed and such failure remains unremedied for a period of 30 Business Days after the Issuer has received written notice from the Trustee in respect of the failure;
- (d) **(cross default)** any debt of the Issuer greater than A\$1,000,000 (or its equivalent in any other currencies) becomes due and payable before its stated maturity due to the occurrence of a default in the observance by the Issuer of any of the terms of that debt;
- (e) **(insolvency)** an Insolvency Event occurs in respect of the Issuer;
- (f) **(unlawfulness)** at any time, it is unlawful for the Issuer to perform any of its payment obligations under the Notes; or
- (g) **(vitiation)** all or any obligations of the Issuer or rights of the Noteholders or the Trustee under the Trust Deed or these Note Terms are terminated or are or become void, illegal, invalid, unenforceable or of limited force and effect.

### 7.2 Notification

If an Event of Default occurs, the Issuer must, promptly after becoming aware of it, notify the Noteholders, the Trustee, the Registrar and the ASX of the occurrence of the Event of Default.

### 7.3 Consequences of an Event of Default

- (a) If an Event of Default occurs and is continuing in relation to the Notes, the Trustee may declare, by written notice to the Issuer (with a copy to the Noteholders), that the Face Value (together with any accrued and unpaid Interest) of each Note is due and payable immediately or on such other date as specified in that notice.
- (b) The Trustee will not be bound to take any action referred to in clause 7.3(a) above or any other proceedings or action to enforce the obligations or covenants of the Issuer pursuant to or in connection with the Trust Deed or these Note Terms unless:
  - (i) it is directed to take such action by a Noteholder Resolution (or, if required by, a Special Resolution) (ignoring any Notes held by or on behalf of the Issuer and not cancelled);

- (ii) it is indemnified and/or secured to its satisfaction as contemplated by the Trust Deed;
  - (iii) its liability for taking such action is limited in a manner consistent with section 283DC of the Corporations Act;
  - (iv) such action is permitted under the Trust Deed and these Note Terms; and
  - (v) it is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.
- (c) If the Trustee forms the view that such action is or could be inconsistent with the Trust Deed, these Note Terms, the Corporations Act, the ASX Listing Rules 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 Noteholder Resolution (or, if required, 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 such Noteholder Resolution or Special Resolution (as applicable).

#### **7.4 Noteholders' right to take action**

No Noteholder is entitled to commence action or proceedings directly against the Issuer to enforce any right, power or remedy under these Note Terms or the Trust Deed unless, subject to clause 7.3(c):

- (a) the Trustee, having become bound to proceed in accordance with the Trust Deed and these Note Terms, fails to do so within 14 days of being obliged to do so and such failure is continuing; or
- (b) 30 Business Days have lapsed since the date on which one or more Noteholders gave notice to the Trustee that they intend to commence such action or proceedings (with such notice to specify the details, including legal basis for, such action or proceedings, and to be copied to the Issuer) and the Trustee has not commenced such action or proceedings notwithstanding a request from such Noteholders to do so,

in which case any such Noteholder may itself institute such actions or proceedings against the Issuer to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so. Any such proceedings must be brought in the name of the Noteholders and not the Trustee.

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## **8 Title and transfer of Notes**

### **8.1 Title**

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

### **8.2 Effect of entries in Register**

- (a) Each entry in the Register in respect of a Note constitutes:
  - (i) 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;

- (ii) an entitlement to the other benefits given to the Noteholders under these Note Terms and the Trust Deed in respect of the Note; and
  - (iii) (subject to rectification for fraud or manifest or proven error) conclusive evidence of validly issued Note under the Trust Deed, regardless of any non-compliance by the Issuer with the provisions of the Trust Deed.
- (b) 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 become a member of the Issuer or to attend or vote at meetings of members of the Issuer.

### **8.3 No certificates**

Except to the extent required by law or otherwise determined by the Issuer, no certificates in respect of the Notes will be issued by the Issuer, the Registrar or the Trustee.

### **8.4 Register conclusive as to ownership**

Notes are regarded as issued or transferred to a person if and when the person's name is recorded in the Register as the Noteholder in accordance with the Trust Deed. 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 or proven error.

### **8.5 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 Noteholder as the absolute owner of that Note. This clause 8.5 applies whether or not a Note is overdue and despite any notice of ownership, trust or interest in the Note.

### **8.6 Joint holders**

- (a) 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.
- (b) On the death of a joint holders, the survivor or survivors are the only person or persons whom the Issuer or the Trustee will recognise as having any title to the Notes (but the Issuer or the Trustee may require any evidence of death which it thinks fit).
- (c) The joint holders are counted as a single Noteholder of the Note for the purposes of calculating the number of Noteholder or requisitioners who have requested a Meeting of Noteholders.
- (d) The giving of notice to, or receipt of notice for, any one of the joint holders is taken to be the giving of notice to, or receipt of notice for, all of the joint holders.
- (e) Any one of the joint holders may give an effective receipt for payment on the Notes and a payment to any one of the joint holders will discharge the Issuer's liability with respect to that payment.
- (f) The Registrar is not bound to register more than four persons as joint holders of any Note

## **8.7 Transfers in whole**

A Note may be transferred in whole but not in part.

## **8.8 Transfer**

- (a) A Noteholder may, subject to this clause 8.8, transfer any Notes:
  - (i) if the Notes are quoted on the ASX, by a transfer in accordance with the rules of the Clearing System;
  - (ii) by a proper transfer under any other computerised or electronic system recognised by the Corporations Act; or
  - (iii) by any *proper or sufficient instrument of transfer of marketable securities* under applicable law.
- (b) The Issuer must not charge any fee on the transfer of a Note.

## **8.9 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.

## **8.10 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 Operator'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.

## **8.11 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 Operator'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 acknowledge a disposal (including registering 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) In the event of 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.

#### **8.12 Notice of holding lock and refusal to register transfer**

If, in the exercise of its rights under clause 8.10 and 8.11, 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 it requests the holding lock or the date it refuses to register a transfer, give written notice of the request or refusal to the Noteholder, to the transferee and the broker lodging the transfer. Any failure to give such notice does not, however, invalidate the exercise by the Issuer of its rights.

#### **8.13 Delivery of instrument**

If an instrument is used to transfer the Notes according to clause 8.8, it must be delivered to the Registrar, together with such evidence (if any) as the Issuer or the Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Notes.

#### **8.14 Refusal to register transfers**

- (a) The Issuer may only refuse to register a transfer of any Notes if such refusal is required or permitted by Applicable Regulation or these Note Terms.
- (b) If the Issuer refuses to register a transfer, the Issuer must give the lodging party notice of the refusal and the reasons for it within five Business Days after the date on which the transfer was delivered to the Registrar.

#### **8.15 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.

#### **8.16 Effect of transfer**

Upon registration and entry of the transferee in the Register, the transferor ceases to be entitled to future benefits under the Trust Deed and these Note Terms in respect of the transferred Notes and the transferee becomes so entitled in accordance with clause 8.8.

#### **8.17 Death, legal disability**

- (a) If a Noteholder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the legal representative or the person entitled to Notes as a result of bankruptcy or liquidation, will be recognised as being entitled to require the transfer to it of Notes registered in the Noteholder's name.
- (b) The Issuer need not register any transfer or transmission under this clause 8.17 unless the transferee provides evidence of its entitlement satisfactory to the Issuer and an indemnity in favour of the Issuer in a form determined by the Issuer in respect of any consequence arising from the transfer or transmission.

#### **8.18 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.

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## 9 Payments

### 9.1 Summary of payment provisions

Payments in respect of the Notes will be made in accordance with this clause 9.

### 9.2 Record Date

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

### 9.3 Payments subject to applicable laws

All payments are subject to applicable laws, but without prejudice to the provisions of these Note Terms relating to the payments of Additional Amounts. If a payment cannot lawfully be made by the Issuer to a particular Noteholder due to any circumstance or matter affecting the Noteholder without the approval of a Government Agency or the satisfaction of some other condition, then the Noteholder is not entitled to receive that payment, and the Issuer is not obliged to make that payment, unless that approval has been obtained or that other condition is satisfied. The Issuer is not obliged to pay any further interest to the affected Noteholder in such circumstances on account of the delay.

### 9.4 Payment delays

If the Issuer has determined that a person other than a Noteholder is or may be entitled to be registered as a Noteholder and receive a payment in respect of a Note, the Issuer may withhold the payment until it has established the respective entitlements of that person to its satisfaction and (if applicable) the person so entitled has been registered as Noteholder and provided details for the payment to be made to the satisfaction of the Issuer. The Issuer is not obliged to pay any further interest on account of the delay.

### 9.5 Payments on Business Days

If a payment:

- (a) is due 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
- (b) 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, no Noteholder is entitled to any interest or amount in respect of that delay.

### 9.6 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.

## 9.7 Payments by cheque

- (a) 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.
- (b) Cheques sent to the 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.

## 9.8 Unsuccessful attempts to pay

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

- (a) 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;
- (b) attempts to pay an amount to a Noteholder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful;
- (c) has made reasonable efforts to locate a Noteholder but is unable to do so; or
- (d) 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:

- (e) the amount will be taken to have been duly paid to the Noteholder and will not bear interest; and
- (f) 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.

## 9.9 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.

## 9.10 Fractions

For the purposes of making any payment to a Noteholder in respect of its aggregate holding of Notes, any fraction of a cent will be disregarded.

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# 10 Taxation

## 10.1 No set-off, counterclaim or deductions

All payments in respect of the Notes must be made in full without set-off or counterclaim, and will be made free and clear of, and without any withholding or deduction in respect of Taxes, unless such withholding or deduction is required by applicable law or made under or in connection with, or to ensure compliance with, FATCA.



## 10.2 Withholding tax

Subject to clause 10.3, if a law requires the Issuer to withhold or deduct an amount for Taxes imposed in connection with a payment on a Note such that the Noteholder would not actually receive on the due date the full amount provided for under the Notes, then:

- (a) the Issuer agrees to withhold or deduct the amount for the Taxes; and
- (b) if the amount deducted or withheld is in respect of Taxes imposed in Australia, the Issuer will pay an additional amount (**Additional Amount**) so that, after making the deduction or withholding, the Noteholder is entitled to receive (at the time the payment is due) the amount it would have received if no deduction or withholding had been required to be made from a payment in respect of a Note.

## 10.3 Gross-up exceptions

- (a) No Additional Amounts are payable under clause 10.2 in respect of any Note:
  - (i) to, or to a third party on behalf of, a Noteholder who is liable to such Taxes in respect of such Note by reason of having some connection with Australia other than the mere holding of or receipt of payment in respect of such Note;
  - (ii) to, or to a third party on behalf of, a Noteholder who could lawfully avoid (but has not so avoided) such Taxes by complying or procuring that any third party complies with any statutory requirements or by making or procuring that any third party makes a declaration of non-residence or similar case for exemption to any Tax Authority;
  - (iii) to, or to a third party on behalf of, a Noteholder who is an Offshore Associate and not acting in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme within the meaning of the Corporations Act;
  - (iv) to, or to a third party on behalf of, a Noteholder that is not the beneficial owner of such Notes to the extent that the beneficial owner thereof would not have been entitled to the payment of such Additional Amounts had such beneficial owner been the Noteholder of such Notes;
  - (v) to, or to a third party on behalf of, a Noteholder where such withholding or deduction is required to be made pursuant to a notice or direction issued by the Commissioner of Taxation under section 255 of the Tax Act or section 260-5 of Schedule 1 to the Taxation Administration Act 1953 (Cth) or any similar law;
  - (vi) to, or to a third party on behalf of, a Noteholder, if that person has not supplied an appropriate Australian tax file number, an Australian business number or other exemption details from these requirements before the Record Date; or
  - (vii) in respect of any combination of any or all of paragraphs (i) to (vi) above.
- (b) Notwithstanding any other provision of these clauses, if the Issuer, any agent, or any other person through whom payments on the Notes are made, is required to withhold or deduct amounts under or in connection with, or in order to ensure compliance with FATCA, the Issuer or that other person will be permitted to make such withholding or deduction, and the Noteholders and beneficial owners of Notes

will not be entitled to receive any gross up, additional amount or other amount for such withholding or deduction had payment been made on the due date.

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## **11 Amendments and waivers of Note Terms**

### **11.1 Amendments without the consent of the Noteholders**

Subject to the Trust Deed and compliance with the Corporations Act and all other applicable laws, the Issuer may at any time and from time to time, with the approval of the Trustee, but without the consent of the Noteholders, amend these Note Terms or the Trust Deed if the Trustee agrees with the Issuer that such amendments are:

- (a) of a formal or minor or technical nature;
- (b) made to cure any ambiguity or correct any manifest error;
- (c) necessary to facilitate the listing or quotation of the Notes on the ASX;
- (d) necessary to comply with any laws, regulations, legislation or the ASX Listing Rules; or
- (e) not materially prejudicial to the interests of Noteholders as a whole.

### **11.2 Amendments with the consent of the Noteholders**

Without limiting clause 11.1, subject to the Trust Deed and compliance with the Corporations Act and all other applicable laws, the Issuer may at any time and from time to time, amend these Note Terms or the Trust Deed if a Noteholder Resolution or (where required under the Meeting Provisions) a Special Resolution is passed in favour of such amendment. If the amendment sought alters or conflicts with any of the personal rights or obligations of the Trustee, it will not be effective without the prior written consent of the Trustee.

### **11.3 Interpretation**

In this clause 11, "amend" includes modify, waive, vary, cancel, amend or add to and "amendment" has a corresponding meaning.

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## **12 Time limit for claims**

A claim against the Issuer for a payment under the Notes is void unless made within five years after the date on which payment first became due and payable.

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## **13 Notices**

All notices and other communications to the Noteholders in connection with the Trust Deed or the Notes must be made in accordance with the notice provisions set out in clause 19 (*Notices*) of the Trust Deed.

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## **14 Further issues of Notes**

### **14.1 Issuer may issue further Notes**

Subject to clauses 6.2, 14.2 and the ASX Listing Rules, the Issuer may from time to time create and issue additional Notes after the Initial Issue Date having the same terms and conditions as the Notes issued on the Initial Issue Date in all respects (or in all respects other than in respect of the Issue Date, the Issue Price, the date on which the additional Notes commence bearing Interest or the date of the first interest payment in respect of the additional Notes). Any Notes issued pursuant to this clause 14 will be consolidated and form part of the same single class as the Notes issued on the Initial Issue Date, and will be treated as such including for the purposes of voting and taking all other actions by the Noteholders, except as otherwise specified in the Trust Deed or these Note Terms. References in these Note Terms to the Notes include (unless the context requires otherwise) any additional Notes issued pursuant to this clause 14 that form a single class with the Notes issued on the Initial Issue Date.

### **14.2 Notice of further issues**

The Issuer must provide prior notice to the Trustee and the Noteholders of any additional Notes to be issued under clause 14.1, and execute such supplemental documents as the Trustee may require in connection with the issue of such Notes.

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## **15 General**

### **15.1 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 Shareholders.

### **15.2 Further documents**

The Issuer may request the Trustee to execute (and the Trustee may agree 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.

### **15.3 Governing law and jurisdiction**

- (a) These Note Terms and the Notes are governed by the laws of New South Wales, Australia.
- (b) The Issuer and each Noteholder submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia 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.

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## 16 Interpretation and definitions

### 16.1 Interpretation

In these Note Terms:

- (a) if there is any inconsistency between the provisions of these Note Terms and the Trust Deed, then, to the maximum extent permitted by law, the provisions of these Note Terms will prevail;
- (b) calculations, elections and determinations made by the Issuer under these Note Terms are binding on Noteholders in the absence of manifest error;
- (c) 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 succeeding Business Day;
- (d) the singular includes the plural and vice versa, and a gender includes the other gender;
- (e) another grammatical form of a word or expression defined in these Note Terms has a corresponding meaning;
- (f) a reference to a document (including these Note Terms) includes all schedules, annexures, attachments or exhibits to it;
- (g) a reference to a cause or clause is to a clause or clause of these Note Terms;
- (h) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time and all schedules, annexures, attachments or exhibits to it;
- (i) a reference to **Australian dollars, A\$, dollars, \$ or cents** is a reference to the lawful currency of Australia;
- (j) a reference to time is to Sydney time;
- (k) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (l) *a reference to a person includes:*
  - (i) a reference to the person's executors, administrators, successors and permitted assigns and substitutes; and
  - (ii) 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, including a natural person, partnership, joint venture, Government Agency, association, corporation or other body corporate;
- (m) a reference to a statute, ordinance, code, rule, directive or law (however described) includes a constitutional provision, a statutory provision, treaty, decree, convention, statute, regulation, ordinance, code, by-law, judgment, rule of common law or equity, whether inside or outside Australia, and is a reference to that law as amended, extended, re-enacted consolidated or replaced;

- (n) the meaning of general words is not limited by specific examples introduced by words 'such as', 'including', 'particularly' including, 'for example' or other similar expressions;
- (o) headings (including those in brackets at the beginning of clauses) and footnotes are for convenience only and do not affect the interpretation of these Note Terms.
- (p) an Event of Default is subsisting until it has been remedied or waived in writing by the Trustee on behalf of the Noteholders;
- (q) if a payment is required to be made under these Note Terms, unless the contrary intention is expressed, the payment will be made in Australian dollars; and
- (r) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally.

#### 16.2 References to particular terms

Unless the contrary intention appears, in these Note Terms:

- (a) any reference to "principal" is taken to include the aggregate principal amount of the Notes outstanding, any Additional Amounts in respect of principal which may be payable under these Note Terms and any other amount in the nature of principal payable in respect of the Notes under these Note Terms; and
- (b) any reference to "interest" is taken to include any Additional Amounts in respect of interest and any other amount in the nature of interest payable in respect of the Notes under these Note Terms.

#### 16.3 Inconsistency with ASX Listing Rules

So long as the Notes are quoted on the ASX, these Note Terms are to be interpreted in a manner consistent with the ASX Listing Rules.

#### 16.4 Definitions

Unless the contrary intention appears, in these Note Terms:

**Additional Amount** has the meaning given to it in clause 10.2.

**Applicable Regulations** means such provisions of the ASX Listing Rules, the rules of the applicable Clearing System or the Corporations Act, and any regulations or rules under or pursuant to any such provisions, as may be applicable to the transfer of a Note and includes any Restriction Agreement.

**ASX** means ASX Limited (ABN 98 003 624 691) or the securities market operated by it, as the context requires.

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

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532), the body which administers CHESS.

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

**Australian Accounting Standards** means the Australian Accounting Standards issued by the Australian Accounting Standards Board.

**Business Day** means a day which is a business day within the meaning of the ASX Listing Rules but where used in connection with any Redemption, Conversion or payment on the Notes, excludes a day on which major trading banks are not open for business in Sydney.

**Cash and Cash Equivalents** means, at any time, the aggregate amount in Australian dollars of cash and cash equivalents held by the Issuer as at such time, as determined in accordance with the Australian Accounting Standards, but excluding the amount of such cash or cash equivalents which are the subject of a Security Interest.

**Change of Control Event** means the occurrence of any of the following:

- (a) the investment management agreement between the investment manager and the Issuer lapses or is terminated and no replacement investment management agreement has been entered into by the investment manager and the Issuer on, or as soon as reasonably practicable after, such lapse or termination;
- (b) a takeover bid is made to acquire all of the Ordinary 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 per cent of the Ordinary Shares on issue; or
  - (ii) the Directors of the Issuer unanimously recommend the acceptance of the offer under the takeover bid, and acceptance of that offer would result in the bidder having a relevant interest in 100 per cent of the Ordinary Shares on issue; or
- (c) a court approves a proposed scheme of arrangement which, when implemented, will result in a person having a relevant interest in more than 50 per cent of the Ordinary Shares on issue.

**Change of Control Notice** means a Noteholder Redemption Event Notice informing the Noteholders that a Change of Control Event has occurred.

**Change of Control Period** means the period beginning on the date the Issuer provides a Change of Control Notice and ending 30 Business Days from that date.

**CHES** means the Clearing House Electronic Sub-register System operated by ASX Settlement.

**Clean-Up Event** means at any time the aggregate principal amount of the Notes outstanding is less than A\$5 million.

**Clean-Up Event Redemption Notice** means a notice provided by the Issuer in accordance with clause 4.5.

**Clearing System** means CHES or any other applicable securities trading or clearance system through which the Notes are cleared and/or settled.

**Conversion** means the conversion of a Note in accordance with clause 3 and the words **Convert**, **Convertible**, **Converting** and **Converted** bear a corresponding meaning.

**Conversion Amount** means in relation to a Note the subject of a Conversion Notice, the Face Value of the Note, together with any accrued (but unpaid) Interest on the Note up to (but excluding) the Conversion Date for the Note.

**Conversion Date** in relation to a Note means the date (determined by the Issuer (in its absolute discretion) in accordance with these Note Terms) on which Ordinary Shares will be issued to the relevant Noteholder on the Conversion of that Note under clause 3.

**Conversion Notice** means a notice of Conversion given in accordance with clause 3.2.

**Conversion Period** in respect of a Note means the period commencing on (and excluding) the Initial Issue Date and ending on (and including) the First Step-up Date.

**Conversion Price** means A\$1.15 or such other price as is determined in accordance with clauses 3.8 to 3.13.

**Conversion Right** means the right of a Noteholder to convert principal and accrued but unpaid Interest due under a Note into Ordinary Shares in accordance with clause 3.1.

**Conversion Shares** has the meaning given to it in clause 3.5.

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

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

**CS Facility Operator** means the operator of a CS Facility.

a **Delisting Event** will occur if:

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

in each case, other than as a result (directly or indirectly) of a Change of Control Event.

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

**Distribution** means a distribution to Shareholders in any form whatsoever, including without limitation, by way of dividend (whether in cash or in specie), share buy-back, reduction of capital, bonus securities issue or otherwise.

**Event of Default** means any event specified in clause 7.1.

**Face Value** means the nominal principal amount of each Note, being A\$100.

**Financial Indebtedness** means, without double counting, any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised under any acceptance credit, or bill acceptance, discount or 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 any applicable generally accepted accounting practices, 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) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) consideration for the acquisition of assets (excluding inventory bought in the ordinary course of business) or services payable more than 180 days after acquisition;
- (i) 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
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) inclusive above,

but excluding any increase or possible increase in Financial Indebtedness resulting from changes to accounting definitions.

**First Step-up Date** means 30 September 2026.

**First Step-up Interest Rate** means an interest rate of 5.50% per annum.

**Fixed Interest Rate** means an interest rate of 4.50% per annum.

**Government Agency** means a government, a government department or a governmental, semi-governmental, statutory, administrative, parliamentary, provincial, public, municipal, local, judicial or quasi-judicial body.

**Initial Issue Date** means the date on which Notes are first issued under these Note Terms.

**Insolvency Event** occurs in relation to a body corporate if:

- (a) it is (or states that it is) insolvent (as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration (other than in circumstances where the appointment of the administrator or liquidator is stayed, withdrawn, dismissed or terminated within 30 Business Days) or wound up (each as defined in the Corporations Act).

**In-specie Distribution** means any non-cash Distribution of the Issuers' Investment Assets, direct or indirect, for the benefit of a Shareholder.

**Interest** means the interest payable from time to time on a Note under these Note Terms.

**Interest Payment Date** in relation to a Note means:



- (a) 31 March and 30 September in each year during the term of the Note, with the first Interest Payment Date being 30 September 2021, or if any such date is not a Business Day, the following Business Day;
- (b) where a Conversion Right attached to the Note has been exercised prior to the Redemption Date in respect of the Note, the Conversion Date in respect of the Note; and
- (c) the Redemption Date in respect of the Note.

**Interest Period** means in respect of 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) the Issue Date in respect of the Note; and
- (b) the final Interest Period ends on (but excludes) the first to occur in respect of the Note:
  - (i) the Maturity Date;
  - (ii) any other Redemption Date; and
  - (iii) where the Conversion Right attached to the Note has been exercised prior to the Redemption Date in respect of the Note, the Conversion Date in respect of the Note.

**Interest Rate** means:

- (a) in respect of each Interest Period that commences during the period from (and including) the Initial Issue Date to (but excluding) the First Step-up Date, the Fixed Interest Rate;
- (b) in respect of each Interest Period that commences during the period from (and including) the First Step-up Date to (but excluding) the Second Step-up Date, at the First Step-up Interest Rate; and
- (c) in respect of each Interest Period that commences during the period from (and including) the Second Step-up Date to (but excluding) its Maturity Date, at the Second Step-up Interest Rate.

**Investment Assets** means the assets owned by the Issuer which may include, without limitation, any of the following:

- (a) securities, including, without limitation, equity and debt securities of all types, whether subordinated or unsubordinated, secured or unsecured, quoted or unquoted, rated or unrated, denominated in any currency;
- (b) deposits and currencies of all kinds;
- (c) any other debt and equity instruments, including without limitation, loans (and participations therein), warrants, trade claims and promissory notes; and
- (d) derivative instruments and other synthetic products, including, but not limited to, foreign exchange options and forwards (including on a non-deliverable basis), bond options and forwards (including on a non-deliverable basis), interest rate and

*currency swaps, forward rate agreements, total return swaps, credit default swaps and equity derivatives and in credit and/or convertibility linked notes; and pooled investment vehicles of any description.*

**Issue Date** in relation to a Note means the date on which the Note is issued.

**Issue Price** has the meaning given to it in clause 1.3.

**Issuer** means NAOS Emerging Opportunities Company Limited (ABN 58 161 106 510).

**Issuer Redemption Event Notice** means any of the following:

- (a) an Optional Early Redemption Notice;
- (b) a Tax Redemption Notice; or
- (c) a Clean-Up Event Redemption Notice.

**LTV Ratio** means, at any time, the loan-to-value ratio for the Issuer calculated as follows:

$$A = B/C$$

where:

A = the LTV Ratio (expressed as a percentage) as at such time;

B = the Total Debt less the Cash and Cash Equivalents as at such time; and

C = the Market Value of all Marketable Securities held by or on behalf of the Issuer as such time.

**LTV Ratio Event** means the LTV Ratio exceeds 50%.

**Market Value** in relation to a Marketable Security means, at any time:

- (a) where that Marketable Security is listed on the ASX, the most recent traded price listed for such Marketable Security on the ASX; and
- (b) where that Marketable Security is not listed on the ASX, the redemption price (however described) specified in the terms for such Marketable Security unless there is no redemption price so specified, in which case the Market Value for such Marketable Security will be determined by reference to the higher of:
  - (i) the most recent price at which a marketable security comprising the same class as that Marketable Security was redeemed by the Issuer;
  - (ii) the most recent price (if any) at which the Issuer purchased that Marketable Security or purchased marketable securities comprising the same class as that Marketable Security (whichever purchase occurred most recently); and
  - (iii) the most recent price at which the Issuer sold marketable securities comprising the same class as that Marketable Security (whether together with other Marketable Securities or individually or whether in a single transaction or series of transactions) provided the aggregate purchase price for such marketable securities exceeded A\$1,000,000,

provided that if the Market Value of an unlisted Marketable Security cannot be reasonably determined in accordance with paragraph (b) above, the Market Value of such Marketable Security will be determined by the reasonable estimate of the Issuer and supported by calculations or any other documentation that the Trustee may reasonably request.

**Marketable Securities** means:

- (a) any debentures, stocks, shares or bonds of any Government Agency, local government authority, body corporate, association or society, and includes any right or option in respect of shares in any body corporate and any interest in a managed investment scheme; and
- (b) any unit (whatsoever called) or interest in a trust estate which represents a legal or beneficial interest in any of the income or assets of that trust estate and includes any options to acquire any units as described.

**Material Adverse Effect** means an event or circumstance which has, or would reasonably be expected to have, a material adverse effect on the ability of the Issuer to meet its obligations under these Note Terms or the Trust Deed.

**Maturity Date** means 30 September 2028.

**Meeting Provisions** means the provisions for meetings of the Noteholders set out in Schedule 3 of the Trust Deed.

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

**NCC Group** means the Issuer and its Subsidiaries.

**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.

**Note Terms** means, in relation to a Note, these clauses.

**Noteholder** means the person from time to time whose name is entered on the Register as the holder of a Note.

**Noteholder Redemption Election Notice** means a notice provided by the Noteholder in accordance with clause 4.6(c) in the form set forth in Schedule 5 of the Trust Deed or as otherwise determined by the Issuer or required by the ASX Listing Rules.

**Noteholder Redemption Event** means each of the following events:

- (a) a Delisting Event; or
- (b) a Change of Control Event.

**Noteholder Redemption Event Date** means the date that is the 20th Business Day after the expiry of the Noteholder Redemption Event Period.

**Noteholder Redemption Event Notice** means a notice provided by the Issuer in accordance with clause 4.6(b).

**Noteholder Redemption Event Period** means the period beginning on the date the Issuer provides a Noteholder Redemption Event Notice and ending 30 Business Days from that date.

**Noteholder Resolution** means:

- (a) a resolution passed at a meeting of the Noteholders duly called and held under the Meeting Provisions:
  - (i) by more than 50% 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 more than 50% of the votes cast; or
- (b) a resolution passed by postal ballot or written resolution, then by Noteholders representing (in aggregate) more than 50% of the principal amount of the Notes outstanding as at the Notification Date or (in the case of resolutions passed by postal ballot) outstanding as at the date determined by the Issuer, with the Trustee's approval.

**Officer** means a director or secretary of the Issuer or any other person authorised by the Issuer as an Officer of the Issuer for the purposes of these Note Terms.

**Offshore Associate** means an "associate" (as defined in section 128F(9) of the Tax Act) of the Issuer that is either:

- (a) a non-resident of Australia that, if it acquires the Notes or an interest in the Notes, would not acquire the Notes or an interest in the Notes in carrying on a business at or through a permanent establishment of the associate in Australia; or
- (b) a resident of Australia that, if it acquires the Notes or an interest in the Notes, would acquire the Notes or an interest in the Notes in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country,

and which does not acquire a Note or an interest in the Notes in the capacity of a clearing house, custodian, funds manager or responsible entity of a registered scheme.

**Optional Early Redemption Notice** means a notice given by the Issuer to the Trustee under clause 4.3.

**Ordinary Share** means an ordinary share in the capital of the Issuer.

**Permitted Financial Indebtedness** means any of the following Financial Indebtedness:

- (a) the Financial Indebtedness constituted by the Notes issued on the Initial Issue Date;
- (b) any Financial Indebtedness incurred or guaranteed after the Initial Issue Date for the purpose of replacing, refinancing or extending the maturity of any other Permitted Financial Indebtedness;
- (c) any Financial Indebtedness:
  - (i) that does not result in the Issuer's total Financial Indebtedness exceeding A\$23,000,000; and

- (ii) does not result in an LTV Ratio Event,
- in each case, immediately after the incurrence of such Financial Indebtedness; or
- (d) any other Financial Indebtedness approved by the Noteholders by way of Special Resolution.

**Permitted Security Interest** means any of the following:

- (a) any Security Interests securing Financial Indebtedness or other obligations which do not exceed A\$1,000,000 in aggregate;
- (b) any Security Interest that is a deemed security interest under the PPSA that does not, in substance, secure payment or performance of an obligation;
- (c) any Security Interest arising by operation of law and in the ordinary course of trading so long as the Financial Indebtedness secured by that Security Interest is paid when due or contested in good faith and appropriately provisioned;
- (d) any Security Interest over the assets of a member of the NCC Group after the Initial Issue Date if:
  - (i) the Security Interest was not created in contemplation of the acquisition of that asset by a member of the NCC Group;
  - (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 NCC Group became a Subsidiary of the Issuer or at such earlier time as that member elects;
  - (iii) the principal amount secured has not been increased in contemplation of, or since, the acquisition of that asset by a member of the NCC Group; and
  - (iv) the Security Interest is removed or discharged within six months of the date of acquisition of such asset;
- (e) any netting and set-off arrangements arising in the ordinary course of the NCC Group's banking arrangements for the purpose of netting debit and credit balances;
- (f) any title retention arrangement entered into by the Issuer in the ordinary course of trading on the supplier's usual terms of sale (or on terms more favourable to the Issuer) so long as the debt it secures is paid when due or contested in good faith and sufficient reserves of liquid assets have been set aside to pay the debt if the contest is unsuccessful;
- (g) any Security Interest over goods (and related insurance contracts) under, and relating to, documentary credit transactions arising or created in the ordinary course of business;
- (h) deposits or pledges to secure contracts in the ordinary course of business, other than by way of security for Financial Indebtedness;
- (i) any Security Interest over and limited to the interest in, or assets of, a joint venture owned by any member of the NCC Group to support the obligations of that member of the NCC Group in respect of any joint venture; and

- (j) any other Security Interest approved by the Noteholders by way of Special Resolution.

**Prospectus** means a prospectus under which Notes are offered for issue as supplemented from time to time and includes any replacement prospectus in respect of such prospectus.

**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) below, the date which is eight calendar days before the applicable due date for payment;
- (b) such other date as is determined by the Issuer in its absolute discretion, and communicated to the 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, the ASX.

Wherever it is necessary to determine the Noteholder as at a Record Date, such determination will be made as of such time as the Issuer reasonably determines.

**Redemption** means the redemption of a Note by payment of its Redemption Price in accordance with these Note Terms and the words **Redeem**, **Redeemable** and **Redeemed** have a corresponding meaning.

**Redemption Date** in relation to a Note means the date for Redemption of that Note in accordance with these Note Terms.

**Redemption Price** means:

- (a) in respect of any Note to be Redeemed under clause 4.3, an amount equal to 100% of the Face Value of the Note together with any accrued (but unpaid) Interest on the Note up to (but excluding) the Redemption Date for the Note;
- (b) in respect of any Note to be Redeemed under clause 4.4, an amount equal to 101% of the Face Value of the Note together with any accrued (but unpaid) Interest on the Note up to (but excluding) the Redemption Date for the Note;
- (c) in respect of any Note to be Redeemed under clause 4.5, an amount equal to 100% of the Face Value of the Note together with any accrued (but unpaid) Interest on the Note up to (but excluding) the Redemption Date for the Note;
- (d) in respect of any Note to be Redeemed under clause 4.6(a)(ii) as a result of the occurrence of a Change of Control Event, an amount equal to 101% of the Face Value of the Note together with any accrued (but unpaid) Interest on the Note up to (but excluding) the Redemption Date for the Note; and
- (e) in respect of any other Note to be Redeemed on its Maturity Date or otherwise, an amount equal to 100% of the Face Value of the Note together with any accrued (but unpaid) Interest up to (but excluding) the Redemption Date for the Note.

**Register** means the register of Noteholders established and maintained under the Trust Deed and, where appropriate, includes:

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

(b) any branch register.

**Registrar** means Boardroom Pty Limited (ABN 14 003 209 836) or any other person appointed by the Issuer to maintain the Register and perform any payment and other duties in relation to the Notes.

**Related Bodies Corporate** has the meaning given to it in the Corporations Act.

**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.

**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.

**Second Step-up Date** means 30 September 2027.

**Second Step-up Interest Rate** means an Interest Rate of 6.50% per annum.

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. It includes any retention of title other than in the ordinary course of trading and a deposit of money by way of security but it excludes a charge or lien arising in favour of a Government Agency by operation of statute unless there is default in payment of moneys secured by that charge or lien.

**Special Resolution** means:

- (a) a resolution passed at a meeting of the Noteholders duly called and held under the Meeting Provisions:
  - (i) by more than 66⅔% 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 more than 66⅔% of the votes cast; or
- (b) a resolution passed by postal ballot or written resolution, then by Noteholders representing (in aggregate) more than 66⅔% of the principal amount of the Notes outstanding as at the Notification Date or (in the case of resolutions passed by postal ballot) outstanding as at the date determined by the Issuer, with the Trustee's approval.

**Statement of Holding** means a statement of holding (in the form determined by the Issuer and the Registrar from time to time) which sets out details of the number of Notes inscribed in the Register in the Noteholder's name as at the date specified in the statement.

**Subsidiary** has the meaning given to it 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 any tax (including any consumption tax, goods and services tax (including GST) and value added tax), levy, impost, charge, withholding, deduction, fee or duty (including stamp and transaction duties) assessed, levied, imposed or collected by a government authority and any related interest, penalty, fine or expense in connection with it, except if imposed on, or calculated having regard to, the net income of a Noteholder or the Trustee.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), as the context requires.

**Tax Authority** means any government, state, municipal, local, federal or other fiscal, revenue, customs or excise authority, body or official, having power to tax.

**Tax Event** occurs where, on or after the Issue Date for a Note, the Issuer receives an opinion of a nationally recognised legal counsel or tax adviser in Australia, experienced in such matters, that as a result of a change in a law or in the application or interpretation of a law there is a more than insubstantial risk that:

- (a) any payment to a Noteholder under the Note will be subject to an amount of withholding or deduction in respect of any Taxes or other governmental charges for which the Issuer must pay an Additional Amount; or
- (b) payment of an amount of interest on the Note will not be, or will cease to be, allowed as a deduction for Australian tax purposes.

**Tax Redemption Notice** has the meaning given to it in clause 4.4(a).

**Total Debt** means, at any time, the outstanding principal amount of all Financial Indebtedness of the Issuer as at such time.

**Trust Deed** means the trust deed entitled 'Trust Deed relating to the NCC Convertible Note Trust (2021)' dated on or about 9 March 2021, and entered into by the Issuer and the Trustee.

**Trustee** means Melbourne Securities Corporation Ltd (ABN 57 160 326 545) in its capacity as trustee of the Trust or any successor or such other person appointed in accordance with the Trust Deed as trustee of the Trust.

**VWAP** for the purpose of determining adjustments to the Conversion Price in respect of a Note to be Converted means the average of the daily volume weighted average sale prices of the Ordinary Shares sold on the ASX during the period specified in these Note Terms, excluding any transaction defined in the applicable Clearing System 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, Ordinary Shares have been quoted on the ASX as cum dividend or cum any other distribution or entitlement which is not extended to a Noteholder, and the Note will convert into Ordinary Shares after the date those Ordinary Shares no longer carry that entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted cum dividend, or cum any other distribution or entitlement will be reduced by an amount (**Cum Value**) equal to:



- (i) in the case of a dividend or other distribution, the amount of that dividend or distribution (with no value included for any franking credits);
  - (ii) in the case of an entitlement which is traded on the ASX on any of those Business Days, the volume weighted average price of all such entitlements sold on the ASX during the relevant period on the Business Days on which those entitlements were traded; or
  - (iii) in the case of an entitlement not traded on the ASX during the relevant period, the value of the entitlement as reasonably determined by the Directors.
- (b) where, on some or all of the Business Days in the relevant period, Ordinary Shares have been quoted ex dividend, ex distribution or ex entitlement, and the Note will convert into Ordinary Shares which carry entitlements for the holders of those Ordinary Shares to receive the relevant dividend, distribution or entitlement, the VWAP on the Business Days on which those Ordinary Shares have been quoted ex dividend, ex distribution or ex entitlement will be increased by the Cum Value.

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## Schedule 3      Meeting Provisions

*The following are the Meeting Provisions referred to in the Note Terms, and which will apply to meetings of Noteholders and are applicable to the convening of meetings of Noteholders and the passing of resolutions by them.*

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### 1 Definitions

#### 1.1 Incorporation of other defined terms

Terms which are defined in the Note Terms or the Trust Deed to which these Meeting Provisions are a schedule have the same meaning when used in these provisions unless the same term is also defined in these provisions, in which case the definition in these provisions prevails. Subject to this, the remaining "Interpretation" provisions of the Trust Deed apply to these provisions.

#### 1.2 Definitions

Where used in this Schedule 3, unless the contrary intention appears:

**Circulating Resolution** means a written resolution of Noteholders made in accordance with paragraph 10 of these Meeting Provisions.

**Meeting** means a meeting of Noteholders convened in accordance with these Meeting Provisions (whether originally convened or resumed following an adjournment).

**Notification Date** means the date stated in the copies of a Circulating Resolution sent to Noteholders, which must be no later than the date on which that resolution is first notified to Noteholders.

**Proxy** means, in relation to any Meeting, a person appointed to vote under a Proxy Form other than:

- (a) any such person whose appointment has been revoked and in relation to whom the Registrar has been notified in writing of such revocation by the time which is 48 hours before the time fixed for such Meeting; and
- (b) any such person appointed to vote at a Meeting which has been adjourned for want of a quorum and who has not been re-appointed to vote at the Meeting when it is resumed.

**Proxy Form** means a notice in writing in the form available from the Registrar.

**48 hours** means 2 consecutive periods of 24 hours.

#### 1.3 Noteholders at a specified time

The time and date for determining the identity of a Noteholder who may be counted for the purposes of determining a quorum or attend and vote at a Meeting, or sign a Circulating Resolution (notwithstanding any subsequent transfer of such Note or entries in the Register), is at the close of business in the place where the Register is maintained on the date which is 8 days before either the date of the Meeting or, for a Circulating Resolution, the Notification Date (as applicable).

#### **1.4 Notes held by the Issuer and its Related Body Corporate**

For the purposes of determining whether the provisions relating to quorum, Meeting and voting procedures have been complied with in determining whether a resolution has been passed at any Meeting, or for determining whether any resolution is passed without holding a Meeting, any Notes held by the Issuer or any Related Body Corporate of the Issuer will be treated as not being on issue.

#### **1.5 Consistency with Part 2L.5 of the Corporations Act**

In respect of any Meeting that is called under Part 2L.5 of the Corporations Act, these Meeting Provisions will be taken to be modified to the extent necessary, and only to that extent, to conform these provisions to the provisions of Part 2L.5 of the Corporations Act that are applicable to that Meeting.

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## **2 Power to call meetings**

### **2.1 Ability to convene Meetings**

Each of the Trustee or the Issuer may at any time call a Meeting.

### **2.2 Issuer's duty to call a Meeting**

In accordance with section 283EA(1) of the Corporations Act, the Issuer must call a Meeting if:

- (a) the Noteholders holding at least 10% or more of the aggregate Face Value of the Notes then outstanding request the Issuer to do so;
- (b) the direction is given to the Issuer in writing at its registered office; and
- (c) the purpose of the Meeting is to:
  - (i) to consider the financial statements that were laid before the last preceding annual general meeting of the Issuer; and/or
  - (ii) to give the Trustee directions in relation to the exercise of any of the Trustee's powers.

### **2.3 Trustee's duty to call a Meeting**

Subject to being indemnified and/or secured to its satisfaction, the Trustee must call a Meeting if Noteholders holding at least 10% or more of the aggregate Face Value of the Notes then outstanding request the Issuer to do so in writing. Every Meeting called by the Trustee will be held on a date, and at a time and place, approved by the Trustee.

### **2.4 Venue**

- (a) All Meetings must be held in Australia unless the Issuer and the Trustee agree otherwise.
- (b) A Meeting may be held at two or more venues using any technology (including audio conference, video conference or any other means of communication) that gives the Noteholders as a whole a reasonable opportunity to participate at the same time.

## 2.5 Virtual Meetings

- (a) For all purposes each Noteholder, or its Proxy, who participates in a Meeting using technology which permits it to attend via audio or video conference, instead of attending physically in person (a **Virtual Meeting**):
  - (i) is taken to be present for the purpose of:
    - (A) such Virtual Meeting; and
    - (B) the computation of quorum and relevant majority, and
  - (ii) may exercise all rights and powers that it would have been able to exercise if it was physically present at such Virtual Meeting.
- (b) Notwithstanding the notice requirements in paragraph 3.2, the notice for the Virtual Meeting must expressly state:
  - (i) the Noteholders will not be entitled to attend or vote in person;
  - (ii) the teleconference or video-conference facility that will be used for the Virtual Meeting; and
  - (iii) how to join, attend and vote at the Virtual Meeting.
- (c) The notice of the Virtual Meeting does not need to state the physical location of the chairman at the time of the Virtual Meeting.
- (d) A Noteholder entitled to attend and vote at a Virtual Meeting may attend the Virtual Meeting provided that such Noteholder complies with any steps prescribed by the party calling for the Virtual Meeting.
- (e) Prior to the start of a Virtual Meeting, the chairman must verify the identity of each attending Noteholder and depending on the verification outcome allow or refuse such Noteholder to attend and vote at the Virtual Meeting.
- (f) Each Virtual Meeting must comply with the following criteria to the satisfaction of the person convening the Meeting:
  - (i) the chairman is able to ascertain and verify the identity of the attending Noteholders, monitor the Virtual Meeting (including by ensuring that all attendees have the opportunity to ask questions or provide comments) and acknowledge and announce to the attending Noteholders the outcome of the voting process;
  - (ii) the person drawing up the minutes must ensure adequate minutes are being taken and not recorded, and must note any technological issues encountered during the Virtual Meeting;
  - (iii) each Noteholder attending is able to effectively communicate with one another, participate in the Virtual Meeting at the same time, follow and intervene in the discussions and vote the items on the agenda in real time; and
  - (iv) the votes must be tallied, registered and declared at the end of the Virtual Meeting.

- (g) The chairman may take such action as it thinks necessary to maintain the proper and orderly conduct of any Virtual Meeting and has all powers necessary or desirable for such purposes.
  - (h) Each Virtual Meeting is taken to take place where the chairman is physically located at the time of the Meeting.
- 

### **3 How to call a Meeting**

#### **3.1 Period of notice**

Unless otherwise agreed in writing by each Noteholder, at least 10 Business Days' notice in writing (15 Business Days' notice for a Special Resolution) of any Meeting must be given by the party convening the Meeting to:

- (a) each Noteholder (or in the case of a Note registered as being owned jointly, the person whose name appears first in the Register);
- (b) the auditors of the Issuer;
- (c) the Registrar;
- (d) if the notice is not given by the Trustee (with a copy to the Trustee), the Trustee; and
- (e) if the notice is not given by the Issuer, the Issuer.

#### **3.2 Contents of notice**

The notice must:

- (a) specify who called the Meeting, the place, day and hour of the Meeting;
- (b) specify the general nature of the business to be transacted at the Meeting, but it is not necessary to specify in the notice the precise terms of the resolutions to be proposed; and
- (c) explain how Noteholders may appoint Proxies and state that Proxies may be appointed until 48 hours before the Meeting but not after that time.

#### **3.3 Omission to give notice**

- (a) The accidental omission to give notice (or any amending or supplementary notice) to, or the non-receipt of notice by, a Noteholder does not invalidate the Meeting nor any resolution passed or other proceedings at a Meeting.
- (b) Where notice of a Meeting convened by the Issuer is not received by the Trustee or a notice of Meeting convened by the Trustee is not received by the Issuer, all business transacted and resolutions passed at the Meeting will (unless the party who did not receive notice otherwise agrees) be void and of no effect.
- (c) An omission to give notice of a Meeting to, or the non-receipt of notice by, the Trustee or the Issuer within the period specified in this paragraph 3, invalidates a Meeting unless the Trustee or the Issuer (as the case may be):
  - (i) refuses to accept delivery of that notice; or

- (ii) by notice to the other, waives its right to compliance with this paragraph 3.

### **3.4 Location of Meetings**

All Meetings must be held in Australia unless the Issuer and the Trustee agree otherwise.

### **3.5 Provision of notices**

Clause 19 (*Notices*) of the Trust Deed applies to these provisions as if it was fully set out in these provisions.

### **3.6 Calculation of period of notice**

If a notice must be given within a certain period of days, the day on which the notice is given, and the day on which the Meeting is to be held, are not to be counted in calculating that period.

### **3.7 Registered Noteholders**

Noteholders who are or become registered as Noteholders less than 21 days before a Meeting will not receive notice of that Meeting.

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## **4 Chairman**

### **4.1 Appointment of a chairman**

- (a) The person who calls a Meeting must nominate in writing a chairman to chair the Meeting. The chairman of a Meeting need not be a Noteholder and may be an officer or employee of the Issuer or the Trustee. The chairman of an adjourned Meeting need not be the same person as was the chairman of the Meeting from which the adjournment took place.
- (b) If a Meeting is held, and
  - (i) a chairman has not been nominated for that Meeting; or
  - (ii) the person nominated is not present within 15 minutes after the time appointed for the holding of such Meeting or is unable or unwilling to chair the Meeting,

the Issuer may appoint a chairman unless the meeting was convened by the Trustee, in which case the Noteholders or Proxies present may appoint a chairman.

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## **5 Quorum**

### **5.1 Number for a quorum**

A quorum for any Meeting is at least 2 Noteholders present in person or by joining a Virtual Meeting or by Proxy together holding (or in the case of Proxies, representing Noteholders who hold), at least 10% of the Notes.

## **5.2 Determination of numbers present**

In determining how many Noteholders are present, each individual attending as a Proxy is to be counted, except that:

- (a) where a Noteholder has appointed more than one Proxy, only one of those Proxies is to be counted;
- (b) where an individual is attending both as a Noteholder and as a Proxy on behalf of another Noteholder, that individual is to be counted once in respect of each such capacity; and
- (c) where an individual is attending as a Noteholder and has also appointed a Proxy in respect of the Notes it holds, those individuals are to be counted only once.

## **5.3 Requirement for a quorum**

No business (other than the choosing of a chairman) may be transacted at a Meeting and the adjournment Meeting, unless the requisite quorum is present at the commencement of business. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the Meeting proceeds to consider each subsequent item of business unless the chairman of the Meeting (*on the chairman's own motion or at the request of a Noteholder or Proxy who is present (if such request is accepted by the chairman in its sole and absolute discretion)*) declares otherwise.

## **5.4 If quorum not present**

- (a) If within 30 minutes after the time appointed for a Meeting a quorum is not present, the Meeting:
  - (i) if convened on the requisition of Noteholders, is dissolved; and
  - (ii) in any other case, is adjourned until a date, time and place the chairman appoints.
- (b) The date of the adjourned meeting must be no earlier than 14 days in respect of any meeting from which the adjournment took place and no later than 42 days after the date of the meeting from which the adjournment took place. At such an adjourned Meeting (which was adjourned pursuant to paragraph 5.4(a)), the Noteholders together holding at least 5% of the Notes who are present either in person or by Proxy constitute a quorum and are entitled to pass the resolution.

## **5.5 If quorum not present at adjourned meeting**

- (a) If a quorum is not present within 30 minutes after the time appointed for any adjourned Meeting, the chairman may dissolve the Meeting.
- (b) If the Meeting is not dissolved in accordance with this provision, the chairman may, with the consent of, and must, if directed by the Holders present at the Meeting, adjourn the Meeting to a new date (being not less than 14 days after the adjourned meeting), time or place. Only business which might validly (but for the lack of required quorum) have been transacted at the original Meeting may be transacted at the adjourned Meeting.

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## **6 Adjournment of a Meeting**

### **6.1 When a meeting may be adjourned**

The chairman of a Meeting may, with the consent of, and must, if directed by, any Meeting by Noteholder Resolution, adjourn the Meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the Meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

### **6.2 Business at adjourned meeting**

- (a) Other than where a Meeting is adjourned because of a lack of a quorum pursuant to paragraph 5.4(a), the chairman of a meeting may, with the consent of, and must, if directed by, any Meeting by Noteholder Resolution, adjourn the Meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the Meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) Only business which might validly (but for the lack of required quorum) have been transacted at the original Meeting may be transacted at the adjourned Meeting.

### **6.3 Notice of adjourned meeting**

It is not necessary to give notice of an adjournment unless the meeting is adjourned because of a lack of a quorum. In that case, unless otherwise agreed in writing by each Noteholder, the person calling the meeting must give five days' notice of the adjourned meeting to each person entitled to receive notice of a meeting under these provisions. The notice must state the quorum required at the adjourned meeting but need not contain any further information.

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## **7 Voting**

### **7.1 Voting on a show of hands**

- (a) Every resolution put to a vote at a Meeting must be decided on a show of hands unless a poll is properly demanded in accordance with paragraph 7.2.
- (b) A declaration by the chairman that a resolution has been carried, or carried by a particular majority, or lost or not carried by any particular majority, is conclusive evidence of the fact. Neither the chairman nor the minutes need to state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

### **7.2 When is a poll properly demanded**

- (a) A poll may be properly demanded by:
  - (i) the chairman;
  - (ii) the Issuer;
  - (iii) the Trustee; or



- (iv) one or more persons who alone or together hold (or represent Noteholders who hold) Notes representing in aggregate at least 5% of the principal amount of the outstanding Notes in respect of which the meeting has been called.
- (b) The poll may be properly demanded before a vote is taken or before or immediately after the voting results on a show of hands are declared.

### **7.3 Conduct of poll**

A poll demanded on the election of a chairman or on a question of adjournment will be taken at the Meeting without adjournment in such manner as the chairman may direct. A poll demanded on any other question will be taken either immediately or at such time (not being more than 5 days from the date of the Meeting) and place as the chairman may direct. The result of the poll is a resolution of the Meeting at which the poll was demanded. No notice need be given of a poll not taken immediately. A demand for a poll may be withdrawn. The demand for a poll will not prevent the continuance of a Meeting for the transaction of any business other than the question on which the poll has been demanded.

### **7.4 Entitlement to vote**

A Noteholder (or, in the case of a Note registered as being owned jointly, the person whose name appears first in the Register) may be present and vote in person at any meeting in respect of the Notes or be represented by Proxy.

### **7.5 Number of votes**

Except where these provisions otherwise provide, at any Meeting convened for the purpose of considering a resolution:

- (a) on a show of hands, each Noteholder present in person and each person present as a Proxy on behalf of a Noteholder who is not present at the meeting has one vote (and, if a Noteholder is present as a Proxy on behalf of another Noteholder, that Noteholder has one vote in respect of each such appointment and any person present as a Proxy on behalf of more than one Noteholder, that Proxy has one vote in respect of each such capacity); and
- (b) on a poll, each Noteholder or Proxy present has one vote in respect of each principal amount equal to the denomination of the Notes in respect of which the meeting is being held of Notes which are registered in that person's name or in respect of which that person is a Proxy.

Without affecting the obligations of the Proxies named in any Proxy Form, any person entitled to more than one vote need not use all votes (or cast all the votes) to which it is entitled in the same way.

### **7.6 Casting vote**

If the votes are equal (whether on a show of hands or a poll), the chairman has a casting vote in addition to the vote or votes (if any) to which the chairman is otherwise entitled as a Noteholder or Proxy.

#### **7.7 Entitlement to attend**

The only persons entitled to attend and speak at any Meeting or any adjourned meeting are the Issuer, the Trustee, the Registrar, the Noteholders (and/or their Proxies) and their respective financial and legal advisers and the chairman.

#### **7.8 Joint Noteholders**

In the case of joint Noteholders, the joint Noteholder first named in the Register (or if that person does not vote, the next named joint Noteholder, or if that person does not vote, the next named and so forth) may be present and vote in person at any Meeting or be represented by Proxy.

#### **7.9 Objections to right to vote**

A challenge to a right to vote at a Meeting:

- (a) may only be made at the Meeting; and
- (b) must be determined by the chairman, whose decision is final.

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### **8 Proxies**

#### **8.1 Appointment of Proxy**

A Noteholder entitled to attend and vote at a Meeting may appoint a Proxy to attend and act on that Noteholder's behalf in connection with such Meeting by signing a Proxy Form.

#### **8.2 Signing of Proxy Form**

The Proxy Form must be signed by:

- (a) the appointor;
- (b) the appointor's attorney duly authorised in writing; or
- (c) if the appointor is a corporation, either under its common seal or under the hand of an officer or attorney so authorised.

#### **8.3 Validity of Proxy Forms**

A Proxy Form is valid for so long as the Notes to which they relate are registered in the name of the appointor but not otherwise. Unless revoked, or the contrary is stated on a Proxy Form, any appointment of a Proxy under a Proxy Form in relation to a Meeting will remain in force in relation to any resumption of such Meeting following an adjournment; provided, however, that no such appointment of a Proxy in relation to a Meeting originally convened which has been adjourned for want of a quorum will remain in force in relation to such Meeting when it is resumed. Any person appointed to vote at such a Meeting must be re-appointed under a Proxy Form to vote at the Meeting when it is resumed.

#### **8.4 Rights of Proxy**

A Proxy appointed to attend and vote for a Noteholder at a Meeting has the same rights as the Noteholder to speak at the Meeting and to vote (but only to the extent allowed by the appointment). The Proxy will be taken to include the right to demand or join in demanding a poll at the relevant Meeting.

#### **8.5 Proxy need not be a Noteholder**

A person named in any Proxy Form may, but need not be a Noteholder, and may be an attorney, officer, employee, contractor, agent, representative of, or otherwise connected with, the Issuer, the Registrar or the Trustee. Each Proxy has the same rights as the appointor to vote whether on a show of hands, to speak, and be reckoned in the quorum.

#### **8.6 Lodgement of Proxy Form**

The Proxy Form under which a Proxy is appointed together with the original or certified copy of the power of attorney or other authority under which it is signed must be deposited with the Registrar or at such places (as the Trustee or the Issuer (with the approval of the Trustee) may in the notice convening the Meeting direct (or if no such place is appointed, then at the office of the Trustee)) at least 48 hours, or any shorter period determined by the Issuer from time to time, before the time appointed for the Meeting (or in the case of a poll before the time appointed for taking of the poll) at which the Proxy proposes to vote. A certified copy of each Proxy Form and satisfactory proof of due execution (if applicable) must, if required by the Issuer, be produced by the Proxy at the Meeting or adjourned Meeting but the Issuer is not obliged to investigate or be concerned with the validity of, or the authority of the Proxy named in any Proxy Form. If a Proxy Form does not comply with this paragraph 8, the appointment of the relevant Proxy will be treated as invalid.

#### **8.7 Effect of death, insanity, revocation or transfer on vote under Proxy**

Any vote in accordance with the terms of a relevant Proxy Form is valid even if, before the Proxy votes, the relevant Noteholder:

- (a) is insane at the time,
- (b) has died,
- (c) revokes or amends the Proxy Form or any instruction in relation to it; or
- (d) transfers the Notes in respect of which the Proxy was appointed,

unless a written notice of that death, insanity, revocation, amendment or transfer is received by the Issuer (or a person appointed to act on behalf of the Issuer specified in the notice of Meeting) at the office specified in the notice of Meeting at least 48 hours before the Meeting at which the Proxy Form was used.

#### **8.8 Voting by Joint Noteholders and persons of unsound mind**

- (a) If Notes are held jointly, the most senior Noteholder's vote either in person or by Proxy is accepted to the exclusion of the other Joint Noteholders.
- (b) The most senior Noteholder is the person whose name appears first on the Register.
- (c) If a Noteholder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Noteholder's committee or Trustee or other person who properly has the management of the Noteholder's estate may exercise any rights of the Noteholder in relation to a Meeting as if the committee, Trustee or other person were the Noteholder.

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## 9 Minutes

### 9.1 Minute books

The Issuer must keep minute books in which it records:

- (a) minutes of all proceedings and resolutions at every Meeting; and
- (b) Circulating Resolutions.

### 9.2 Minutes must be signed

The Issuer must ensure that minutes of a meeting are signed by the chairman of the meeting or by the chairman of the next meeting.

### 9.3 Minutes and Circulating Resolutions conclusive

A minute or Circulating Resolution that is recorded and signed in accordance with these provisions is, unless the contrary is proved, conclusive evidence:

- (a) of the matters contained in it;
- (b) that the meeting has been duly convened and held (or copies of the proposed Circulating Resolution have been duly sent and signed); and
- (c) that all resolutions have been duly passed.

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## 10 Circulating Resolutions

- (a) The Noteholders may without a Meeting being held:
  - (i) pass a Noteholder Resolution, if within one month after the Notification Date Noteholders representing more than 50% of the aggregate principal amount of the Notes outstanding as at the Notification Date sign a document stating that they are in favour of the resolution set out in that document; or
  - (ii) pass a Special Resolution, if within one month after the Notification Date Noteholders representing more than 66⅔% of the aggregate principal amount of the Notes outstanding as at the Notification Date sign a document containing a statement that they are in favour of the resolution set out in that document.
- (b) Separate copies of a document may be used for signing by Noteholders if the wording of the Circulating Resolution and statement is identical in each copy.
- (c) The Circulating Resolution is passed when the last Noteholders whose vote is required to pass a resolution within the required threshold in paragraph (a) above signs the Circulating Resolution.
- (d) The accidental omission to give a copy of a Circulating Resolution to, or the non-receipt of a copy by, any Noteholders does not invalidate the Circulating Resolution.

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## 11 Resolutions passed by Single Noteholder

If there is only one Noteholder, that Noteholder may pass a resolution by recording it and signing the record or by being the sole signatory to a Circulating Resolution.

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## 12 Matters requiring Special Resolution

The following matters require a Special Resolution:

- (a) any proposal to modify a provision of the Trust Deed or the Note Terms, except for:
  - (i) any amendment which may be made without the consent of Noteholders under clause 16.1 (*Amendments without the consent of the Noteholders*) of the Trust Deed; and
  - (ii) any amendment which may be made with the consent of Noteholders by way of a Noteholder Resolution, including under clause 16.2 (*Amendments with the consent of the Noteholders*) of the Trust Deed, and does not require a Special Resolution;
- (b) the exchange or substitution of the Notes for, or the conversion of the Notes into notes or other obligations or securities of the Issuer or any other body corporate which is not expressly permitted under the Note Terms;
- (c) the authorisation of any person to do anything necessary to give effect to a Special Resolution;
- (d) the exercise of any right, power or discretion under the Trust Deed or the Note Terms that expressly requires a Special Resolution;
- (e) the appointment of any committee (which need not consist of Noteholders) to represent the interests of the Noteholders and the conferring on the committee of any rights, powers or discretions which the Noteholders may exercise by a Special Resolution;
- (f) the power to authorise the Trustee to take or to refrain from taking any action which may be taken by the Trustee if such action is required by the Note Terms or the Trust Deed to be taken only by Special Resolution;
- (g) the power to sanction the release by the Trustee of the Issuer from any obligation under the Note Terms or the Trust Deed either unconditionally or upon such conditions as the Trustee may arrange with the Issuer (as the case may be);
- (h) subject to paragraph (a) above and any provisions in the Note Terms or the Trust Deed, the power to sanction agreement by the Trustee to any modification or compromise of any of the rights of all the Noteholders against the Issuer, including any amendment of the Note Terms or the Trust Deed;
- (i) subject to any provisions in the Note Terms or the Trust Deed, the power to give any release or waiver in respect of anything done or omitted by the Issuer or any breach or default by the Issuer or an authorisation of any proposed breach or non-performance;

- (j) the power to authorise the Trustee to sanction on behalf of all the Noteholders any scheme for reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation;
  - (k) any proposal to modify the dates of maturity or redemption of any Notes or any date on which a payment of principal or interest is due on any Notes;
  - (l) a reduction or cancellation of an amount payable, or a change to the method of calculating an amount payable or a date of payment in respect of the Notes (other than where the reduction, cancellation or change is expressly provided for in the Note Terms or where the modification increases the amount payable);
  - (m) any proposal to modify the Face Value in respect of the Notes; and
  - (n) any proposal to modify the provisions concerning the quorum required at any meeting of Noteholders or the majority required to pass the Special Resolution.
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### **13 Matters requiring a Noteholder Resolution**

The Noteholders have the power exercisable by a Noteholder Resolution to do or approve anything for which a Special Resolution is not required.

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### **14 Effect and notice of resolution**

- (a) A Noteholder Resolution or a Special Resolution passed at a Meeting duly convened and held (or a Circular Resolution passed by the Noteholders in writing or a postal ballot) in each case in accordance with these Meeting Provisions is binding on all Noteholders, whether present or not present at the Meeting (or signing or not signing the Circulating Resolution or participating or not participating in the postal ballot), and each such Noteholder is bound to give effect to it accordingly. The passing of any such resolution is conclusive evidence that the circumstances of such resolution justify its passing.
  - (b) The Issuer must give notice (or procure that notice be given) to the Noteholders and the Trustee of the result of the voting on a resolution within 14 days of the result being known. However, failure to do so does not invalidate the resolution.
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### **15 Postal ballot**

The Noteholders may without a Meeting being held, pass a Noteholder Resolution or Special Resolution by postal ballot in accordance with further regulations as the Issuer may determine and the Trustee approves, which regulations, unless the Trustee and the Issuer agree otherwise, must reflect as closely as may be practicable, the provisions of this Schedule 3.

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### **16 Further procedures and regulations**

The Trustee (without the consent of the Issuer or the Noteholders) or the Issuer (without the consent of the Trustee or the Noteholders) may prescribe by notice to the Noteholders (with a copy to the Trustee or the Issuer (as applicable)) such further regulations regarding the holding of Meetings and attendance and voting at them and/or the provision of a Circulating Resolution as the Trustee or the Issuer (as applicable) may in its sole and absolute discretion determine.

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## Schedule 4      Form of Conversion Notice

### *Conversion Notice*

To: NAOS Emerging Opportunities Company Limited

In copy to: Boardroom Pty Limited

This Conversion Notice relates to the issue by NAOS Emerging Opportunities Company Limited (ABN 58 161 106 510) as issuer of A\$23,000,000 redeemable, unsecured, convertible notes issued under the NCC Convertible Note Trust (2021) established by a trust deed dated 9 March 2021 signed by the Issuer and Melbourne Securities Corporation Ltd (ABN 57 160 326 545) as trustee.

Capitalised terms used in this Conversion Notice have the meanings given in the Note Terms unless otherwise defined in this Notice.

Under clause 3.2 of the Note Terms, I/We give notice of the exercise of my/our right to convert [all/ [insert number]] of the Notes\* referred to in the attached Statement of Holding.

Signature(s)

Date

*\* The Noteholder must convert Notes with an aggregate Face Value of at least the lesser of the Noteholder's holding of Notes and A\$10,000.00. If no figure is inserted, this Conversion Notice will be invalid.*

*\*\* In the case of joint holders, all must sign.*

*Trustees must sign personally in accordance with relevant authority. This notice form must be completed in the name(s) of the trustee(s) and not in the name of the trust.*

***Where this notice is executed by a corporation it must be executed in accordance with section 127(1) of the Corporations Act or in accordance with its constitution, charter, enabling statute or other constituent document or under a power of attorney. In each such case, the original of the relevant document, or a copy certified as true to the satisfaction of the Issuer, must accompany the form. If this notice is signed under power of attorney, the attorney certifies that it has not received notice of revocation of that power of attorney. A certified copy of that power of attorney must be lodged with this notice.***

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## Schedule 5      Form of Noteholder Redemption Election Notice

### *Noteholder Redemption Election Notice*

To:    NAOS Emerging Opportunities Company Limited (ABN 58 161 106 510) (**Issuer**)

In copy to: Boardroom Pty Limited

[*insert name of Noteholder*] (**Noteholder**), being the registered holder of the Notes, elects to redeem all Notes held by the Noteholder in accordance with clause 4.6 of terms and conditions of issue of the Notes attached to the certificate for the Note (**Note Terms**) due to the occurrence of a Noteholder Redemption Event – [*insert name of the event*] under the Note Terms.

By signing this notice, the Noteholder:

- (a)    confirms its agreement to the redemption set out in this notice in accordance with the Note Terms; and
- (b)    authorises the Issuer to pay it the Redemption Price in accordance with the Note Terms.

Enclosed with this notice is the Statement of Holding for the Notes to be redeemed.

Unless otherwise indicated, capitalised terms used in this notice have the same meaning as in the Note Terms.

Dated:

For and on behalf of  
[*insert name of Noteholder*]




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## Execution page

Executed as a deed.

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Signed sealed and delivered by NAOS  
Emerging Opportunities Company Limited in  
accordance with section 127(1) of the  
Corporations Act 2001 (Cth) by and in the  
presence of:



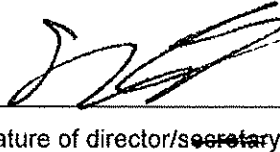
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Signature of director

WARWICK EVANS

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Name of director (print)



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Signature of director/secretary

SEBASTIAN EVANS

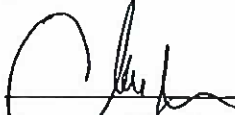
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Name of director/secretary (print)

Executed as a deed.

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Signed sealed and delivered by Melbourne  
Securities Corporation Ltd acting as Trustee in  
accordance with section 127(1) of the  
Corporations Act 2001 (Cth) by and in the  
presence of:

  
\_\_\_\_\_  
Signature of director

MATTHEW FLETCHER  
\_\_\_\_\_  
Name of director (print)

  
\_\_\_\_\_  
Signature of director/secretary

SHELLEY BROWN  
\_\_\_\_\_  
Name of director/secretary (print)