

1 July 2024

ASX Limited  
20 Bridge Street  
Sydney NSW 2000

By: e-lodgement

Attention: Company Announcements Office

## Amended CVC Notes 2 Trust Deed

CVC Limited (ASX:CVC) (**CVC**) today announces that the CVC Notes 2 Trust Deed (**Trust Deed**) has been amended in conjunction with, and to facilitate, the launch of a wholesale offer of new redeemable, unsecured, non-convertible notes to raise up to approximately A\$15 million.

A copy of the amended Trust Deed (as amended by a Supplemental Trust Deed dated 1 July 2024) is attached to this announcement, and a copy is also available at <https://www.cvc.com.au/investor-information/cvc-limited/corporate-governance>.

**This release has been approved by the Board of CVC Limited.**

– Ends –

CVC Limited  
Melbourne Securities Corporation Limited

Trust Deed  
Relating to the CVC Note 2 Trust

Conformed copy of the Trust Deed dated 15 March 2023 as amended by way of Supplemental Trust  
Deed dated 1 July 2024

The Allens contact for this document is James Darcy

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

**Contents**

<b>1</b>	<b>Definitions and interpretation</b>	<b>1</b>
1.1	Terms of Notes	1
1.2	Definitions	1
1.3	Interpretation	4
1.4	Business Day	6
1.5	References to statutory provisions	6
1.6	General compliance provision	6
1.7	Inconsistency with ASX Listing Rules	6
1.8	Inconsistency with Terms	7
1.9	Unsecured notes	7
1.10	References to principal and interest	7
<b>2</b>	<b>Issue</b>	<b>7</b>
2.1	Issue	7
2.2	General issue terms	7
2.3	Interest payment dates	8
2.4	Register	8
2.5	Deed and Terms are binding	8
2.6	Binding nature of relationship	8
2.7	Limit on Holders' rights	8
2.8	Holder's right to take action	9
2.9	Individual responsibility of Holders	9
2.10	Knowledge of the Trustee	9
2.11	Issuer dealing with Notes	9
<b>3</b>	<b>Covenant to pay</b>	<b>9</b>
3.1	Covenant to pay	9
3.2	Method of payment	9
<b>4</b>	<b>Trustee</b>	<b>10</b>
4.1	Appointment	10
4.2	Constitution of Trust	10
4.3	Declaration of trust	10
4.4	Duration	10
4.5	Name of Trust	10
4.6	Beneficiaries	10
<b>5</b>	<b>Payment of commission, brokerage etc.</b>	<b>10</b>
<b>6</b>	<b>Representations and warranties</b>	<b>11</b>
6.1	Representations and warranties by the Issuer	11
6.2	Issuer's representations and warranties repeated	12
6.3	Representations and warranties by the Trustee	12
<b>7</b>	<b>Issuer's covenants</b>	<b>12</b>
7.1	Covenants	12
<b>8</b>	<b>Reports</b>	<b>14</b>
<b>9</b>	<b>Default</b>	<b>15</b>
9.1	Enforcement of Transaction Documents	15
9.2	Enforcement at the direction of Holders	16
9.3	Enforcement by Holders	17
9.4	Application of money received by the Trustee	17

<b>10</b>	<b>Trustee's powers and duties</b>	<b>18</b>
10.1	Power	18
10.2	Exercise of powers	18
10.3	Interest of Holders	18
10.4	Duties	18
10.5	Delegation	18
10.6	Trustee not to interfere	19
10.7	Directions	19
10.8	Experts	19
10.9	Trustee's discretion	19
10.10	Independent rights	20
10.11	Exclusion	20
10.12	Trustee not bound to give notice of default	20
10.13	Confidential information	21
10.14	Trustee may assume certain matters	21
10.15	Trustee refraining from acting	21
10.16	Exclusions of liability	21
10.17	Issuer not concerned with authority of Trustee	22
10.18	Protection of third parties	22
10.19	Capacity as Holder	22
10.20	Trustee may rely on communications	22
10.21	Dispute or ambiguity	22
10.22	Holders' own decision to invest	23
10.23	Materially prejudicial to the interests of Holders as a whole	23
10.24	Survival	23
<b>11</b>	<b>Trustee's undertakings</b>	<b>23</b>
<b>12</b>	<b>Fees and expenses</b>	<b>23</b>
12.1	Fee	23
12.2	Expenses	24
12.3	Liquidation	24
12.4	Priority	24
12.5	Goods and Services Tax	24
12.6	Refund	25
<b>13</b>	<b>Trustee's indemnity</b>	<b>25</b>
13.1	Corporations Act	25
13.2	Indemnity	25
13.3	Retention of money	25
13.4	Indemnity unaffected by unrelated breaches	26
<b>14</b>	<b>Trustee's liability and obligations</b>	<b>26</b>
14.1	Limitation	26
14.2	Acts of attorneys, agents etc	27
14.3	Obligations	27
14.4	Consents	27
14.5	Knowledge of Trustee	27
14.6	Trustee capacity	27
14.7	Acting on directions	28
14.8	Paramount	28

14.9	Certificate by Issuer	29
14.10	Evidence of claims	29
14.11	Trustee not bound to give notice	29
14.12	No monitoring	30
14.13	No Obligation to Act Until Receipt of Funds	31
<b>15</b>	<b>Retirement and removal of Trustee</b>	<b>31</b>
15.1	Notice by Trustee	31
15.2	New appointment by Issuer	31
15.3	Retiring Trustee to appoint	31
15.4	Effect	31
15.5	Removal for breach or by Holders' Resolution	31
15.6	Removal under statutory provisions	32
15.7	Discharge of obligations	32
15.8	Notice to ASIC	32
15.9	Appointment of a successor	32
<b>16</b>	<b>Issue of Notes</b>	<b>33</b>
16.1	Terms of Issue	33
16.2	Entry in the Register	33
16.3	Title and transfer	34
16.4	Payments	34
16.5	Unpaid monies	34
<b>17</b>	<b>Registers</b>	<b>34</b>
17.1	Register	34
17.2	Registered owners	34
17.3	No notice of any trust	34
17.4	Inscription conclusive	34
17.5	Particulars	35
17.6	Inspection	35
17.7	Closure of Register	35
17.8	Change of details	35
17.9	Situs	35
17.10	Trustee may accept correctness	36
17.11	Copy to the Trustee	36
17.12	Issuer not liable for mistakes	36
17.13	Manifest error	36
17.14	No certificate	36
17.15	Clearing System Sub-register	36
17.16	Clearing System Holder	36
17.17	Rectification of Register	36
17.18	Appointment of Registrar	37
17.19	Replacement of Registrar	37
<b>18</b>	<b>Meetings of Holders</b>	<b>37</b>
18.1	Meeting Provisions	37
18.2	Directions to Trustee	37
<b>19</b>	<b>Changing the Deed</b>	<b>38</b>
19.1	Amendment of the Terms	38
19.2	Amendment of the Trust Deed	38

19.3	Amendment of Series of Notes	38
19.4	Effecting a change	39
19.5	Materially prejudicial to the interests of Holders as a whole	39
19.6	Interpretation	39
19.7	Terms	39
<b>20</b>	<b>Confidentiality</b>	<b>39</b>
20.1	Financial information of Issuer	39
20.2	Confidential Information	39
20.3	Confidentiality undertaking	40
<b>21</b>	<b>Validity</b>	<b>40</b>
21.1	Validity of Notes issued	40
21.2	Continuing obligations	40
<b>22</b>	<b>Discharge and release</b>	<b>40</b>
22.1	Release	40
22.2	Non-avoidance	41
22.3	Confirmation	41
22.4	Termination	41
<b>23</b>	<b>Untraceable Holders</b>	<b>41</b>
<b>24</b>	<b>Notices</b>	<b>42</b>
24.1	Service of notices	42
24.2	Service of notices on the Issuer and the Trustee	42
24.3	Holders	42
24.4	Notice to transferor binds transferee	43
24.5	Service on deceased Noteholders	43
24.6	Joint Holders	43
24.7	Effective on receipt	43
24.8	Deemed receipt - general	44
<b>25</b>	<b>Service of process</b>	<b>44</b>
<b>26</b>	<b>Invalid or unenforceable provisions</b>	<b>44</b>
<b>27</b>	<b>Applicable law</b>	<b>44</b>
<b>28</b>	<b>General provisions</b>	<b>44</b>
28.1	Waiver	44
28.2	Stamp duty	44
28.3	Consents	45
28.4	Counterparts	45
28.5	Indemnities	45
28.6	Continuing performance	45
28.7	Remedies	45
28.8	Privacy	45
<b>29</b>	<b>Inspection of this Deed and copies of this Deed</b>	<b>46</b>
<b>30</b>	<b>Further action</b>	<b>46</b>
<b>Schedule 1</b>		<b>47</b>
	Terms of Notes	47
<b>Schedule 2</b>		<b>69</b>
	Rules relating to meetings of Holders	69

**This Deed** is made on 15 March 2023

## Parties

- 1 **CVC Limited** (ABN 34 002 700 361) of Level 37, Gateway, 1 Macquarie Place Sydney NSW 2000 (the **Issuer**).
- 2 **Melbourne Securities Corporation Limited** (ABN 57 160 326 545) of Level 2, 395 Collins Street, Melbourne, Victoria 3000 (the **Trustee**).

## Recitals

- A The Issuer wishes to issue redeemable, unsecured, non-convertible, unsubordinated notes (**Notes**) under this Deed.
- B The Trustee has agreed, on the terms and conditions contained in this Deed, to act as trustee under this Deed for the benefit of the Holders of the Notes.
- C The Issuer may, subject to the Terms, issue other redeemable, unsecured, non convertible, unsubordinated notes (including more than one Series of the Notes) under this Deed.

**It is agreed** as follows.

## 1 Definitions and interpretation

### 1.1 Terms of Notes

Capitalised terms defined in Schedule 1 have the same meaning when used in this Deed, unless this Deed provides otherwise.

### 1.2 Definitions

In this deed:

**Accounts** means, in respect of any period, the audited or auditor reviewed (as applicable):

- (a) statement of financial position or balance sheet as at the end of that period;
- (b) statement of financial performance or profit and loss statement for that period; and
- (c) cash flow statement for that period,

of the Issuer provided, or to be provided, to the Trustee under this Deed together with any statements, reports (including any directors' and auditors' reports) and notes attached to or intended to be read with any of them;

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

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

**Business Day** has the meaning given to that term in the ASX Listing Rules;

**Business Hours** means between 9am and 5pm 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 20;

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

**Face Value** means \$100.00 per Note or such other amount for the face value of the Note as may be specified in the 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;

**Holder** means a person whose name is for the time being registered in the Register as the holder of a Note from time to time

**Holders' Resolution** means:

- (a) a resolution passed at a meeting duly called and held (or by postal ballot) in accordance with the Meeting Provisions and:
  - (i) carried by a majority consisting of greater than 50% of the persons voting at the meeting on a show of hands; or
  - (ii) if a poll is duly demanded, by a majority of the votes cast by the Holders (or Holders of a Series) present at the meeting in person (including virtually), by attorney, by proxy or by representative and entitled to vote; or
- (b) a resolution passed by postal ballot or written resolution under the Meeting Provisions by Holders representing greater than 50% of the aggregate Face Value of all of the Notes that are outstanding or, in the case of a ballot or written resolution of the Holders of a Series, all of the Notes that are outstanding in that Series;

**Initial Registrar** means Registry Direct Limited ABN 35 160 181 840;

**Issue Date** means, in respect of a Note, the date on which that Note is or is to be issued;

**Jurisdiction** means the State of New South Wales;

**Liquidation** includes receivership or other appointment of a controller, deregistration, compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangements or compromise with creditors or bankruptcy;

**Marketable Securities** has the same meaning as the expression 'marketable securities' in s9 of the Corporations Act;

**Material Adverse Effect** means a material adverse effect on the ability of the Issuer to perform its obligations under any Transaction Document;

**Meeting Provisions** means the rules relating to meetings of Holders contained in Schedule 2;

**Modification** means a modification, alteration, cancellation, amendment or addition and the words **Modify** and **Modified** bear their corresponding meanings;

**Moneys Owning** 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 Holder or the Trustee on a Holder's behalf (whether alone or not) for any reason whatsoever under or in connection with any Transaction Document. It includes:



- (a) the aggregate of the Face Value of all Notes and any Interest payable on the Notes and any other moneys payable to the Holders under or pursuant to this Deed (and the 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 any Transaction Document, or as a result of a breach of or default under or in connection with any Transaction Document,

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

**Notes** means a debt obligation issued or to be issued by the Issuer pursuant to this Deed;

**Officer's Certificate** means a certificate signed by a director of the Issuer;

**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;

**Register** means the Register of Holders 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 the Initial Registrar, or any other person appointed by the Issuer (with such appointment notified to the Trustee) to maintain the Register and perform any payment and other duties as specified in that agreement;

**Related Body Corporate** has the meaning given in s50 of the Corporations Act;

**Series** means a series of Notes issued under this Deed;

**Share** means an ordinary share in the capital of the Issuer and **Shareholder** means a holder of one or more Shares;

**Special Resolution** means:

- (a) a resolution passed at a meeting of the Holders of a Series or of all the Holders (as the case may be) duly called and held under the Meeting Provisions:
  - (i) by at least 75% of the persons voting on a show of hands (unless paragraph below applies); or
  - (ii) if a poll is duly demanded, by a majority consisting of at least 75% of the votes cast by the Holders (or Holders of a Series) present at the meeting in person (including virtually), by attorney, by proxy or by representative and entitled to vote; or
- (b) a resolution passed by postal ballot or written resolution under the Meeting Provisions by Holders representing (in aggregate) at least 75% of the aggregate Face Value of all of the Notes that are outstanding or, in the case of a ballot or written resolution of the Holders of a Series, all of the Notes that are outstanding in that Series;

**Statutory Obligation** means any obligation of any kind imposed on the Trustee under applicable law, practice, regulation, ruling, confirmation, advice or action that represent the official requirements of any Government Agency, ASIC, ASX or the law in force in New South Wales, Australia in relation to the Trustee's role under this Deed or the Notes;

**Terms** means the terms and conditions set out in Schedule 1 or any other conditions, as the case may be, under which Notes are issued from time to time pursuant to this Deed;

**Transaction Document** means:

- (a) this Deed; and
- (b) each Note;

**Trust** means the 'CVC Note 2 Trust' established under this Deed;

**Trust Deed** or **Deed** means this deed relating to the CVC Note 2 Trust as amended or supplemented from time to time;

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

- (a) the amount of A\$10 held by the Trustee under clause 4.3;
- (b) the right to enforce the Issuer's duty to pay the Moneys Owing on the Notes on the due date for payment and to repay the Face Value on each Note in accordance with the Terms;
- (c) the right to enforce the Issuer's obligation to pay all other amounts payable under the Notes;
- (d) any charge or security for repayment of the Notes (if applicable);
- (e) the right to enforce any other duties that the Issuer has under the Terms, this Deed or Chapter 2L of the Corporations Act;
- (f) any property representing the proceeds of sale of any property forming part of the Trust Fund;
- (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 Limited (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 Company** means a body corporate eligible to be trustee under s283AC of the Corporations Act; and

**Trustee Related Company** means a Related Body Corporate of the Trustee.

### 1.3 Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document (including this Deed) includes all schedules or annexes to it;
- (d) a reference to a clause or paragraph is to a clause or paragraph of this Deed provided that a reference to a clause in the Terms is to the correspondingly numbered term and a reference in the Terms to the 'Trust Deed' is to this Deed;

- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to 'Australian dollars', 'AUS\$', 'A\$' or '\$' is a reference to the lawful currency of Australia;
- (g) a reference to time is to Melbourne time;
- (h) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code, rule, directive or law (however described) includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or other similar expressions;
- (l) 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;
- (m) an Event of Default is subsisting if it has not been remedied or waived in writing;
- (n) 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;
- (o) use of a term (including **Moneys Owning**) 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;
- (p) terms used in the Corporations Act have the same respective meanings when used in this Deed; and
- (q) a reference to the 'fraud', 'negligence' or 'wilful default' of the Trustee:
  - (i) means the fraud, negligence or wilful default of the Trustee and of its officers and employees; and
  - (ii) does not include any circumstances where the Trustee, or its officers or employees fail to act due to lack of instructions or directions or lack of proper or clear instructions or directions from the appropriate Holders as required to be given under this Deed or any other Transaction Document;
- (r) a reference to 'wilful default' in relation to the Trustee means any wilful failure to comply with, or wilful breach by, the Trustee of any of its obligations under this Deed other than a failure or breach which:
  - (i) arises as a result of a breach of this Deed by a person other than:
    - (A) the Trustee; or
    - (B) any other person referred to in paragraph 1.3(r) in relation to the Trustee;or
  - (ii) is in accordance with a lawful court order or direction or required by law; or
  - (iii) is in accordance with any proper instruction or direction of the Holders given at a meeting of Holders convened pursuant to the Meeting Provisions.

#### 1.4 Business Day

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

#### 1.5 References to statutory provisions

A reference to a statute or statutory provision includes:

- (a) a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision;
- (b) a statute or statutory provision which has been amended, extended, consolidated or replaced by the statute or statutory provision; and
- (c) subordinate legislation made under the statute or statutory provision including an order, regulation, or instrument.

#### 1.6 General compliance provision

- (a) A provision of this Deed which is inconsistent with a Statutory Obligation (including a provision of the Corporations Act) does not operate to the extent of that inconsistency.
- (b) Clause 1.6 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 clause 1.6 or clause 10, to the extent a provision of this Deed breaches or contravenes, or if complied with would result in a breach or contravention of:
  - (i) a Statutory Obligation of the Trustee or any other party; or
  - (ii) a right, power, authority, discretion or remedy conferred on the Trustee by law, this Deed is taken not to contain that provision.
- (d) Without limiting the generality of this clause 1.6, 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 1.6 prevails over all other provisions of this Deed including any that are expressed to prevail over it.

#### 1.7 Inconsistency with ASX Listing Rules

- (a) Despite anything to the contrary in this clause 1.7, this clause 1.7 has effect subject to clause 1.6.
- (b) This Deed is to be interpreted subject to the ASX Listing Rules and the ASX Settlement Operating Rules and accordingly, if the Notes are quoted on ASX, the following clauses apply:
  - (i) despite anything contained in this Deed, if the ASX Listing Rules prohibit an act being done, the act shall not be done;
  - (ii) nothing contained in this Deed prevents an act being done that the ASX Listing Rules require to be done;
  - (iii) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);

- (iv) if the ASX Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
  - (v) if the ASX Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision; and
  - (vi) if any provision of this Deed is or becomes inconsistent with the ASX Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.
- (c) The obligations imposed by this clause are additional to those imposed by any other clause of this Deed.

## **1.8 Inconsistency with Terms**

Unless the Terms otherwise provide, if there is any inconsistency between the provisions of the Terms and this Deed, then, to the maximum extent permitted by law, the provisions of this Deed will prevail.

## **1.9 Unsecured notes**

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

## **1.10 References to principal and interest**

In this Deed, unless the contrary intention appears:

- (a) any reference to "principal" is taken to include the Face Value of a Note payable at Redemption, and any other amount in the nature of principal payable in respect of the Notes under the Terms; and
- (b) any reference to "interest" is taken to include any amount in the nature of interest payable in respect of the Notes under the Terms.

## **2 Issue**

### **2.1 Issue**

The Issuer may:

- (a) issue Notes to any person on the terms of this Deed and the Terms by registering the person as the Holder of the Notes; and
- (b) designate Notes issued at different times (whether or not on the Terms set out in Schedule 1) as different Series or as part of a Series already on issue.

### **2.2 General issue terms**

The Notes are direct, redeemable, unsecured, non-convertible and unsubordinated debt obligations of the Issuer constituted by, and owing under, this Deed and issued on and subject to the Terms. The obligations of the Issuer in respect of each Note:

- (a) constitute separate and independent acknowledgments of the indebtedness of the Issuer;
- (b) are subject to the terms of this Deed (including the Terms);
- (c) are not convertible into Shares; and
- (d) rank equally 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 Terms.

### 2.3 Interest payment dates

Each Series of Notes issued will have common Interest payment dates.

### 2.4 Register

Entitlement to a Note is determined by inscription in the Register and on such inscription, a Note will be deemed to be issued.

### 2.5 Deed and Terms are binding

- (a) Holders (and any persons claiming through or under a Holder) are deemed to have notice of, and be bound by, this Deed and the Terms. No Noteholder or person claiming through a Noteholder may claim any benefit under this deed and the Terms unless it agrees to be so bound.
- (b) Holders 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 Terms and Chapter 2L of the Corporations Act, in its capacity as trustee of the Trust.
- (c) This Deed and the Terms are binding on the Issuer and the Trustee.
- (d) It is a fundamental condition of a Holder receiving any of the rights or benefits in connection with this Deed or the Notes that the Holder performs all of the obligations and complies with all restrictions and limitations applicable to it under this Deed and the Terms.
- (e) This Deed:
  - (i) is the trust deed for the Trust; and
  - (ii) is the trust deed in respect of the Notes required by Part 2L.1 of Chapter 2L of the Corporations Act.
- (f) This Deed is to be interpreted so as not to give rise to the operation of section 283DB(1) of the Corporations Act.

### 2.6 Binding nature of relationship

Each Holder is taken to have agreed:

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

### 2.7 Limit on Holders' rights

All of the rights against the Issuer in connection with the Notes are held by the Trustee for the Holders. Accordingly, subject to clause 2.8:

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

## **2.8 Holder's right to take action**

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

## **2.9 Individual responsibility of Holders**

Each Holder is taken to have acknowledged for the benefit of the Trustee that the Holder 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.

## **2.10 Knowledge of the Trustee**

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

## **2.11 Issuer dealing with Notes**

The Issuer may purchase or otherwise deal with any Notes. All un-matured Notes purchased by the Issuer may be cancelled or resold despite any rule of law or equity to the contrary. All liabilities and obligations of the Issuer in connection with any Notes which are repurchased and cancelled by the Issuer, are discharged.

# **3 Covenant to pay**

## **3.1 Covenant to pay**

The Issuer covenants to the Trustee (on behalf of the Holders) to pay the Moneys Owing from time to time in respect of the Notes as and when due, in accordance with the Terms or otherwise as required in this Deed. The Trustee hereby directs the Issuer to pay the Moneys Owing directly to the Holders, unless:

- (a) the Issuer is in Liquidation;
  - (b) the Issuer is directed by the Trustee by the giving of notice to that effect not less than five Business Days' prior to the scheduled date for the making of the payment; or
  - (c) 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. The payment of an amount due under a Note to either the Holder at the time the amount is due, or to the Trustee, discharges the obligation of the Issuer to pay that amount under that Note.

## **3.2 Method of payment**

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

- (b) Any money payable on or in respect of a Note must be paid in Australian dollars only:
  - (i) by cheque sent by prepaid post on the payment date, at the risk of the registered Holder, to the Holder (or to the first named joint holder of the Note) at its address appearing in the Register at the close of business on the Record Date;
  - (ii) by any method of direct credit determined by the Issuer, to such bank account as may be nominated by the Holder Register; or
  - (iii) by any other method of transferring money approved and agreed by the Issuer and the Trustee from time to time.
- (c) Every cheque referred to in clause 3.2(b) is sent at the risk of the person entitled to the money represented by the cheque.
- (d) Payment is treated as made when the cheque is posted or the deposit is made in accordance with this clause 3.2.

## **4 Trustee**

### **4.1 Appointment**

The Trustee is appointed, and agrees to act, as the trustee of the Trust established under this clause 4.

### **4.2 Constitution of Trust**

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

### **4.3 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 of itself and the Holders from time to time on the terms of this Deed.

### **4.4 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 the Issuer is discharged and released from its liabilities, obligations and covenants under clause 22.

### **4.5 Name of Trust**

The Trust will be known as the 'CVC Note 2 Trust'.

### **4.6 Beneficiaries**

Subject to the rights of the Trustee, the Holders are the persons beneficially entitled to the Trust Fund from time to time and at all times on the terms of this Deed. They hold that beneficial entitlement as equitable tenants in common, provided that joint Holders of a Note shall hold as between themselves and the Issuer as joint tenants.

## **5 Payment of commission, brokerage etc.**

The Issuer may pay a commission, procuration fee, brokerage or any other fees to any person for applying or underwriting applications for or obtaining applications for Notes.



## 6 Representations and warranties

### 6.1 Representations and warranties by the Issuer

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

- (a) **(Validity)**: the Issuer is a corporation validly existing under the Corporations Act.
- (b) **(Power)**: the Issuer has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authority)**: the Issuer has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (d) **(Legally binding obligations)**: each Transaction Document to which the Issuer is expressed to be a party constitutes a valid and legally binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (e) **(Execution and performance)**: the execution and performance by the Issuer of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents do not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement which is binding on it or its assets.
- (f) **(Prospectus)**: that as far as the Issuer is aware (having made all reasonable enquiries):
  - (i) the information contained in the Prospectus is true and complete in all material respects and is not misleading or deceptive, or likely to mislead or deceive, in any material respect; and
  - (ii) no act, matter or thing has occurred since the date of the Prospectus that renders such information misleading or deceptive or likely to mislead or deceive in any material respect and which has not, within a reasonable time after that occurrence, been the subject of a supplementary or replacement prospectus.
- (g) **(No taxes payable)**: no ad valorem stamp, transaction, registration or similar taxes are payable in connection with the execution, delivery, performance or enforcement of the Transaction Documents or the transactions contemplated by them (other than any duty that may be payable in relation to the issue of the Notes themselves).
- (h) **(Immunity)**: the Issuer does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).
- (i) **(Approvals)**: each consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption of, from or required by, a government agency or required by law which is required in relation to:
  - (i) the execution, delivery, issue and performance by the Issuer of the Transaction Documents and the transactions contemplated by those documents; or
  - (ii) the validity and enforceability of those documents,

has been obtained or effected, is in full force and effect, and that it has complied with, and paid all applicable fees for, each of them.

- (j) **(No misrepresentation)**: all information (other than any assumptions, estimates or forecasts) provided by the Issuer to the Trustee is true in all material respects at the date of this Deed and the Issue Date for any Note or, if later, when provided and that neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by this Deed or the Note, was or is misleading, by omission or otherwise.
- (k) **(Law)**: the Issuer has complied with all applicable laws where a failure to comply would have, or would be likely to have, a Material Adverse Effect.
- (l) **(No Event of Default)**: no event has occurred which constitutes an Event of Default.
- (m) **(Solvency)**: there are no reasonable grounds to suspect that the Issuer is insolvent or unable to pay its debts as and when they become due and payable.

## 6.2 Issuer's representations and warranties repeated

Each representation and warranty in clause 6.1 is deemed to be repeated by the Issuer on each Issue Date by reference to the facts and circumstances existing on that date, other than the representation in clause 6.1(f) in respect of an issue of Notes for which a Prospectus is not required under Part 6D.2 of the Corporations Act.

## 6.3 Representations and warranties by the Trustee

The Trustee makes the following representations and warranties to the Issuer on the date of this Deed as follows.

- (a) **(Status)** The Trustee is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) **(Power, authority and due authorisation)** The Trustee:
  - (i) has the power to enter into, and exercise its rights and perform and comply with its obligations (if any) under the Transaction Documents;
  - (ii) has taken or will take all necessary action to authorise the entry into this Deed and the performance of all its obligations under it; and
  - (iii) meets the requirements of a trustee as provided in ss283AC(1) and 283AC(2) of the Corporations Act.
- (c) **(Binding obligations)** The obligations assumed by it in this Deed are legal, valid, binding and enforceable under their terms, subject to any necessary stamping and registration and subject to principles of equity and laws affecting creditors rights generally and legal reservations in any legal opinions delivered in connection with the issue of the Notes.

## 7 Issuer's covenants

### 7.1 Covenants

The Issuer covenants with the Trustee that it will:

- (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) keep proper books of account (in accordance with current Australian Accounting Standards and practice) and enter into those books particulars of all dealings and transactions in relation to its business;
- (c) so long as any of the Notes remain outstanding, promptly notify the Trustee after it becomes aware that any material condition of this Deed cannot be fulfilled or after it becomes aware of any Material Adverse Effect or the occurrence of any Event of Default or a breach by the Issuer of Chapter 2L of the Corporations Act, such notice to be given as soon as practicable and in any event, within five Business Days of the Issuer becoming so aware;
- (d) 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;
- (e) comply with this Deed, including the Terms and the Meeting Provisions;
- (f) comply with its reporting and other obligations to the Trustee, ASIC, ASX and to the Holders under the Corporations Act, the ASX Listing Rules and the ASX Settlement Operating Rules;
- (g) use all reasonable endeavours to ensure that the Notes are, within a reasonable time after their issue, quoted on the ASX and that such quotation is maintained (including paying all necessary listing fees), and it will provide to the ASX such information as the ASX may require in accordance with the ASX Listing Rules and any other ASX requirements (including providing the ASX with a copy of this Deed);
- (h) comply with all laws which may be binding on it with respect to the Notes, including the Corporations Act, the ASX Listing Rules and the ASX Settlement Operating Rules (if applicable), and do anything reasonably requested by the Trustee to enable the Trustee to comply with the Corporations Act (or any other laws binding on the Trustee with respect to the Trust or the Notes), the ASX Listing Rules and the ASX Settlement Operating Rules (if applicable);
- (i) provide the Trustee (at the Issuer's own cost) with a valuation of its assets and business conducted on a 'going concern' basis, as and when reasonably requested by the Trustee for the purpose of ensuring that the Trustee can comply with Chapter 2L of the Corporations Act;
- (j) provide or cause to be provided (without charge and within the required time or, in all other cases, promptly) to the Trustee:
  - (i) within 120 days after the close of each of the Issuer's financial years, a copy of the Issuer's audited Accounts lodged with ASIC in respect of that financial year;
  - (ii) within 90 days after the first half of each of the Issuer's financial years, a copy of the Issuer's unaudited Accounts lodged with ASIC in respect of that half year, which have been reviewed by the Issuer's auditor in accordance with s309(4) of the Corporations Act;

- (iii) by the time required under s318 of the Corporations Act, any reports required to be given to the Trustee or Holders under that section;
  - (iv) by the time required under s283BF of the Corporations Act, any reports required to be given to the Trustee under that section;
  - (v) to the extent not already provided under this clause 7, within seven days of issue, copies of all reports and releases made by the Issuer to the ASX (if any);
  - (vi) to the extent not already provided under this clause 7, copies of any document, form or report which are lodged with ASIC and which are material to the Trustee's role as trustee of the Trust at the same time any such document, form or report is given to ASIC;
  - (vii) copies of all documents and notices given to Holders at the same time any such document or notice is given to the Holders;
  - (viii) 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;
  - (ix) notice in writing of the occurrence of any Event of Default, which notice must provide details of the nature and circumstances of the default; and
  - (x) any other information reasonably required by the Trustee for the purposes of this Deed;
- (k) ensure that any Accounts provided to the Trustee:
- (i) comply with the requirements of the Corporations Act;
  - (ii) comply with current accounting practice except to the extent disclosed in them and with all applicable laws; and
  - (iii) give a true and fair view of the matters with which they deal;
- (l) comply with all statutory and regulatory requirements applicable to it and its obligations under this Deed and the Terms;
- (m) carry on and conduct the business of the Issuer in a proper and efficient manner and will procure that each of its subsidiaries will carry on and conduct their businesses in a proper and efficient manner;
- (n) adequately insure or cause to be insured its assets against all material risks properly insurable against the standard of a prudent business person including professional indemnity insurance cover for an amount not less than \$2 million;
- (o) 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 Terms;
- (p) promptly, after redeeming or cancelling any Notes in full, give the Trustee details of that redemption or cancellation; and
- (q) 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.

## 8 Reports

- (a) The Issuer must comply with its reporting obligations to the Trustee, ASIC and to the Holders 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 2023 as the last day of the relevant first quarter.

- (b) In addition to its reporting obligations under the Corporations Act, within one month of the end of each Interest Period until and including the Maturity Date, the Issuer must give the Trustee an Officer's Certificate certifying the following:
  - (i) full particulars of the Moneys Owing as at the relevant Interest Payment Date including details of the:
    - (A) Face Value; and
    - (B) Interest Rate;
  - (ii) full particulars of and the Face Value of all Notes Redeemed for which a Holder Redemption Notice (as defined in clause 4.3 of Schedule 1) has been given in that Interest Period;
  - (iii) whether all amounts which have become due and payable on or prior to that Interest Payment Date have been duly paid in respect of all Notes;
  - (iv) whether all amounts which are secured by an encumbrance over any of the Issuer's assets and which have become due and payable on or prior to that Interest Payment Date have been duly paid; and
  - (v) as at the date of the Officer's Certificate, that the net assets of the Issuer would be sufficient to pay all Moneys Owing.
- (c) The Issuer must notify the Trustee as soon as practicable if it holds shares in the Trustee or any Related Body Corporate of the Trustee.

## 9 Default

### 9.1 Enforcement of Transaction Documents

Despite any other provision of this Deed but subject to clause 9.2 and to the Corporations Act, the Trustee, despite knowledge of any breach (whether anticipatory or actual) or default under a Transaction Document (and whether of or in relation to any covenant, obligation, condition or other provision of a Transaction Document) or the occurrence of an Event of Default, may in its absolute discretion:

- (a) waive or excuse on any terms or conditions, or without imposing any terms and conditions, that breach or default (if the Trustee is reasonably satisfied that the default, including any Event of Default, will not materially prejudice the Holders' interests);
- (b) decide whether or not to take action to enforce the Transaction Documents as it sees fit in its absolute discretion including without limitation:
  - (i) if the Issuer breaches any of its obligations under this Deed or the Terms, the Trustee may, at its discretion and without further notice, bring such legal proceedings as it may think fit to enforce such obligations, including demand and require immediate payment of any Moneys Owing that remain unpaid and to commence legal proceedings against the Issuer to recover the same;
  - (ii) exercise any powers, rights or privileges conferred by law or equity under any Transaction Document or any other collateral deed or security;
  - (iii) exercise any of its powers under the Corporations Act;

- (iv) issue a default notice to the Issuer requiring that the default be remedied to the satisfaction of the Trustee; and
  - (v) take such other action as the Holders deem appropriate to recover the Moneys Owing;
- (c) not inform Holders of any breach or default (including any Event of Default if the Trustee is reasonably satisfied that the Event of Default will not materially prejudice the Holders' interests);
- (d) despite the knowledge of the Trustee of any breach or default, 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 Owing under this Deed), unless in any such case:
  - (i) the Trustee is directed to take action by a Holder's 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, proceedings, actions, claims and demands to which the Trustee may become liable as a result of such direction and all costs, charges and expenses (including rights of remuneration under this Deed) which may be incurred by the Trustee in connection with such direction, action or proceedings;
- (e) not 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 by another person of the breach or default, and until such a time the Trustee can 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 Holders in accordance with clause 18.

## 9.2 Enforcement at the direction of Holders

Provided the Trustee is first placed in funds to cover the costs associated with taking the action required, the Trustee must take action to enforce the Transaction Documents where all of the following conditions are satisfied:

- (a) it is directed as to the manner in which to take action by a Special Resolution of the Holders of the Notes or by Holders representing greater than 75% of the aggregate Face Value of all Notes then outstanding;
- (b) its liability is limited in a manner consistent with clauses 13.2, 14.1 and section 283DC of the Corporations Act; and
- (c) it is indemnified and/or secured to its satisfaction against all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action and any and all costs, charges, fees, expenses and liabilities which the Trustee may incur in accordance with clauses 13.2 and 14.1;
- (d) such action is permitted under this Deed and the Terms; and
- (e) the Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Trustee forms the view that such action is or could be inconsistent with this Deed, the 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 Holder 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 Holder Resolution or Special Resolution (as applicable).

### 9.3 Enforcement by Holders

- (a) 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 Holders. Accordingly, subject to clause 9.3(b):
  - (i) no Holder is entitled to directly enforce any rights, powers or remedies under this Deed or the Terms directly against the Issuer; and
  - (ii) the rights, powers or remedies of the Trustee under and in respect of this Deed and the Terms are exercisable and enforceable by the Trustee only. No Holder may exercise any of them (whether in its own name or the Trustee's name).
- (b) A Holder, or Holders, may only take action or proceedings against the Issuer or to enforce any provision of a Transaction Document following the making of a request in accordance with clause 9.2(a) if:
  - (i) the Trustee, having become bound to proceed in accordance with this Deed and the Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing; or
  - (ii) 30 Business Days have lapsed since the date on which the Holder, or Holders, gave notice to the Trustee that it, or they, intended to commence such action or proceedings (with such notice to specify the details of its claim and the basis of its claim) and the Trustee has not commenced such action or proceedings as a result of the request of the Holder, or Holders, made in accordance with clause 9.2(a),

in which case any such Holder 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 Holders and not the Trustee. The Holder, or Holders, must provide to the Issuer a copy of the notice referred to in clause 9.3(a) as soon as reasonably practicable.

### 9.4 Application of money received by the Trustee

- (a) All money received by the Trustee in respect of amounts payable under this Deed must, unless and to the extent attributable, in the opinion of the Trustee, to a particular Series of Notes, be apportioned equally and rateably between Holders of each Series of the Notes. All money received by the Trustee under this Deed must, to the extent attributable in the opinion of the Trustee to a particular Series of Notes or which are apportioned to such Series as aforesaid, be held by the Trustee upon trust to apply in the following order:
  - (i) first – 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 Terms and the Notes (including rights of remuneration under this deed), but remaining unpaid under or in connection with this Deed (including all remuneration payable to the Trustee); and
  - (ii) secondly - in payment of all fees, costs, charges, expenses and liabilities incurred by, or other amounts owing to, a Liquidator in carrying out its duties, discretions



- or functions under or in connection with the Notes, the Terms and this Deed, but remaining unpaid;
- (iii) thirdly – in or towards payment to Holders *pari passu* and rateably of all Moneys Owing in respect of the Notes of that Series, but remaining unpaid;
  - (iv) fourthly - in or towards payment equally and rateably of all amounts due but remaining unpaid in respect of the Notes of each other Series; and
  - (v) the balance (if any) to the Issuer.
- (b) In making any payments in accordance with clause 9.4(a)(iii) or 9.4(a)(iv), the Trustee shall have discretion to first pay either the Face Value or Interest owing on the Notes of the relevant Series in such order as the Trustee sees fit.
- 

## **10 Trustee's powers and duties**

### **10.1 Power**

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 Terms.

### **10.2 Exercise of powers**

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

### **10.3 Interest of Holders**

In exercising its powers, authorities and discretions under this Deed and the Terms, the Trustee will have regard to (subject to this Deed (including the Terms)) the interests of the Holders as a class and will not have regard to the interests of, and be responsible for the consequences of such exercise for, individual Holders 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 Terms.

### **10.4 Duties**

The Trustee must:

- (a) comply with its duties under Chapter 2L of the Corporations Act; and
- (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 Terms.

The provisions contained in this clause are for the benefit of Holders.

### **10.5 Delegation**

- (a) The Trustee, (without notice to the Issuer or any Holder) employ agents and attorneys, and may authorise and 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 its behalf, and delegating any trusts, powers or discretions vested in the Trustee under this Deed on such terms and conditions (including power to sub-delegate) as the Trustee may think fit.

- (b) Any person dealing with the Trustee or any delegate appointed under clause 10.5(a), is entitled to assume without further enquiry that such delegate has been duly appointed and such appointment remains in full force and effect.
- (c) The Trustee may act on the opinion, certificate, advice of or information obtained from any agent or delegate appointed under clause 10.5(a). The Trustee is not liable for any loss arising due to the acts or omissions of any delegate, attorney or agent (other than a Related Body Corporate).

#### **10.6 Trustee not to interfere**

Subject to this Deed, its general duties as trustee under statute (including the Corporations Act) and at general law, the Trustee must not interfere with the conduct of the ordinary business of the Issuer unless and until the Moneys Owing have become immediately due and payable as a result of a breach or default under this Deed (including an Event of Default) and the Trustee has become entitled, or has been duly directed by Holders, pursuant to the terms of this Deed to enforce the same. For the avoidance of doubt, nothing in this clause restricts or precludes the Trustee's rights to remuneration in clause 11 or the Trustee's right of indemnity in clause 13.

#### **10.7 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 Holder.

#### **10.8 Experts**

The Trustee may engage and rely and act upon (without enquiry), in accordance with the terms of this Deed, the advice or opinion or any information obtained from any barrister, solicitor, accountant, valuer, surveyor, broker, auctioneer or other expert whether engaged or appointed by the Issuer, the Trustee or by any one or more of the Holders and whether or not the advice, opinion or information so obtained is addressed to the Trustee or expressed to be for the benefit of the Trustee. The Trustee is not responsible for any loss occasioned by so engaging, relying or acting and will have no liability for having acted in accordance with such advice, opinion or information.

#### **10.9 Trustee's discretion**

Except where otherwise expressly provided for in 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 Terms in its absolute discretion;
- (b) as between itself and the Holders, all questions and matters of doubt arising in relation to this Deed and every such determination made in good faith (whether upon a question actually raised or implied in the acts or proceedings of the Trustee) shall be conclusive and shall bind all Holders, unless a court of competent jurisdiction otherwise orders; and
- (c) without limiting paragraphs (a) 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 any of those documents or any agreements referred to in those documents on such terms as it thinks fit, in any case without the approval of the Holders.

### 10.10 Independent rights

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

- (a) hold Notes, or any other Marketable Securities in or of the Issuer;
- (b) represent or act for, or contract with, individual Holders;
- (c) deal in any capacity with the Issuer or with any Related Body Corporate or associate of the Issuer;
- (d) commence, prosecute, vary, discontinue, abandon, waive or compromise any action, proceeding or claim on any terms or conditions as it thinks fit;
- (e) contract or enter into arrangements with itself acting in any capacity other than as Trustee; or
- (f) act in any capacity in relation to any other trusts,

provided 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.

### 10.11 Exclusion

- (a) Subject to the Corporations Act, all liabilities and responsibilities which may from time to time be imposed on the Trustee at law or in equity are, to the maximum extent permitted at law or in equity and except to the extent expressly provided to the contrary in this Deed, expressly waived and negated by the Holders and the Issuer.
- (b) The Trustee has no obligations or duties except those expressly set out in this Deed and the Transaction Documents to which it is a party and those arising under 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.
- (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 Holders, or adversely affects the exercise by the Trustee or the Holders of a right or remedy, under or relating to this Deed is excluded to the full extent permitted by law.
- (d) The appointment as trustee does not mean that the Trustee:
  - (i) is a trustee for the benefit of;
  - (ii) is a partner of; or
  - (iii) has a fiduciary duty to, or other fiduciary relationship with,any Holder (other than in its capacity as a Holder), the Issuer or any other person, except as provided in this Deed or the other Transaction Documents.

### 10.12 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.

**10.13 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.

**10.14 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.

**10.15 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.

**10.16 Exclusions of liability**

- (a) Subject to clause 10.16(b), neither the Trustee nor any of its directors, officers, employees or attorneys is liable to a Holder 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 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 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 Terms;
  - (iv) a failure by the Issuer to perform its obligations under this Deed or the Terms;
  - (v) any recital, statement, representation or warranty contained in this Deed, the 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 Terms, in each case, made by any person other than the Trustee;
  - (vi) the acts or omissions of a Liquidator; or
  - (vii) any action taken or not taken by the Trustee under this Deed or the Terms:
    - (A) in accordance with any instructions or directions from the appropriate Holders, with which the Trustee is required to comply; or
    - (B) in any manner, where this Deed or the Terms do not require instructions to be given to the Trustee.
- (b) This clause 10.16 does not exempt the Trustee nor any of its directors, officers, employees or attorneys from liability to a Holder or the Issuer:
  - (i) if the Trustee fails to follow the lawful directions of the appropriate Holders given in accordance with under this Deed or the Terms;

- (ii) if the Trustee fails to seek the required consent of the appropriate Holders, in any circumstance where that consent is required under this Deed or the 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 Holders required to be given under this Deed or the 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 Terms unless it gives its consent or approval as Trustee under this Deed or the Terms (as the case may be).

#### **10.17 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 Holders and, as between the Issuer and the Holders, any action taken by the Trustee concerning this Deed or the Terms is taken to be authorised by the appropriate Holders.

#### **10.18 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 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 Terms has been duly authorised by this Deed, the Terms and the appropriate Holders.

#### **10.19 Capacity as Holder**

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

- (a) has the same rights and obligations as the other Holders; 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.

#### **10.20 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.

#### **10.21 Dispute or ambiguity**

If there is any dispute or ambiguity in relation to any matter connected with the Notes, this Deed or the 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 10.8; 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.

## **10.22 Holders' own decision to invest**

Each Holder 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) (or in respect of an issue of Notes for which no Prospectus is required, on the basis of publicly available information);
- (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 14.12.

## **10.23 Materially prejudicial to the interests of Holders as a whole**

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

## **10.24 Survival**

The provisions of this clause 10 will survive the termination of this Deed and the Terms and any retirement or removal of the Trustee as trustee of the Trust.

# **11 Trustee's undertakings**

The Trustee must:

- (a) 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;
- (b) 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
- (c) 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 are held in a capacity other than as trustee of the Trust.

# **12 Fees and expenses**

## **12.1 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 including any services performed by it in relation to any default or restructure of the arrangements under this Deed. Fees payable by the Issuer to the Trustee are exclusive of GST.
- (b) In addition to the fee payable to the Trustee under clause 12.1(a), if the Trustee takes any enforcement action in relation to this Deed, the Issuer must pay to the Trustee, on demand from 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.
- (c) If the Trustee takes any action not covered by clause 12.1(b) and which is (in the Trustee's reasonable opinion) 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), the Issuer

must pay to the Trustee, on demand from 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.

## 12.2 Expenses

The Issuer must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed, the Terms and the Prospectus 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) of the Trustee or that any delegate of the Trustee reasonably incurs or incurred in connection with negotiating and executing this Deed, the Terms and the Prospectus and any subsequent consent, agreement, approval, waiver or amendment relating to this Deed, the Terms or the Prospectus;
- (b) all expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment, or similar process) the Trustee or any delegate of the Trustee reasonably incurred in connection with the Trustee or any delegate of the Trustee exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, the Terms or the Prospectus; 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 Terms;
  - (ii) the convening and holding of any meeting of Holders or the carrying out of any directions or resolutions of any such meeting; or
  - (iii) all actions taken under this Deed or the 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.

## 12.3 Liquidation

If the Issuer or any of its assets are placed in liquidation or a Liquidator is appointed to the Issuer or any of its assets, the Trustee is entitled to claim and receive from any Liquidator 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.

## 12.4 Priority

All amounts payable to the Trustee, including all costs, charges, expenses and liabilities incurred and payments made in or about the execution, administration or enforcement of the trusts of this Deed under this clause 12, must be paid in priority to any claim by any Holder and will continue to be payable until the trusts of this Deed are finally wound up and whether or not the trusts of this Deed are in course of administration by or under the order of any court. The Trustee may retain and pay to itself in priority to any claim by any Holder all such amounts out of any moneys for the time being in its hands upon the trusts of this Deed.

## 12.5 Goods and Services Tax

If any party:

- (a) reasonably decides that it is liable to pay GST on a supply that is made in connection with this Deed; and
  - (b) certifies to the recipient of the supply that it has not priced the supply to include GST,
- then the recipient of the supply agrees to pay that party an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

## **12.6 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 12.5, 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.

## **13 Trustee's indemnity**

### **13.1 Corporations Act**

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

### **13.2 Indemnity**

- (a) The Trustee's right of indemnity under this Deed and the Terms is subject to the Corporations Act. This Deed is to be interpreted so as not to give rise to the operation of section 283DB(1) of the Corporations Act.
- (b) To the maximum extent permitted by section 283DB of the Corporations Act, the Trustee, its officers, directors, employees and attorneys (together included in the defined term, 'Trustee' for the purposes of this clause 13.2) 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 it in the execution of the trusts of this Deed or the exercise of any of the powers, rights, authorities or discretions vested in the Trustee under this Deed, but this indemnity does not extend to:
  - (i) such cost, loss, liability, claims, demands, Taxes or expense that arises out of the Trustee's fraud, negligence or wilful default or breach of s283DA(a), (b), or (c) of the Corporations Act (where the Trustee fails to show the degree of care and diligence required of it as Trustee); or
  - (ii) any Taxes (excluding any GST) imposed on the Trustee's (or its officers, directors, employees or attorneys) remuneration for its services as trustee.
- (c) 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. The indemnity under this Deed is a continuing obligation, independent of the Issuer's other obligations under this Deed and continues after the Deed ends. It is not necessary for the Issuer, the Trustee or a Holder to incur an expense or make a payment before enforcing a right of indemnity under this Deed.

### **13.3 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 13.2.



### **13.4 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 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.

## **14 Trustee's liability and obligations**

### **14.1 Limitation**

- (a) The Trustee is not liable to the Issuer, any Holder or any other person in any capacity other than as trustee of the Trust.
- (b) Any liability arising under or in connection with this Deed or any other Transaction Document is limited to and can be enforced against the Trustee only to the extent to which the Trustee can be satisfied out of that part of the Trust Fund from which the Trustee is actually indemnified for the liability.
- (c) Neither the Issuer nor any Holder may not 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 (exception in relation to the property of the Trust).
- (d) The Issuer and each Holder waive each of their rights against the Trustee, and each releases the Trustee from any personal liability, in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this Deed or any other Transaction Document, which cannot be paid or satisfied out of any property held by the Trustee.
- (e) The provisions of this clause 14.1 will 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 Terms or by any other act or omission of the Issuer, the Noteholders or any other person.
- (f) The Issuer and each Holder each acknowledge that it is responsible for performing a variety of obligations under this Deed and any Transaction Document. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed or any other Transaction Document) will be considered fraud, negligence or wilful default of the Trustee for the purposes of this clause 14.1 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer, a Holder or any other person to fulfil its obligations under this Deed or any Transaction Document or by any other act or omission of the Issuer, a Holder or any other person.
- (g) This clause 14 applies despite any other provision of this Deed or any other Transaction Document and extends to all liabilities and obligations of the Trustee in any way



connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or any other Transaction Document.

#### **14.2 Acts of attorneys, agents etc**

No attorney, agent, receiver or receiver and manager appointed in accordance with any Transaction Document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any liability in excess of that contemplated in clause 14.1(a) and no act or omission of any such person will be considered fraud, negligence, wilful default or breach of s283DA(a), (b), or (c) of the Corporations Act of the Trustee for the purpose of clause 14.1(a).

#### **14.3 Obligations**

The Trustee is not obliged to do or refrain from doing anything under any Transaction Document (including incur any liability or convening any meeting of Holders) unless the Trustee's liability is limited in the same manner as set out in this clause 14.

#### **14.4 Consents**

The Trustee is not obliged to give any consent, approval or authorisation under this Deed 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 either by the Holders or from the Trust Fund against any loss or liability that it may incur as a result or, at the election of the Trustee, it is first placed in funds or is otherwise indemnified to its satisfaction sufficient to cover the costs that it may incur as a result.

#### **14.5 Knowledge of Trustee**

The Trustee will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any 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 the Transaction Documents having actual knowledge, actual awareness or actual notice of that thing, or grounds or reason to believe that 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).

#### **14.6 Trustee capacity**

- (a) In a Transaction Document, except where expressly provided to the contrary:
  - (i) 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 14.6(d) the Trustee is not liable to the Issuer, the Holders or any other person in any capacity other than as trustee of the Trust; and
  - (ii) 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.
- (b) The Trustee's duties and obligations to Holders are owed to Holders only in their capacity as Holders.
- (c) The Trustee has entered into this Deed and has undertaken or will undertake all covenants, terms and conditions on its part to be observed and performed in this Deed only in its capacity as trustee of the Trust and in no other capacity.

- (d) Any liability or right of indemnity in respect of any matter, thing, act or omission arising from this Deed actual, contingent or of some other kind (in this clause, **liability**) on the part of the Trustee:
- (i) is not personal;
  - (ii) is at all times limited to the property of the Trust; and
  - (iii) does not extend beyond money received by the Trustee for or on behalf of the Holders subject always to such payments, deductions or withholdings by the Trustee as authorised by this Deed,
- except to the extent that such liability arises from the Trustee's fraud, negligence, wilful default or breach of s283DA(a), (b), or (c) of the Corporations Act.
- (e) If the Issuer or any of the Holders do not recover all money owing to any of them as a result of the non-performance of any of the Trustee's obligations under this Deed or any Transaction Document, they may not seek to recover the shortfall by:
- (i) bringing proceedings against the Trustee in its personal capacity; or
  - (ii) applying to have the Trustee put into administration or wound up or applying to have a receiver or similar person appointed to the Trustee or proving in the administration or winding up of the Trustee.
- (f) The Issuer and the Holders acknowledge that:
- (i) the whole of this Deed and each other Transaction Document is subject to this clause 14; and
  - (ii) the Trustee will in no circumstances be required to satisfy any liability of the Trustee arising under, or for non-performance or breach of any obligations under this Deed or any Transaction Document out of any funds, property or assets other than the property of the Trust under the Trustee's control and in its possession as and when they are available to the Trustee to be applied in exoneration for such liability; and
  - (iii) if any liability of the Trustee is not fully satisfied out of the property of the Trust as referred to in this clause 14, the Trustee will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability to the extent, if any, that the property of the Trust has been reduced by reasons of fraud, negligence or wilful default by the Trustee in the performance of the Trustee's duties as trustee of the Trust.
- (g) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under this Deed or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or wilful default.

#### 14.7 Acting on directions

To the extent permitted by law, the Trustee is not liable to a Holder or the Issuer for acting in accordance with any Holders' Resolution or any Special Resolution or any other direction given by any Holder or Holders in accordance with this Deed or the Terms with which the Trustee is required to comply.

#### 14.8 Paramount

The provisions of this clause 14:

- (a) are paramount and apply regardless of any other provision of this Deed or any other instrument, even a provision which seeks to apply regardless of any other provision;
- (b) survive and endure beyond any termination of any Transaction Document for any reason;
- (c) are not severable from any Transaction Document; and
- (d) do not limit or adversely affect the powers of the Trustee, any receiver or attorney in respect of the Trust Fund.

#### **14.9 Certificate by Issuer**

- (a) The Trustee is entitled to:
  - (i) accept and rely upon a certificate which purports to be an Officer's Certificate 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 Holders 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 information, statement, certificate, report, balance sheet or account 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 knowledge and belief or similarly qualified) and opinions contained in any statement, certificate, report, balance sheet or account given pursuant to the provisions of, or in relation to, this Deed as conclusive evidence of the contents of it.
- (b) The Trustee is not bound to call for further evidence other than such certificate, statement, report, balance sheet or account nor to enquire as to the accuracy thereof and is not responsible for any costs, liabilities, expenses, claims, loss or damage that may be occasioned by its relying thereon.

#### **14.10 Evidence of claims**

- (a) 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, administrator or liquidator of the Issuer as to:
  - (i) the amounts of the claims of the creditors which have been admitted in any liquidation, dissolution or other winding up and which will not have been satisfied in full out of the other resources of the Issuer; and
  - (ii) the persons entitled to any amount under paragraph (a)(i) and their respective entitlements.
- (b) Any such certificate given by any such receiver, trustee, administrator or liquidator of the Issuer will be conclusive and binding on the Trustee and all Holders.

#### **14.11 Trustee not bound to give notice**

The Trustee is not bound to give notice to any person of the execution of this Deed 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.

## 14.12 No monitoring

Except to the extent required by the Corporations Act and notwithstanding any other provisions of this Deed or the Terms:

- (a) the Trustee has no obligation to assess, investigate or keep under review or monitor compliance by the Issuer of its covenants and obligations under this Deed or the Terms or any other activities, financial condition or status of the Issuer or provide to any person (including a Holder) any information with respect to the Issuer (whenever coming into its possession), including provide notice to any Holder of any breach by the Issuer of any provision of this Deed or the Terms;
- (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 Holder 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) request information or otherwise 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 investigate the adequacy, accuracy or completeness of any information provided by the Issuer; or
  - (ii) except as specifically required under this Deed, furnish any notices, information, reports or accounts to a Holder but may in its discretion do so.
- (d) If any monitoring obligations of any kind are imposed on the Trustee under applicable law or by way of ASIC instrument in relation to this Deed or any Note (**Obligations**), any performance by the Trustee of those Obligations will, if permitted by law or by ASIC, be deferred for a period of 30 days, during which period:
  - (i) the Trustee may seek any further information or advice (including without limitation legal advice) before performing the Obligations;
  - (ii) the Issuer will assist the Trustee with any further information or advice requested by the Trustee under sub-paragraph 14.12(d)(i); and
  - (iii) the Trustee and the Issuer will negotiate and agree in writing upon the terms and conditions of the Trustee's performance of the Obligations (including in respect of additional new fees to be paid by the Issuer to the Trustee commensurate with the Obligations (**Additional Fees**)) and any assistance to be provided by the Issuer under sub-paragraph 14.12(d)(ii),unless the Issuer certifies in writing to the Trustee (or ASIC directs the Trustee in accordance with law) that the Obligations must be performed by the Trustee immediately so as to ensure:
  - (iv) that the Issuer is not in breach of, or does not fail to comply with, any applicable law or ASIC instrument relating to the Notes; or
  - (v) the discharge by the Issuer of its duties and obligations in relation to the Notes, in which case:
  - (vi) the Trustee may lawfully undertake the Obligations; and

- (vii) the Trustee will be paid by the Issuer as soon as possible an amount for the performance of the Obligations that is regarded by the Trustee (acting reasonably) as reasonable for the period the Trustee performs the Obligations until such time as the Trustee and the Issuer agree on the Additional Fees.

#### **14.13 No Obligation to Act Until Receipt of Funds**

- (a) The Trustee is not obliged to act or give any consent, approval or authorisation under this Deed or any other Transaction Document or make any request of, or give a direction to, another party to this Deed or any other Transaction Document until such time as it is placed in funds and is indemnified to its reasonable satisfaction.
- (b) The Trustee will not be liable to any Holders, creditors or any other person for failure to take any action where clause 14.13(a) has not been satisfied in respect of the relevant act.

### **15 Retirement and removal of Trustee**

#### **15.1 Notice by Trustee**

Subject to clause 15.4 and compliance with the relevant statutory requirements for the time being, the Trustee may retire (without giving any reason for its retirement) at any time upon giving at least 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.

#### **15.2 New appointment by Issuer**

- (a) Subject to clause 15.3, the power to appoint a new Trustee (which new Trustee must be a Trustee Company) 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).

#### **15.3 Retiring Trustee to appoint**

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 a Trustee Company as the new trustee (or, in its discretion, apply to a court of competent jurisdiction for the appointment of a new trustee) and any such appointment will be effective without the approval of the Issuer or the Holders being required but the Trustee may, in lieu of exercising the power conferred by this clause, call a meeting for the purpose of appointing, by the passing of a Holders' Resolution, a person nominated either by the Trustee or by any Holder as the new trustee.

#### **15.4 Effect**

Despite anything contained in this clause, the Trustee covenants that the retirement of the Trustee pursuant to this clause 15 will not take effect unless and until:

- (a) a new trustee (being a Trustee Company) has been appointed, and
- (b) the new trustee has executed a deed under which it agrees to perform the obligations of the Trustee under this Deed,

and the Trustee hereby declares that this covenant is intended for the benefit of the Holders.

#### **15.5 Removal for breach or by Holders' Resolution**

Subject to compliance with the relevant statutory requirements for the time being:

- (a) where the Issuer reasonably forms the view that the Trustee has not performed its obligations under this Deed or has acted negligently or fraudulently in relation to any matter under this Deed, the Issuer may by 30 days' notice to the Trustee;
- (b) where the Trustee becomes subject to any winding up, liquidation, administration, dissolution, deregistration, scheme of arrangement or other arrangement or compromise with creditors or similar proceedings, other than for the purposes of a solvent reconstruction or amalgamation, the Issuer may immediately;
- (c) the Holders may by a Holders' Resolution and 60 days' notice to the Trustee, remove the Trustee and appoint a new trustee in accordance with the provisions of this Deed.

### 15.6 Removal under statutory provisions

The Issuer must take all reasonable steps to replace the Trustee under s283AE 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) cannot be a Trustee Company; or
- (d) has failed or refused to act as trustee in accordance with the provisions of this Deed.

### 15.7 Discharge of obligations

By force of this clause 15.7, when the Trustee retires or is removed, the Trustee is, to the extent permitted by law, discharged and released from its obligations, covenants and liabilities under this Deed arising after the date it retires or is removed. The Issuer must then, if required by the Trustee, execute a confirmation of release in favour of the Trustee in a form and substance acceptable to the Trustee (including that the provisions in this Deed in relation to the indemnity given by the Issuer to the Trustee for any cost, charge, expense, loss and liability will apply even after the date of release if the action, omission or event giving rise to such cost, charge, expense, loss or liability occurred prior to the date of release, but only to the extent that such cost, charge, expense, loss and liability is not attributable to the Trustee's fraud, negligence, wilful default or breach of s283DA(a), (b), or (c) of the Corporations Act).

This does not affect any of the Trustee's rights accrued before such retirement or removal.

### 15.8 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.

### 15.9 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 15.9(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 15.9(c).
- (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:
  - (i) the Trustee is removed by a Holder Resolution in which case the cost is to borne by the Holders; or
  - (ii) the new Trustee is a Related Body Corporate of the Trustee and is appointed at the request of the Trustee, in which case the cost is to borne by the Trustee.
- (f) No removal or retirement of the Trustee under this clause 15.9 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 15.9.

## **16 Issue of Notes**

### **16.1 Terms of Issue**

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

### **16.2 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 Holder 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 Holder 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.



### 16.3 Title and transfer

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

### 16.4 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 Terms.

### 16.5 Unpaid monies

- (a) If clause 9.7 (*Unsuccessful attempts to pay*) of the 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 9.7 (*Unsuccessful attempts to pay*) of the Terms.
- (b) The Trustee may rely on a certificate from the Issuer to the effect that the matters set out in clause 9.7 (*Unsuccessful attempts to pay*) of the Terms are satisfied. The Trustee is not liable to any Holder for any moneys paid to the Issuer under this clause 16.5. The Issuer indemnifies the Trustee from any and all costs, losses, liabilities, expenses, demands or claims suffered or incurred by the Trustee in respect of any moneys paid to the Issuer under this clause 16.5.

## 17 Registers

### 17.1 Register

On issue of the Notes, the Issuer will establish and maintain, or cause to be established and maintained, a Register at the Registrar's principal place of business in the Jurisdiction or such other place in Australia approved by the Issuer, the Trustee and the Registrar where the work involved in maintaining the Register is done. The Issuer may delegate to attorneys or agents such powers, authorities and discretions in relation to the Register as it may properly so delegate. The Issuer must notify the Trustee in writing of the location of the Register.

### 17.2 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.

### 17.3 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.

### 17.4 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 the Deed (and the Terms); and
- (c) an entitlement to the other benefits given to the Holders under the Terms and the Deed in respect of the Note.

### 17.5 Particulars

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

- (a) their name or, in the case of joint Holders, the names of the joint Holders 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 Holder or, in the case of joint Holders, the address of the Holder whose name first appears on the application form or transfer form for such Note;
- (c) if provided, the email address of the Holder or, in the case of joint Holders, the email address for the Holder whose name first appears on the application form or transfer form for such Note;
- (d) the number and amount of Notes held by such Holder,
- (e) if provided, their Australian tax file number or evidence of any exemption from the need to provide an Australian tax file number;
- (f) if provided, their Australian Company Number, Australian Business Number or other Australian identifying registration number;
- (g) the account to which payments in respect of the Note are to be paid or the address to which payments are to be posted;
- (h) the Issue Date and the Maturity Date; and
- (i) any other particulars the Issuer considers necessary or desirable or are required under this Deed or by law.

### 17.6 Inspection

The Register will be open at all reasonable times during Business Hours for the inspection of the Trustee and the Holders, and of any persons authorised in writing by the Trustee or the Holders.

### 17.7 Closure of Register

Subject to the ASX Listing Rules, the Issuer may from time to time close any relevant Register for any period or periods not exceeding in total in any one year:

- (a) the maximum period for the time being permitted by law; or
- (b) 30 days,

whichever is the lesser period.

### 17.8 Change of details

Any change of the name or address of a Holder must be notified immediately by the Holder 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.

### 17.9 Situs

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

**17.10 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.

**17.11 Copy to the Trustee**

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

**17.12 Issuer not liable for mistakes**

The Issuer is not liable for any mistake in a Register, or in any purported copy of a Register, except to the extent that the mistake is attributable to the Issuer's own fraud, negligence or wilful default.

**17.13 Manifest error**

The making of, or giving effect to, a manifest error in an inscription in the Register will not avoid 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.

**17.14 No certificate**

- (a) No certificate or other evidence of title will be issued by or on behalf of the Issuer to evidence title to a Note unless the Issuer determines that certificates should be made available or that it is required to do so pursuant to any applicable law or regulation.
- (b) The Issuer may issue, to any person who is issued one or more Notes, a Note Certificate.

**17.15 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 17.

**17.16 Clearing System Holder**

If the operator of a Clearing System is registered in the Register as the holder of Notes, the Holder or Holders, as the case may be, of the Notes will be the member or members of the Clearing System who, by its rules or regulations, is or are entitled to the relevant Notes. If more than one, those Holders will be taken to be the Holder in relation to that number of the Notes to which they are entitled by the Clearing Systems rules or regulations.

**17.17 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 Holder or any other information,

the Issuer may rectify the same. Neither the Issuer nor the Trustee is liable for any loss, costs, charges, expenses or liability incurred as a result of any of the above occurring.

**17.18 Appointment of Registrar**

- (a) The Issuer may cause the Register to be maintained by a third party on its behalf and require that person to:
  - (i) discharge the Issuer's obligations under this Deed in connection with the Register and transfers of Notes; and
  - (ii) assist it in the supply and delivery of the information, records and reports required by law.
- (b) Neither the Issuer nor the Trustee is liable for any act or omission of any person appointed by the Issuer under this clause 17.18, 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 person who is establishing and maintaining the Register. As at the date of this Deed, the Issuer has appointed the Initial Registrar to establish and maintain the Register.

**17.19 Replacement of Registrar**

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

**18 Meetings of Holders****18.1 Meeting Provisions**

Subject to the Corporations Act, the Trustee or the Issuer may call a meeting of Holders or of Holders of a Series in the manner as provided in the Meeting Provisions. The provisions of Part 2L.5 of the Corporations Act and the Meeting Provisions apply to any meeting of Noteholders. The Trustee may do all things (including executing documents) it reasonably considers necessary or desirable under or in connection with any Holder Resolution or Special Resolution

**18.2 Directions to Trustee**

- (a) Except as expressly stated in this Deed, by a Holders' Resolution and subject to any applicable law, Holders may:
  - (i) give directions to the Trustee as to; or
  - (ii) authorise, ratify or confirm anything done or not done by the Trustee in respect of, the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to this Deed or the Notes, or any other instrument to which the Trustee is or becomes a party in the capacity of Trustee under this Deed.
- (b) Notwithstanding any other term of this Deed, Holders may, by Special Resolution:
  - (i) approve the release of the Trustee from liability for something done or omitted to be done by the Trustee or any other person before the release is given;
  - (ii) give the Trustee directions as to the manner in which to take action to enforce the Transaction Documents; and
  - (iii) give the Trustee directions as to how to vote on any resolution of a meeting of the Trustee and creditors of the Issuer which requires a Special Resolution.

- (c) To the extent permitted by law, the Trustee is not liable to a Holder, the Issuer or any other person for acting on directions given by the Holders under this Deed, or under any authorisation, resolution or confirmation made or given by the Holders to the Trustee.

## **19 Changing the Deed**

### **19.1 Amendment of the Terms**

At any time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, with the approval of the Trustee (such approval not to be unreasonably withheld or delayed) amend the Terms in respect of any Series in accordance with clause 11 of the Terms.

### **19.2 Amendment of the Trust Deed**

At any time, and from time to time, but subject to the Note Terms and clauses 19.3, 19.4 and 19.5, the Issuer may, with the approval of the Trustee amend this Deed:

- (a) without the consent of the Holders, if the Trustee and the Issuer are each of the opinion that such amendment is:
  - (i) of a formal or technical nature or made to cure any ambiguity or correct any manifest error;
  - (ii) necessary or expedient for the purpose of listing the Notes on ASX or to comply with the applicable ASX Listing Rules or the listing or quotation requirements of any other any securities exchange on which the Issuer may propose to seek a listing of the Notes;
  - (iii) necessary or expedient for the purpose of enabling the Notes or any Series to be offered for issue or for sale under the laws for the time being in force in any place;
  - (iv) necessary or expedient to comply with the provisions of any law or regulation or the requirements of any statutory authority; or
  - (v) in any other case, not materially prejudicial to the interests of Holders of the Notes or any Series (taken as a whole).
- (b) 19.2(b) except as otherwise provided in clauses 19.2(c) or 19.2(d) below, if such amendment is authorised by a Holders' Resolution;
- (c) in the case of an amendment:
  - (i) to this clause 19; or
  - (ii) to any other clause of this Deed or any paragraph of the Meeting Provisions, in either case providing for Holders to give a direction to the Trustee by a Special Resolution,

in each case, if a Special Resolution is passed in favour of such amendment; or
- (d) in the case of an amendment to the Meeting Provisions to which clause 19.2(c)(ii) does not apply, if a Special Resolution is passed in favour of such amendment,

and provided that in the case of clauses 19.2(b) or 19.2(c) above, 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.

### **19.3 Amendment of Series of Notes**

Any amendment under this clause 19 may be made in respect of a single Series of Notes, or more than one Series of Notes, provided that where the amendment requires the approval of

Holders, the approval of the requisite majority of Holders of the relevant Series has been obtained in accordance with the Meeting Provisions.

#### **19.4 Effecting a change**

- (a) An amendment to this Deed may only be made by supplemental deed Modifying this Deed, or any one or more of the Schedules to this Deed.
- (b) The Trustee is not obliged to consent to any amendment to this Deed or execute a supplemental deed amending this Deed if, in its reasonable opinion, such alteration would have the effect of:
  - (i) increasing any liability of the Trustee in its personal capacity; or
  - (ii) derogating from any of its rights under any of those documents.

#### **19.5 Materially prejudicial to the interests of Holders as a whole**

For the purposes of determining whether any matter or thing is not materially prejudicial to the interests of Holders as a whole:

- (a) the Trustee may rely on a legal opinion from independent legal advisers of recognised standing in Australia to reasonably form a view on whether it can make such a determination; and
- (b) the taxation consequences to a Holder and other special consequences or circumstances which are personal to a Holder do not need to be taken into account by the Issuer, the Trustee or their respective legal advisers.

#### **19.6 Interpretation**

In this clause 19, "**amend**" includes modify, vary, cancel, alter, waive or add to and "**amendment**" has a corresponding meaning.

#### **19.7 Terms**

Any amendment of the Terms may only be made in accordance with the Terms.

### **20 Confidentiality**

#### **20.1 Financial information of Issuer**

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

#### **20.2 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 or in connection with any obligation, duty or power of the Trustee under this Deed;
- (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 absolute discretion and, if given, may be given by the Issuer on such conditions as it deems fit.

### **20.3 Confidentiality undertaking**

The Trustee agrees to use its best endeavours to ensure that every person to whom it provides Confidential Information under this clause (except clauses 20.2(a) or 20.2(b)) gives and performs obligations under a confidentiality undertaking in the same terms as this clause except professional advisers who owe a professional duty of confidentiality to the Trustee in connection with the Confidential Information.

## **21 Validity**

### **21.1 Validity of Notes issued**

Despite any breach of, or non-compliance by the Issuer, of the provisions of this Deed, all Notes issued under this Deed will, as between:

- (a) the relevant Holder and the Issuer;
- (b) the relevant Holder and the Trustee;
- (c) the relevant Holder and any receiver, trustee or liquidator of the Issuer; and
- (d) the relevant Holder and all other Holders,

be deemed to have been validly issued under this Deed.

### **21.2 Continuing obligations**

Nothing in this clause 21 will exonerate or relieve, or be deemed to exonerate or relieve, the Issuer or the Trustee from any of their respective covenants, liabilities and obligations under this Deed.

## **22 Discharge and release**

### **22.1 Release**

- (a) By force of this clause 22, but subject to clause 22.2, 22.4 and 28.6, the Issuer will immediately be discharged and released from its respective liabilities, obligations and covenants under this Deed when:
  - (i) subject to clause 23, on the payment (or otherwise Redemption or satisfaction in full, as applicable) of 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 and all Moneys Owing (as to which the Trustee may accept as conclusive an Officer's Certificate); and
  - (ii) the Issuer has furnished to the Trustee a statement in writing that it does not intend to, and will not, create any Notes in the future under this Deed; and
  - (iii) all fees, costs, losses, liabilities, charges, expenses, demands, claims or Taxes 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) If this Deed is terminated in accordance with clause 22.1(a), the Trustee will (subject to being indemnified in accordance with clause 13.2) distribute the balance of the capital and income (if any) of the Trust (including, without limitation, cash) at the direction of the Issuer.

**22.2 Non-avoidance**

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 any thing referred to in clause 22.2(c),

had not been made, and the Issuer must immediately take all action and sign all documents necessary or required by the Trustee or a Holder to restore to the Trustee or that Holder (as the case may be) the rights under this Deed (and the Terms) held by them immediately before the payment, conveyance, transfer or transaction. This clause 22.2 applies whether or not the Trustee or the Holder (as the case may be) knew, or ought to have known, of anything referred to in this clause.

**22.3 Confirmation**

Upon the happening of the events in clause 22.1, but subject to clause 22.2, 22.4 and 28.6, the Trustee must, if required by the Issuer, execute a confirmation of release in favour of the Issuer and terminate the Trust and the Trust will terminate on such a release being given.

**22.4 Termination**

On the Trust being terminated under this clause 22:

- (a) the Trustee will be released from any liability arising under or in connection with this Deed; and
- (b) the Trustee will be indemnified by the Issuer in respect of all fees, costs, losses, liabilities and expenses (each, a cost) reasonably and properly incurred by it in respect of an event which occurred prior to the date of termination (other than such cost to the extent that it arises out of the Trustee's negligence, fraud or wilful default) and the Issuer must pay the Trustee any such cost within five Business Days of written notice of such cost from the Trustee.

**23 Untraceable Holders**

- (a) Subject to applicable law and the ASX Listing Rules:
  - (i) where the Issuer has made reasonable efforts to locate a Holder but is unable to do so; and
  - (ii) moneys payable to the Holder have not been claimed by the Holder or any legal personal representative of the Holder for a period of 12 months after first becoming payable,

those moneys must be paid by the Trustee to the Issuer, if the Trustee has actual possession and control of such moneys, and must be held by the Issuer on trust for the Holder in a non- interest bearing deposit with a bank selected by the Issuer until such time as the moneys are dealt with in accordance with the applicable legislation relating to unclaimed moneys.

- (b) The Trustee is not liable to any Holder for any moneys paid to the Issuer in accordance with this clause.

## 24 Notices

### 24.1 Service of notices

- (a) A notice, demand, consent, approval or communication under this Deed (**Notice**) must be in writing, in English and, if required under the provision of the Deed under which the Notice is given, signed by a person duly authorised by the sender and marked for the attention of the addressee as provided in 24.2.
- (b) Communications sent by email need not be marked for attention in the way stated in clause 24.2. 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.

### 24.2 Service of notices on the Issuer and the Trustee

All notices, certificates, demands, consents, approvals and other communications between the Issuer and the Trustee under this Deed or the Terms may be hand delivered or sent by prepaid post (airmail if appropriate) or email to the recipient's address for Notices specified below and as varied by any Notice given by the recipient to the sender.

- (a) Issuer
  - Attention: Mark Avery
  - Address: Suite 40.03, Level 40, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW, 2000
  - Email: [mavery@cvc.com.au](mailto:mavery@cvc.com.au)
- (b) Trustee
  - Attention: Company Secretary
  - Address: Level 2, 395 Collins St, Melbourne VIC 3000
  - Email: [notices@msc.group](mailto:notices@msc.group)

### 24.3 Holders

- (a) All notices, certificates, demands, consents, approvals and other communications by either the Issuer or the Trustee to a Holder under this Deed may be sent by:
  - (i) prepaid post (airmail if appropriate) to or left at the address of the Holder (as shown in the Register at the close of business on the day which is five Business Days before the date of the notice or communication); or
  - (ii) email to the electronic address nominated by a Holder for such communication and (as shown in the Register at the close of business on the day which is five Business Days before the date of the notice, communication),and may also be given:
  - (iii) by an advertisement published in The Australian Financial Review, The Australian or any other newspaper of national circulation in Australia;
  - (iv) so long as the Notes are quoted on the ASX, by publication of an announcement on the ASX;
  - (v) if delivered to a Clearing System for communication by them to the persons shown in their respective records as having interests therein;



- (vi) by the Issuer posting, at the request of the Trustee, the notice or communication on its internet website; or
  - (vii) 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 Holders.
- (b) If any notice is published by the Issuer in accordance with any of paragraphs (a)(iii) or (vii) above, the Issuer must promptly provide a copy to the Trustee.
- (c) The Issuer must, at the request of the Trustee, post notices to Holders on its own internet website but such action will not discharge the Issuer's obligation to give Holders a notice under this Deed.
- (d) Where a notice is given by the Issuer to Holders generally, a copy of the notice must also be given to the ASX.

#### **24.4 Notice to transferor binds transferee**

Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the Holder 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.

#### **24.5 Service on deceased Noteholders**

A notice served on a Holder in accordance with this clause 24 is (despite the fact that the Holder is then deceased and whether or not the Issuer has notice of the Holder'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 Holder, until some other person is registered in the Holder's place as the Holder or Joint Holder. The service is sufficient service of the notice or document on the Holder's legal personal representative and any person jointly interested with the Holder in the Notes.

#### **24.6 Joint Holders**

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

#### **24.7 Effective on receipt**

A Notice given in accordance with clause 24.1 takes effect when taken to be received (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 on the next succeeding Business Day 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's email system generates a delivery confirmation message confirming successful transmission of the email Notice to the recipient's email address;
  - (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.

## **24.8 Deemed receipt - general**

Despite clause 24.7, 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.

## **25 Service of process**

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 24.

## **26 Invalid or unenforceable provisions**

Any provision of this Deed or the 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.

## **27 Applicable law**

This Deed is governed by, and is to be construed in accordance with, the laws of New South Wales. 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. The Issuer and each Holder 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.

## **28 General provisions**

### **28.1 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.

### **28.2 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;
- (b) indemnifies the Trustee against any liability arising from failure to comply with clause 28.2(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

### **28.3 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.

### **28.4 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. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

### **28.5 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.

### **28.6 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.

### **28.7 Remedies**

The rights, powers, trusts, authorities, discretions or remedies of a party under this Deed are cumulative and not exclusive of any rights, powers, trusts, authorities, discretions or remedies provided by law.

### **28.8 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 28.8, 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.

## **29 Inspection of this Deed and copies of this Deed**

The Holders may inspect a copy of this Deed during normal Business Hours at such place as may be notified by the Issuer to the Trustee from time to time. The Holders will be entitled to a copy of this Deed as required by the Corporations Act and otherwise on payment of the prescribed fee within 21 days of receipt by the Issuer of such payment.

## **30 Further action**

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

## Schedule 1

### Terms of Notes

#### 1 Form of Notes

##### 1.1 Constitution and status

The Notes are redeemable, unsubordinated, unsecured, non-convertible notes of the Issuer constituted by, and owing under the Trust Deed. Holders are entitled to the benefit of and are bound by the provisions of the Trust Deed and these Terms.

##### 1.2 Form

The Notes are issued in registered form by entry in the Register.

##### 1.3 Face Value and Issue Price

- (a) The Notes are each issued fully paid with a Face Value of \$100.00 (**Face Value**).
- (b) Each Note will be issued by the Issuer at an issue price of \$100.00 or such other amount as set out in or determined in accordance with the relevant offer document (**Issue Price**). The Issue Price must be paid in full on application.

##### 1.4 Currency

The Notes are denominated in Australian dollars.

##### 1.5 Clearing System

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

##### 1.6 No certificates

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

##### 1.7 ASX quotation of Notes

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

##### 1.8 No other rights

The Notes confer no rights on a Holder:

- (a) to become a member of the Issuer;
- (b) to vote at any meeting of members of the Issuer;
- (c) to subscribe for or participate in any new issue of securities by the Issuer; or
- (d) to participate otherwise in the profits or property of the Issuer or any other member of the CVC Group, except as set out in these Terms or the Trust Deed.

##### 1.9 Statement of Holding

- (a) The Issuer or the Registrar (as applicable) must issue to each Holder a Statement of Holding as soon as reasonably practicable after the Issue Date for the Notes and in any event within the time prescribed by the ASX or the ASX Listing Rules.

- (b) A Statement of Holding is no assurance or guarantee that any amounts will be paid to the Holder.

## **2 Interest**

### **2.1 Interest**

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

## **3 General provisions applicable to Interest**

### **3.1 Calculation of Interest Rate and Interest payable**

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

$$\text{Interest payable} = \frac{\text{Interest Rate} \times \$100 \times N}{365}$$

Where:

**N** means, in respect of:

- (i) the first Interest Payment Date in respect of a Note, the number of days from, and including, its Issue Date to, but excluding, that first Interest Payment Date; and
- (ii) each subsequent Interest Payment Date, the number of days from, and including, the preceding Interest Payment Date to, but excluding, that Interest Payment Date or, in the case of the last Interest Period, the Maturity Date or Redemption Date.

### **3.2 Notification of Interest Rate, Interest payable and other items**

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

### **3.3 Default Interest**

If an amount is not paid under these Terms on or before the due date, interest accrues on the unpaid amount at the aggregate of the Interest Rate prevailing at the time the payment was due

and 1.5% per annum from, and including, the due date to, but excluding, the date on which payment is made to the Holder of the full unpaid amount.

### 3.4 Determination final

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

### 3.5 Calculations

For the purposes of any calculations required under these Terms:

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

## 4 Redemption and purchase

### 4.1 Scheduled redemption

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

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

### 4.2 Early Redemption by the Issuer

- (a) If a Regulatory Event, Minimum Holding Event or Change of Control Event occurs, the Issuer may Redeem all (but not some) of the Notes in whole before their Maturity Date at their Face Value together with any Interest accrued on those Notes to (but excluding) the applicable Redemption Date.
- (b) Subject to clause 4.2(c), compliance with any applicable law and the ASX Listing Rules, the Issuer may Redeem all (but not some) of the Notes of a Series in whole before their Maturity Date, but not prior to two years from the Issue Date of the first tranche of the relevant Series, at their Face Value plus the Early Redemption Premium, together with any Interest accrued but unpaid on those Notes to (but excluding) the applicable Redemption Date (**Premium Early Redemption**).
- (c) The Issuer may exercise its right under clause 4.2(a) or 4.2(b) to Redeem the Notes if, and only if:
  - (i) the Issuer has given:
    - (A) in the case of a Premium Early Redemption, not less than 20 nor more than 45 days; and
    - (B) otherwise not less than 15 nor more than 45 days, notice in writing to the Trustee, the Holders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the Premium Early Redemption or occurrence of a Regulatory Event, Minimum Holding Event or Change of Control Event and of the intention of the Issuer to Redeem the Notes (**Early Redemption Notice**); and
  - (ii) other than in the case of Premium Early Redemption, not less than five Business Days before the Issuer gives the Early Redemption Notice under clause 4.2(c)(i), the Trustee has received from the Issuer:

- (A) a certificate signed by two Directors or a Director and a secretary of the Issuer confirming that a Regulatory Event, Minimum Holding Event or Change of Control Event has occurred; and
  - (B) in the case of a Regulatory Event, an opinion addressed to or endorsed for use by the Trustee of a qualified legal or taxation adviser (such legal or taxation adviser to be acceptable to the Trustee, acting reasonably) that a Regulatory Event has occurred in respect of the Notes.
- (d) If an Early Redemption Notice is given by the Issuer under clause 4.2(c)(i), the notice will be effective (and Redemption will occur) on such date as specified by the Issuer in the Early Redemption Notice (which in the case of a Premium Early Redemption Notice must be no less than 30 days after the date of the Early Redemption Notice).

### 4.3 Early Redemption by the Holders

- (a) If a Change of Control Event occurs, the Holder of any Notes may require the Issuer to Redeem all (but not some) of the Notes held by that Holder at their Face Value together with any Interest accrued on the Notes to (but excluding) the applicable Redemption Date.
- (b) If a Delisting Event occurs, the Holder of any Notes may require the Issuer to Redeem all (but not some) of the Notes held by that Holder at their Face Value plus the Early Redemption Premium, together with any Interest accrued on the Notes to (but excluding) the applicable Redemption Date.
- (c) No later than 10 Business Days after the occurrence of a Change of Control Event or a Delisting Event, the Issuer must give notice in writing to the Trustee, the Holders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted):
  - (i) specifying the occurrence of a Change of Control Event and/or Delisting Event (as the case may be);
  - (ii) specifying the date on which the Change of Control Event and/or Delisting Event occurred;
  - (iii) informing the Holders of their right under clause 4.3(a) to require the Issuer to Redeem all (but not some) of their Notes;
  - (iv) enclosing the form of the notice required to be given by a Holder if it elects to exercise its right to Redeem its Notes (**Holder Redemption Notice**); and
  - (v) such other information relating to the Change of Control Event or Delisting Event as the Trustee may reasonably require be given to the Holders.
- (d) A Holder may exercise its right under clause 4.3(a) to Redeem its Notes by delivery to the Registrar (as agent for the Issuer) of a duly completed and signed Holder Redemption Notice, which notice must be delivered to the Issuer not later than 10 Business Days after the date of receipt by the Holder of the notice given by the Issuer to the Holder under clause 4.3(b).
- (e) Subject to the right of the Issuer to Redeem the Holder's Notes at an earlier date, if a Holder Redemption Notice is given by the Holder under clause 4.3(d):
  - (i) not less than 10 Business Days before an Interest Payment Date, the notice will be effective (and Redemption will occur) on the immediately following Interest Payment Date; and



- (ii) less than 10 Business Days before an Interest Payment Date, the notice will not be effective for that Interest Payment Date and Redemption will not occur until the following Interest Payment Date.

#### **4.4 Effect of Holder Redemption Notice**

- (a) Once given by a Holder, a Holder Redemption Notice cannot be withdrawn without the written consent of the Issuer.
- (b) An Holder Redemption Notice must be accompanied by evidence of title for the Notes the subject of the Notice as may reasonably be required by the Issuer and the Registrar.
- (c) A Holder must not deal with, transfer, dispose of or encumber any Notes the subject of a Holder Redemption Notice once that Notice has been given.

#### **4.5 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 Holder will not invalidate a Holder Redemption Notice or an Early Redemption Notice.

#### **4.6 Failure to give notice**

The accidental or inadvertent failure to give notice to an individual Holder will not invalidate a Holder Redemption Notice or an Early Redemption Notice.

#### **4.7 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 Holders upon Redemption of the Notes.

#### **4.8 Cancellation**

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

#### **4.9 Purchase**

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

- (a) The Issuer and any of its Related Bodies Corporate (or any third party nominated by the Issuer) may, at any time, purchase Notes in the open market or otherwise and at any price;
- (b) If purchases are made by tender for the Notes by the Issuer or any of its Related Bodies Corporate, tenders must be available to all Holders alike; and
- (c) Notes purchased under this clause 4.9 may be held, resold or cancelled at the discretion of the purchaser (and, if the Notes are to be cancelled, the Issuer).

### **5 Status and ranking**

#### **5.1 Status**

The Notes at all times constitute direct, redeemable, non-convertible, unsubordinated and unsecured obligations of the Issuer.

#### **5.2 Ranking of Notes**

- (a) The Notes rank equally without any preference or priority among themselves and at least equally with all other present and future unsubordinated and (subject to clause 6.1)

unsecured debt obligations of the Issuer (subject to the laws and principles of equity affecting creditors' rights or obligations preferred by mandatory provisions of applicable law).

- (b) The ranking of Notes is not affected by the date of registration of any Holder in the Register.

## 6 Financial covenants and Undertaking

### 6.1 Negative pledge

For so long as any of the Notes remain outstanding, the Issuer must not without the approval of a Special Resolution:

- (a) (**new debt**): incur any Financial Indebtedness for moneys borrowed or raised pursuant to any financial accommodation or agree to do so, except:
  - (i) pursuant to the Existing Debt Obligations; or
  - (ii) any indebtedness incurred or guaranteed after the Issue Date for the purpose of replacing, refinancing or extending the maturity of the Existing Debt Obligations; or
  - (iii) Permitted New Debt; or
- (b) (**security interest**): create or permit to subsist, and will ensure that none of its Subsidiaries will create or permit to subsist, Security Interest upon the whole or any part of its present or future property or assets (including any uncalled capital) to secure any Financial Indebtedness or to secure any Guarantee of or indemnity in respect of 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, any and all action necessary shall have been taken to ensure that:
  - (i) all amounts payable by the Issuer under the Notes and the Trust Deed are secured equally and rateably with the Financial Indebtedness or Guarantee or indemnity, as the case may be; or
  - (ii) such other Security Interest or Guarantee or indemnity or other arrangement (whether or not including the giving of a 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 deem not materially less beneficial to the interests of the Holders.

## 7 Events of Default

### 7.1 Events of Default

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

- (a) (**non-payment**) the Issuer fails to pay any amount payable by it under the Terms within 10 Business Days after the date on which it is due, or 20 Business Days where the payment is required to be made by cheque, 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) (**breach of other obligations**) the Issuer fails to comply with any of its other obligations under the Terms or the Trust Deed and such failure remains unremedied for a period of 20 Business Days after the Issuer has received written notice from the Trustee in respect of the failure;

- (c) (**insolvency**) an Insolvency Event occurs in respect of the Issuer;
- (d) (**cessation of business**) the Issuer ceases or suspends the conduct of all of its business;
- (e) (**unlawfulness**) at any time, it is unlawful for the Issuer to perform any of its payment obligations under the Notes.
- (f) (**cross default**) any debt of the Issuer greater than \$1,000,000.00 (or its equivalent in any other currencies) becomes due and payable before its stated maturity due to the occurrence of a default event under the terms of that debt;
- (g) (**vitiation**) all or any rights or obligations of the Issuer, Holders or the Trustee under the Trust Deed or the 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 Trustee of the occurrence of the Event of Default (specifying details of it) and use its reasonable endeavours to promptly notify the Holders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the occurrence of the Event of Default.

## 7.3 Consequences of an Event of Default

- (a) If any Event of Default occurs and is continuing in relation to the Notes, the Trustee may declare by notice to the Issuer (with a copy to the Holders and the Registrar) that all the Notes are to be Redeemed at their Face Value (together with any accrued Interest) immediately (but not earlier than five Business Days after the date the Trustee gives notice under this clause) or on such other date specified in that notice.
- (b) The Trustee shall not be bound to take any of the actions referred to in paragraph (a) above to enforce the obligations of the Issuer in respect of the Notes or any other proceedings or action pursuant to or in connection with the Trust Deed, the Terms or the Notes unless:
  - (i) it shall have been so directed by a Special Resolution of the Holders of the relevant Notes or so requested in writing by the Holders representing greater than 75% of the aggregate Face Value of all Notes outstanding;
  - (ii) it is indemnified, to its satisfaction, against all costs, charges, liabilities and expenses which may be incurred by it (including legal costs on a solicitor and own client basis) in connection with that action;
  - (iii) 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 Terms;
  - (v) it is first placed in funds by the Issuer sufficient to cover the costs that it may incur as a result of doing so; and
  - (vi) 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 these Terms or the Corporations Act or any applicable law, it must take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction given by Special Resolution, and, while those steps are

underway, the Trustee is not obliged to take any action or proceedings it has been directed to take by Special Resolution.

## **8 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 Holder to pay principal, interest and any other amount in accordance with these Terms; and
  - (ii) an entitlement to the other benefits given to Holders under these Terms and the Trust Deed in respect of the Note.
- (b) For the avoidance of doubt, an entry in the Register does not make the Holder a member of the Issuer or confer rights on a Holder to become a member of the Issuer or to attend or vote at meetings of members of the Issuer.

### **8.3 Register conclusive as to ownership**

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

### **8.4 Non-recognition of interests**

Except as required by law, the Issuer, the Trustee and the Registrar must treat the person whose name is entered in the Register as the holder of a Note as the absolute owner of that Note. This clause 8.4 applies whether or not a Note is overdue and despite any notice of ownership, trust or interest in the Note.

### **8.5 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:
  - (i) subject to the ASX Settlement Operating Rules, to register more than four persons as joint Holders of any Note; or
  - (ii) to issue more than one certificate (if applicable) or Statement of Holding in respect of a Note jointly held, and only the joint Holder in respect of a Note whose name first appears on the register is entitled to be issued a certificate (if applicable) or Statement of Holding in respect of a Note jointly held.
- (b) If a Holder who owns a Note jointly dies, the Issuer will recognise only the survivor or survivors as being entitled to the Holder's interest in the Note.
- (c) Interest or other money payable in respect of a Note that is held jointly may be paid to the Holder whose name appears first on the Register, and the payment to any one joint Holder of a Note of any amount from time to time payable or repayable in respect of the Note, discharges the obligation of the Issuer to pay that amount under the Note to each joint Holder of the Note and the Trustee.
- (d) The delivery to a joint Holder of a Note whose name first appears in the Register in respect of that Note of a notice or other communication will discharge the obligation of the Issuer or the Trustee to deliver that notice or communication to each of the joint Holders

of that Note, and in that case the notice or communication will be deemed to be given to all joint Holders of that Note.

- (e) If a Note is held jointly, and more than one Holder votes in respect of that Note, only the vote of the Holder whose name appears first on the Register counts.
- (f) The joint Holders of a Note are counted as a single holder for the purposes of calculating the number of Holders or persons who have requisitioned a meeting of Holders.
- (g) If a Note is held jointly, each of the joint Holders is jointly and severally liable for all payments including payment of any Tax, which is to be made in respect of the Note.

## **8.6 Transfers in whole**

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

## **8.7 Transfer**

- (a) A Holder may, subject to this clause 8.7, transfer any Notes:
  - (i) by a proper ASTC transfer according to the ASX Settlement Operating Rules;
  - (ii) by a proper transfer under any other computerised or electronic system recognised by the Corporations Act;
  - (iii) under any other method of transfer which operates in relation to the trading of securities on any securities exchange outside Australia on which the Notes are quoted; or
  - (iv) 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.

## **8.8 Market obligations**

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

## **8.9 Issuer may request holding lock or refuse to register transfer**

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

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

## **8.10 Issuer must request holding lock or refuse to register transfer**

- (a) The Issuer must request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Notes approved by and registered on the CS Facility's electronic sub-register or Notes registered on an issuer-sponsored sub- register, as the case may be, if the Corporations Act, the ASX Listing Rules or the terms of a Restriction Agreement require the Issuer to do so.
- (b) The Issuer must refuse to register any transfer of Notes if the Corporations Act, the ASX Listing Rules or the terms of a Restriction Agreement require the Issuer to do so.

- (c) During a breach of the ASX Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the Holder of the Restricted Securities is not entitled to any Interest (or other distribution on), or voting rights in respect of, the Restricted Securities.

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

If, in the exercise of its rights under clauses 8.9 and 8.10, the Issuer requests the application of a holding lock to prevent a transfer of Notes or refuses to register a transfer of Notes, it must, within five Business Days after the date the holding lock is requested or the refusal to register a transfer, give written notice of the request or refusal to the Holder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

#### **8.12 Delivery of instrument**

If an instrument is used to transfer the Notes according to clause 8.7, it must be delivered to the Registrar, together with such evidence (if any) as the Issuer and/or the Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Notes.

#### **8.13 Refusal to register**

- (a) The Issuer may only refuse to register a transfer of any Notes if such registration would contravene or is forbidden by Applicable Regulation or the 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.

#### **8.14 Transferor to remain Holder until registration**

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

#### **8.15 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 the Terms in respect of the transferred Notes and the transferee becomes so entitled in accordance with clause 8.2.

#### **8.16 Estates**

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

#### **8.17 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.

## **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 holder of that Note at the nominated time on the relevant Record Date.

### **9.3 Payments subject to law**

All payments are subject to applicable law, but without prejudice to the provisions of clause 10.

### **9.4 Payments on Business Days**

If a payment:

- (a) is due on a Note on a day which is not a Business Day then the due date for payment will be postponed to the first following day that is a Business Day; or
- (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, the Holder is not entitled to any additional payment in respect of that delay.

### **9.5 Payments to accounts**

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

### **9.6 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 Holder (or to the first named joint holder of the Notes) at its address appearing in the Register.
- (b) Cheques sent to the nominated address of a Holder will be at the risk of the registered Holder and will be taken to have been received by the Holder on the payment date and, no further amount will be payable by the Issuer in respect of the Notes as a result of the Holder not receiving payment on the due date.

### **9.7 Unsuccessful attempts to pay**

Subject to applicable law and the ASX Listing Rules, where the Issuer is required to pay any amount to a Holder in respect of a Note, and:

- (a) decides that the amount is to be paid to the Holder by a method of direct credit and the Holder has not given a direction as to where amounts are to be paid by that method;
- (b) attempts to pay the amount to the Holder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful;
- (c) attempts to pay the amount to a Holder by issuing a cheque which has not been presented within six months of its date and, as a consequence, the Issuer has cancelled such cheque; or



- (d) has made reasonable efforts to locate the Holder to ensure that the amount is paid to it, but is unable to do so,

then in each case:

- (e) the amount will be taken to have been duly paid to the Holder and will not bear Interest; and
- (f) the amount will be held by the Issuer for the Holder in a non-interest bearing deposit with a bank selected by the Issuer until the Holder (or any legal personal representative of the Holder) 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.

## **9.8 Payment to joint Holders**

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

## **9.9 Fractions**

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

## **10 Deductions**

### **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 without any withholding or deduction for or in respect of Taxes, unless such withholding or deduction is required by law.

### **10.2 Withholding and other taxes**

- (a) The Issuer may withhold or deduct from any amount payable to a Holder in respect of the Notes an amount in respect of any Tax which a qualified legal or taxation advisor advises that it is required by law to withhold or deduct from that payment.
- (b) The Issuer must pay the full amount required to be withheld or deducted to the relevant revenue authority within the time allowed for such payment (without incurring penalty under the applicable law) and must, if required by a Holder, deliver to that Holder a copy of the relevant receipt issued by the relevant revenue authority without unreasonable delay after it is received by the Issuer.
- (c) If an amount is deducted or withheld under clause 10.2(a) from a payment to a Holder in respect of any Tax, the Issuer will have no obligation to pay any Additional Amount to the Holder such that the Holder, at the time the payment is due, receives the same amount it would have received if no deductions or withholdings had been required to be made.

## **11 Amendment of the Terms**

### **11.1 Amendment without the approval of the Holders**

At any time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, with the approval of the Trustee, but without the consent of the Holders, amend the Terms in respect of any Series if the Issuer is of the opinion that such amendment:

- (a) of a formal or technical nature or made to cure any ambiguity or correct any manifest error;



- (b) necessary or expedient for the purpose of listing the Notes on ASX or to comply with the applicable ASX Listing Rules or the listing or quotation requirements of any other any securities exchange on which the Issuer may propose to seek a listing of the Notes;
- (c) necessary or expedient for the purpose of enabling the Notes to be offered for issue or for sale under the laws for the time being in force in any place;
- (d) necessary or expedient to comply with the provisions of any law or regulation or the requirements of any statutory authority; or
- (e) in any other case, not materially prejudicial to the interests of Holders of the Notes or any Series (taken as a whole).

## 11.2 Amendment with the approval of the Holders

At any time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, with the approval of the Trustee, amend the Terms in respect of any Series:

- (a) except as otherwise provided in clauses 11.2(b) and 11.2(c) below, if such amendment is authorised by a Holders' Resolution;
- (b) in the case of an amendment:
  - (i) to this clause 11.2; or
  - (ii) to any other clause of the Trust Deed or any paragraph of the Meeting Provisions, in either case providing for Holders to give a direction to the Trustee by a Special Resolution,in each case, if a Special Resolution is passed in favour of such amendment; or
- (c) in the case of an amendment to the Meeting Provisions to which clause 11.2(b)(ii) does not apply, if a Special Resolution is passed in favour of such amendment; and
- (d) otherwise in accordance with the Trust Deed.

## 11.3 Materially prejudicial to the interests of Holders as a whole

For the purposes of determining whether any matter or thing is not materially prejudicial to the interests of Holders as a whole:

- (a) the Trustee may rely on a legal opinion from independent legal advisers of recognised standing in Australia to reasonably form a view on whether it can make such a determination; and
- (b) the taxation consequences to a Holder and other special consequences or circumstances which are personal to a Holder do not need to be taken into account by the Issuer, the Trustee or their respective legal advisers.

## 11.4 Amendment of Series of Notes

An amendment made pursuant to this clause 11 applies only to Notes of the Series to which such amendment relates.

## 11.5 Amendments with the consent of the Holders

If an 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.

## 11.6 Interpretation

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

## **12 General**

### **12.1 Reporting**

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

### **12.2 Time limit for claims**

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

### **12.3 Voting**

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

### **12.4 Notices**

The Trust Deed contains provisions for the giving of notices.

### **12.5 Further documents**

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

### **12.6 Further issues**

Subject always to clause 6.1, the Issuer may from time to time, without the consent of the Holders, issue further notes having the same Terms as the Notes in all respects (or in all respects except for the Issue Date and the first payment of interest for such new notes) so as to form part of the same series or issue any other notes, shares or any other form or type of securities, or incur or guarantee any indebtedness upon such terms as it may think fit in its sole discretion.

### **12.7 Governing law and jurisdiction**

- (a) These Terms and the Notes are governed by the laws of New South Wales.
- (b) The Issuer and each Holder submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales in connection with matters concerning the Notes or these Terms.
- (c) The Issuer and each Holder 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.

## **13 Interpretation and definitions**

### **13.1 Interpretation**

In these Terms, except where the context otherwise requires:

- (a) a reference to a Note is a reference to a Note of a particular Series;

- (b) a reference to a Holder is a reference to a holder of a Note of a particular Series;
- (c) clause 1.7 of the Trust Deed applies to these Terms;
- (d) unless the contrary intention appears:
  - (i) any reference to "principal" is taken to include the Face Value of a Note payable at Redemption, and any other amount in the nature of principal payable in respect of the Notes under the Terms; and
  - (ii) any reference to "interest" is taken to include any amount in the nature of interest payable in respect of the Notes under the Terms.
- (e) if there is inconsistency between the Terms and the Trust Deed, then, to the maximum extent permitted by law, the Terms will prevail;
- (f) the Directors may exercise all powers of the Issuer under these Terms as are not, by the Corporations Act or by the Constitution of the Issuer required to be exercised by the Issuer in a general meeting;
- (g) if a calculation is required under these Terms, unless the contrary intention is expressed, the calculation will be rounded to four decimal places;
- (h) calculations, elections and determinations made by the Issuer under these Terms are binding on Holders in the absence of manifest error;
- (i) if an event under these Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (j) the singular includes the plural and vice versa, and a gender includes other genders;
- (k) another grammatical form of a defined word or expression has a corresponding meaning;
- (l) a reference to a document includes all schedules or annexes to it;
- (m) a reference to a clause or paragraph is to a clause or paragraph of these Terms;
- (n) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (o) a reference to '\$', 'Australian dollars', 'A\$', 'AUD' or 'Australian cent' is a reference to the lawful currency of Australia;
- (p) a reference to time is to Melbourne time;
- (q) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (r) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (s) a reference to a statute, ordinance, code, rule, directive or law (however described) includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (t) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (u) an Event of Default is subsisting if it has not been remedied or waived in writing; and
- (v) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Terms.

## 13.2 Definitions

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

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

**ASTC** means the ASX Settlement Pty Limited (ABN 49 008 504 532);

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

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

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

**Australian Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and, where applicable, the *Income Tax Assessment Act 1997* (Cth);

**Balance Sheet** means the balance sheet of the consolidated CVC Group shown in the latest audited financial statements or half year financial statements of the Issuer;

**BBSW Rate** means, for an Interest Period, the rate for prime bank eligible securities having the closest relevant tenor which is designated as the 'MID' on the 'ASX Benchmark Rates' web page as at approximately 11:00 am of the relevant day. However, if such rate does not appear on the 'ASX Benchmark Rates' web page or if it does appear but the Registrar determines that there is an obvious error in that rate, **BBSW Rate** means the rate determined by the Registrar having regard to comparable indices then available. The rate is to be expressed as a percentage rate per annum and will be rounded up, if necessary, to the next higher one ten-thousandth of a percentage point (0.0001 per cent.);

**Business Day** means a day which is a business day within the meaning of the ASX Listing Rules;

**Change of Control Event** means each of:

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

**Consolidated Interest Bearing Liabilities** means the aggregate sum (without double counting) of all interest bearing liabilities of the CVC Group (on a consolidated basis) as set out in the latest Balance Sheet and of the CVC Group's Guarantees;

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

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

**Costs** includes costs, charges and expenses;

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

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

**CVC Group** means the Issuer and its Subsidiaries but excludes any Subsidiary in its capacity as trustee or responsible entity of a Relevant Trust or Scheme;

**Delisting Event** will occur if:

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

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

**Early Redemption Notice** means a notice given by the Issuer to the Trustee under clause 4.2(c)(i);

**Early Redemption Premium** means:

- (a) where the Early Redemption Notice for a Premium Early Redemption is issued on or after the second anniversary from the Issue Date of the first tranche of the relevant Series but before the Maturity Date; or
- (b) where a Delisting Event occurs,  
\$2.00;

**Event of Default** means the happening of any event set out in clause 7;

**Existing Debt Obligations** means the total commitment of Financial Indebtedness made available to the CVC Group by any financier under a debt facility as at the Issue Date, which for the avoidance of doubt includes any Notes;

**Face Value** means the nominal principal amount of each Note, being \$100.00;

**Financial Adviser** means an independent financial adviser, holding a relevant Australian Financial Services Licence, appointed by the Issuer and approved in writing by the Trustee or, if the Issuer fails to make such appointment and such failure continues for a reasonable period (as determined by the Trustee), appointed by the Trustee following notification to the Issuer;

**Financial Indebtedness** means any actual or contingent debt or other monetary liability arising in respect of money borrowed or raised or any financial accommodation provided, including in respect of any:

- (a) bill of exchange, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) finance lease;
- (d) obligation to deliver goods or provide services paid for in advance by any financier or in relation to any other financing transaction; or
- (e) cash advance,

but excluding (for the avoidance of doubt) in respect of any operating lease. Where these Terms require the amount of any Financial Indebtedness to be determined or calculated, for Financial Indebtedness comprising a swap, option, hedge, forward, futures or similar transaction which is subject to netting, the net (and not the gross) amount payable by the relevant party will be counted;

**Gearing Ratio** means the aggregate of Total Liabilities less Limited Recourse Debt of CVC Group divided by the aggregate of Total Liabilities plus Total Equity less Limited Recourse Debt of the CVC Group expressed as a percentage and otherwise expressed by the following formula:

$$\frac{100(\text{Total liabilities} - \text{Limited Recourse Debt})}{(\text{Total liabilities} + \text{Total equity}) - \text{Limited Recourse Debt}}$$

**Governmental Agency** means a government or a governmental, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

**Guarantee** means a guarantee (whether operative or operative on the giving of a notice, passing of time or the occurrence of an event), indemnity, letter of credit, letter of comfort having binding effect or any other obligation or irrevocable offer:

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify any person against the consequences of default in the payment of; or
- (c) to be responsible for,
- (d) an obligation or monetary liability of another person, distribution, or the solvency or financial condition of another person;

**Holder** means, in respect of a Note, the person from time to time whose name is entered on the Register as the holder of that Note;

**Holders Resolution** means a resolution passed at a meeting duly called and held (or by postal ballot) in accordance with the Meeting Provisions and:

- (a) carried by a majority consisting of greater than 50% of the persons voting at the meeting on a show of hands;
- (b) if a poll is duly demanded, by a majority of the votes cast by the Holders present at the meeting in person, by attorney, by proxy or by representative and entitled to vote; or
- (c) if the meeting is by postal ballot, by a majority consisting of the Holders representing greater than 50% of the Face Value of all of the Notes;

**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 has a controller (as defined in the Corporations Act) appointed, 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; or
- (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); or
- (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; or
- (e) it is taken (under s459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (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** means the interest payable from time to time in respect of a Note, including interest payable under in clause 3.1 and, as applicable, default interest payable under clause 3.3;

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

- (a) the last Business Day of each of March, June, September and December during the term of the Note, with the first Interest Payment Date being 30 June 2023;
- (b) the Maturity Date; and
- (c) any Redemption Date;

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

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

**Interest Rate** means, in respect of an Interest Period for a Note, the aggregate of the 90 day BBSW Rate as at the day immediately preceding the Interest Period and the Margin per annum;

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

**Issuer** means CVC Limited (ABN 34 002 700 361);

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

**Margin** has the meaning given to that term in the Prospectus or other offer document under which Notes are offered for issue;

**Maturity Date** means 31 March 2026;

**Meeting Provisions** means the rules relating to meetings of Holders contained in Schedule 2 to the Trust Deed;

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

**Minimum Holding Event** means, in respect of the Notes, that, at any time, the aggregate Face Value of the Notes that have not been Redeemed is less than 10% of the aggregate Face Value of the Notes originally issued on the Issue Date;

**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;

**Notification Date** means the date stated in the copies of a written resolution to be made in writing sent for that purpose to Holders, which must be no later than the date on which such resolution is first notified to Holders in the manner provided in the Terms;

**Permitted New Debt** means to incur any Financial Indebtedness for moneys borrowed or raised pursuant to any financial accommodation the terms of which are commercial, arm's length and do



not contain any unusual or onerous terms and on an incurrence basis does not result in the Gearing Ratio exceeding 40%;

**Permitted Security Interest** means, in relation to a member of the CVC Group, as the case may be, any of the following:

- (a) liens, rights of retention and statutory charges arising by operation of law in the ordinary course of business where the related indebtedness is not more than 60 days overdue or is being contested in good faith and appropriately provisioned;
- (b) any Security Interest granted in relation to Permitted New Debt;
- (c) any Security Interest over the assets of a member of the CVC Group where:
- (d) such member became a Subsidiary of the Issuer after the date of the Trust Deed and such Security Interest was not created in contemplation of that member becoming a Subsidiary of the Issuer; and
- (e) 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 CVC Group became a Subsidiary of the Issuer or at such earlier time as that member elects;
- (f) any Security Interest for Limited Recourse Debt; and
- (g) any other Security Interest not referred to in sub-paragraphs (a) to (e) above provided the aggregate value of assets subject to such Security Interests is not more than 10% of the Total Equity;

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

- (a) subject to sub-paragraphs (b) and (c), the date which is eight (8) calendar days before the applicable due date for payment; or
- (b) such other date as is determined by the Issuer in its absolute discretion, and communicated to ASX not less than eight calendar days before the record date which would have been determined under paragraph (a) above; or
- (c) such other date as may be required by, or agreed with, ASX;

**Redemption** means the redemption of a Note in accordance with clause 4 and the words

**Redeem**, **Redeemable** and **Redeemed** bear their corresponding meanings;

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

**Register** means the register of Holders (established and maintained under clause 17 of the Trust Deed) and, where appropriate, the term **Register** includes:

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

**Registrar** means Registry Direct Limited ABN 35 160 181 840 or any other person appointed by the Issuer (with such appointment notified to the Trustee) to maintain the Register and perform any payment and other duties as specified in that agreement;

**Regulatory Event** means, in the opinion of the Directors (having obtained an opinion from a reputable legal or accounting adviser):

- (a) there is more than an insubstantial risk that the Issuer will be exposed to additional costs or the imposition of additional requirements which the Directors determine at their sole



discretion to be unacceptable, as a result of the occurrence of any of the following on or after the Issue Date:

- (i) the introduction, enactment, amendment, change, repeal, replacement or revocation of an applicable standard or regulation affecting the accounting treatment of the Notes;
  - (ii) the introduction, enactment, amendment, change, repeal, replacement or revocation of any law or regulation affecting the Notes or any action required to be taken by the Issuer under these Terms or the Trust Deed; or
  - (iii) any pronouncement, action or decision of a Governmental Agency or ASX interpreting or applying any law or regulation or the ASX Listing Rules; or
- (b) there is more than an insubstantial risk that the Issuer would be exposed to more than a de minimis increase in its costs (including, but not limited to, increased taxes, duties or other governmental charges or civil liabilities and/or the loss or reduction of any tax deduction available to the Company in connection with the payment of Interest on the Notes) as a result of the occurrence on or after the Issue Date of:
- (i) any amendment to, clarification of, or change (including any announced prospective change), in the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;
  - (ii) any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (Administrative Action); or
  - (iii) any amendment to, clarification of, or change in the pronouncement that provides for a position with respect to an Administrative Action that differs from the current generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known;

**Related Body** Corporate has the meaning given in the Corporations Act;

**Relevant Trust or Scheme** means a trust, managed investment scheme or other comparable arrangement in respect of which moneys have been raised from the public or that has otherwise been established bona fide for or with a view to, and in which there are, investors, beneficiaries, objects of trust or other scheme participants external to the CVC Group (including any sub-trust or other Subsidiary of such a trust, managed investment scheme or other comparable arrangement), other than a trust, managed investment scheme or other comparable arrangement in which an entity of the CVC Group (that is not a Relevant Trust or Scheme or acting in the capacity of trustee or responsible entity of a Relevant Trust or Scheme) has a Controlling Interest of more than 50%;

**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 Holders;

**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 Holders;

**Security** has the meaning given to that term in the Corporations Act;

**Security Interest** means any mortgage, pledge, lien or charge or any security (including any security interest arising under sections 12(1) or 12(2) of the *Personal Property Securities Act 2009* (Cth)) 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, including any retention of title other than in the ordinary course of business and any charge or lien arising by operation of law;

**Shares** means an ordinary share in the capital of the Issuer;

**Special Resolution** means:

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

**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 Holder's name as at the date specified in the statement.

**Subsidiary** has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of an entity if it is controlled by that entity (as defined in s50AA 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;

For the avoidance of doubt, no Relevant Trust or Scheme is or will be deemed to be a Subsidiary of a member of the CVC Group;

**Tax** means any tax, levy, impost, charge, rate, withholding or duty (including stamp and transaction duties) levied or imposed by any Governmental Agency together with any related interest, penalties, fines and expenses in connection with them. It includes GST;

**Terms** means, in relation to a Note, the terms and conditions of issue of that Note (as set out in Schedule 1 to the Trust Deed);

**Total Equity** means the total equity from time to time of the CVC Group on a consolidated basis (as set out in the latest balance sheet and notes to the balance sheet);

**Total Liabilities** means the total liabilities from time to time of the CVC Group on a consolidated basis (as set out in the latest balance sheet and notes to the balance sheet);

**Trust Deed** means the trust deed entitled 'Trust Deed relating to the CVC Note 2 Trust' between the Issuer and the Trustee and dated on or about 15 March 2023 as amended on or about 1 July 2024;

**Trustee** means the person from time to time acting as the trustee of the trust constituted by the Trust Deed (acting in that capacity), initially being Melbourne Securities Corporation Limited (ABN 57 160 326 545);

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

## Schedule 2

### Rules relating to meetings of Holders

#### 1 Power to call meetings

##### 1.1 Ability to convene meetings

The Trustee or the Issuer may at any time call a meeting of Holders or Holders of a Series.

##### 1.2 Issuer's duty to call meeting

In accordance with section 283EA(1) of the Corporations Act, on direction (to the Issuer in writing at its registered office) of the Holders representing at least 10% of the Face Value of the Notes on issue, the Issuer must call a meeting of Holders:

- (a) to consider the financial statements that were laid before the last preceding annual general meeting of the Issuer; or
- (b) to give the Trustee directions in relation to the exercise of the Trustee's powers, or both, as so requested by the relevant Holders.

##### 1.3 Trustee's duty to call a Meeting

Subject to being indemnified and/or secured to its satisfaction, the Trustee must call a meeting if Holders 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.

##### 1.4 Meeting under the Corporations Act

A meeting of Holders may be called under Part 2L.5 of the Corporations Act.

##### 1.5 Venue

- (a) All meetings must be held in New South Wales, 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 Holders as a whole a reasonable opportunity to participate at the same time.

##### 1.6 Holders at a specified time

The time and date for determining the identity of a Holder who may be counted for the purposes of determining a quorum or attend and vote at a meeting, or sign a written 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 21 days before either the date of the meeting or, for a written resolution, the Notification Date (as applicable).

##### 1.7 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.

## **1.8 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.

## **2 How to call meeting**

### **2.1 Period of notice**

- (a) At least 10 Business Days' notice (15 Business Days' notice for a Special Resolution) exclusive of the day on which the notice is served or deemed to be served and of the day on which the meeting is to be held, of every meeting is to be given to the Holders or the Holders of the relevant Series, as the case may be, the Trustee (if the notice is not given by the Trustee), the Issuer (if the notice is not given by the Issuer), the Registrar and the Issuer's auditors.
- (b) Holders who are or become registered as Holders less than 21 days before a meeting will not receive notice of that meeting.

### **2.2 Right of attendance**

The following persons have the right to attend and, if they wish, to address any meeting of Holders or Holders of a Series:

- (a) each Holder or Holder of the Series (as the case may be) and their representative, proxy or attorney;
- (b) the Trustee, its solicitors and any other experts or advisers that the Trustee may engage;
- (c) the directors of the Issuer and the Issuer's solicitors;
- (d) the auditor of the Issuer; and
- (e) any other experts or advisers that the Issuer may engage.

### **2.3 Contents of notice**

The notice must specify;

- (a) who called the meeting;
- (b) the place, day and hour of the meeting; and
- (c) the general nature of the business to be transacted, but it is not necessary to specify in the notice the precise terms of the resolutions to be proposed; and
- (d) that Holders may attend personally or through a proxy appointed and notified to the Trustee in accordance with paragraph 6 of this Schedule 2.

### **2.4 Omission to give notice**

- (a) Accidental omission to give notice to, or the non-receipt of notice by, a Holder does not invalidate the meeting nor any resolution passed 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 by the period specified in this clause 2, all business transacted and resolutions passed at the meeting will (unless the Trustee or the Issuer (as the case may be) who did not receive notice refuses to accept delivery of that notice or by notice to the other, waives its rights to compliance with this paragraph) be void and of no effect.

## 2.5 Postal ballot

Any meeting of Holders or Holders of a Series may be conducted by postal ballot in accordance with such arrangements as the Issuer may determine and the Trustee approves, which arrangements, unless the Trustee and the Issuer agree otherwise, must reflect as closely as may be practicable, the provisions of this Schedule 2.

## 2.6 Location of meetings

All meetings of Holders and Holders of a Series must be held in the Jurisdiction unless the Issuer and the Trustee agree otherwise.

# 3 Proceedings at meeting

## 3.1 Quorum

- (a) At any such meeting, any one or more Holders present in person or by proxy, form a quorum for the purposes of passing the resolutions shown in the table below, only if they alone or together hold (or in the case of proxies, represent Holders who hold) in aggregate at least the proportion of the outstanding principal amount of the Notes of the relevant Series shown in the table below.

Type of resolution	Required proportion for any meeting except for meeting previously adjourned because of lack of quorum	Required proportion for meeting previously adjourned because of lack of quorum
Special Resolution	Greater than 50%	10%
Holder Resolution	10%	No requirement

- (b) No business (other than choosing the Chairperson) shall be transacted at any 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 Chairperson of the meeting (on the Chairperson's own motion or at the request of a Holder or proxy representing a Holder who is present (if such request is accepted by the Chairperson in its absolute discretion)) declares otherwise.
- (c) In determining how many Holders are present, each individual attending as a proxy is to be counted, except that:
- (i) where a Holder has appointed more than one proxy, only one of those proxies is to be counted;
  - (ii) where an individual is attending both as a Holder and as a proxy on behalf of another Holder, that individual is to be counted once in respect of each such capacity; and
  - (iii) where an individual is attending as a Holder and has also appointed a proxy in respect of the Notes it holds, those individuals are to be counted only once.

### 3.2 No quorum

- (a) First meeting - If a quorum is not present within 30 minutes from the time appointed for the meeting, then the meeting shall:
  - (i) if convened on the requisition of Holders, be dissolved; and
  - (ii) in any other case stand adjourned to such day and time (not being less than 14 days thereafter) and to such place as may be appointed by the Chairperson.
- (b) Second meeting - If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for any adjourned meeting, the Chairperson may:
  - (i) dissolve the meeting or
  - (ii) if the meeting is not dissolved in accordance with this provision, the Chairperson may, with the consent of the meeting, and must, if directed by the meeting, adjourn the meeting once more to a new date (being not less than 14 days after the adjourned meeting), time or place. The 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.

### 3.3 Chairperson

- (a) The person who calls a meeting must nominate in writing a Chairperson to chair the meeting. The Chairperson of a meeting need not be a Holder and may be an officer or employee of the Issuer or the Trustee. The Chairperson 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 Chairperson 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 Chairperson unless the meeting was convened by the Trustee, in which case the Holders or proxies present may appoint a Chairperson.

### 3.4 Adjournment

- (a) The Chairperson may, with the consent of a Holders' Resolution of any meeting at which a quorum is present (such consent being obtained if the Chairperson so requires on a poll), and shall (if directed by a Holders' Resolution on a poll), adjourn the meeting either to a later time at the same meeting or to an adjourned meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
- (c) 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 Holder, 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.

### **3.5 Minutes**

- (a) Minutes of all resolutions and proceedings at every meeting of Holders or of Holders of a Series must be made and duly entered in books to be provided from time to time for that purpose by the Issuer.
- (b) Minutes of a meeting signed by the Chairperson constitute conclusive evidence of the proceedings of the meeting, and until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made will be deemed to have been duly held and convened and all resolutions passed or proceedings taken to have been duly passed or taken.

## **4 Voting**

### **4.1 Show of hands**

At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairperson, the Trustee, at least five Holders (or at least five Holders of the relevant Series) present in person or by proxy or attorney or by one or more Holders (or Holders of the relevant Series) present in person or by proxy or attorney and holding or representing 5% of the Face Value of all Notes (or of all Notes in the relevant Series) on issue at the time of the meeting in respect of which the meeting has been called. Unless a poll is so demanded, a declaration by the Chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

### **4.2 Poll**

If a poll is duly demanded it shall be taken in such manner as the Chairperson may direct and the result of such poll shall be the resolution of the meeting at which the poll was demanded.

### **4.3 Conduct of poll**

A poll demanded on the election of a Chairperson or on a question of adjournment shall be taken at the meeting without adjournment. A poll demanded on any other question shall be taken either immediately or at such time (not being more than five days from the date of the meeting) and place as the Chairperson may direct. No notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

### **4.4 Number of votes**

On a show of hands every Holder (or Holder of the relevant Series) who:

- (a) being an individual is present in person or by proxy or attorney; or
- (b) being a corporation is present by proxy or attorney or by its authorised representative,

shall have one vote and on a poll every Holder (or Holder of the relevant Series) who is present in person or by attorney or by proxy shall have one vote for every Note with respect to which it is the registered holder. A Holder (or Holder of the relevant Series) entitled to more than one vote need not use all its votes or cast all the votes it uses in the same way.

### **4.5 Joint Holders**

In the case of joint Holders, the joint Holder first named in the Register (or if that person does not vote, the next named joint Holder, or if that person does not vote, the next named and so forth) may exercise the voting rights of jointly held Notes.



#### **4.6 Casting vote**

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

### **5 Passing resolutions in writing**

- (a) The Holders may without a meeting being held pass a resolution in writing without a meeting being held.
- (b) A resolution in writing is passed, without a meeting being held:
  - (i) if it is a Holder Resolution, where within one month from the Notification Date, Holders representing more than 50% of the aggregate Face Value of all Notes outstanding as at the Notification Date have signed a document stating that they are in favour of the resolution set out in that document; or
  - (ii) if it is a Special Resolution, where within one month from the Notification Date, Holders representing at least 75% of the aggregate Face Value of all Notes outstanding as at the Notification Date have signed a document stating that they are in favour of the resolution set out in that document,

and any such resolution is deemed to have been passed on the date on which the last Holder whose signature on the resolution caused it to be so passed signed it (as evidenced on its face).

- (c) The accidental omission to give a copy of the resolution to, or the non-receipt of such a copy by, any Holder does not invalidate a resolution in writing made pursuant to paragraph (a).
- (d) A resolution in writing signed by Holders may be contained in one document or in several documents in like form each signed by one or more Holders.
- (e) A resolution in writing signed by Holders must be signed by a director or secretary of the Issuer.

### **6 Proxies**

#### **6.1 Appointment of proxy**

A Holder entitled to attend and vote at a meeting may appoint a proxy to attend and act on that Holder's behalf in connection with any meeting.

#### **6.2 Validity of forms of proxy**

Forms of Proxy are valid for so long as the Notes to which they relate are registered in the name of the appointor but not otherwise.

#### **6.3 Instrument appointing proxy**

An instrument appointing a proxy shall be in writing under the hand of:

- (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.



#### **6.4 Rights of proxy**

A proxy appointed to attend and vote for a Holder has the same rights as the Holder to speak at the meeting and to vote (but only to the extent allowed by the appointment).

#### **6.5 Proxy need not be Holder**

A person appointed to act as a proxy need not be a Holder, and may be an attorney, officer, employee, contractor, agent, representative of, or otherwise connected with, the Issuer or the Trustee (as the case may be).

#### **6.6 Deposit of proxy**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a duly certified copy of such power or authority shall be deposited at such place 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 before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

#### **6.7 Form of proxy**

An instrument of proxy may be in the usual common form or in such other form as the Issuer and the Trustee shall approve. The proxy shall be deemed to include the right to demand or join in demanding a poll. Unless the contrary is stated on a proxy, a proxy shall be as valid for any adjournment of the meeting as for the meeting to which it relates and need not be witnessed.

#### **6.8 Validity of vote**

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation or amendment of the proxy or of the authority under which the proxy was executed or the transfer of the Notes in respect of which the proxy is given provided that no notice in writing of such death, insanity, revocation, amendment or transfer shall have been received by the Issuer at its registered office 48 hours before the commencement of the meeting or adjourned meeting at which the proxy is used. The Issuer will promptly provide to the Trustee a copy of any such written notice that it receives.

### **7 Special Resolutions**

The Holders have, in respect of the Notes and subject to the provisions contained in the Terms, in addition to the powers set out above, but without affecting any powers conferred on other persons, the following powers exercisable only by Special Resolution subject to the provisions relating to quorum in paragraph 3 of this schedule:

- (a) the power to approve any proposal to modify a provision of the Trust Deed or the Terms, except for:
  - (i) any amendment which may be made without the consent of Holders under clause 19.2 of the Trust Deed or clause 11.1 of the Terms; or
  - (ii) any amendment which may be made with the consent of Holders by way of a Holders Resolution, including under clause 19.2 of the Trust Deed or clause 11.2 of the Terms, 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 Terms;

- (c) the exercise of any right, power or discretion under the Trust Deed or the Terms that expressly requires a Special Resolution;
- (d) 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 Terms or the Trust Deed to be taken only by Special Resolution;
- (e) the power to sanction the release by the Trustee of the Issuer from any obligation under the Terms or the Trust Deed either unconditionally or upon such conditions as the Trustee may arrange with the Issuer (as the case may be);
- (f) subject to paragraph (a) above and any provisions in the 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 Terms or the Trust Deed;
- (g) subject to any provisions in the 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;
- (h) the power to authorise the Trustee to sanction on behalf of all the Holders any scheme for reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation;
- (i) the power to sanction 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;
- (j) the power to sanction 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);
- (k) the power to sanction any proposal to modify the Face Value in respect of the Notes;
- (l) the power to sanction any proposal to modify the provisions concerning the quorum required at any meeting of Noteholders or the majority required to pass the Special Resolution.
- (m) the power to approve the release of the Trustee from liability for something done or omitted to be done by the Trustee or any other person before the release is given;
- (n) the power to authorise any person to do all such acts and things as may be necessary to carry out and give effect to a Special Resolution;
- (o) the power to authorise any person to do anything necessary to give effect to a Special Resolution;
- (p) the power to authorise any to appoint any persons (whether Holders or not) as a committee or committees to represent the interests of the Holders and to confer upon such committee or committees any powers or discretions which the Holders could themselves exercise by Special Resolution; and
- (q) the power to discharge or exonerate the Registrar from any liability in respect of any act or omissions for which the Registrar may have become responsible under these presents or under the Notes.

## 8 Holder Resolution

The Holders have the power exercisable by Holder Resolution to do anything for which a Special Resolution is not required.

## **9 Effect and notice of resolutions**

- (a) A Holders' Resolution or a Special Resolution passed at a meeting of the Holders or the Holders in the relevant Series duly called and held (including by way of postal ballot) in accordance with this Schedule 2 will be binding upon all the Holders and the Holders in the relevant Series (whether or not present at the meeting) and each of the Holders shall be bound to give effect thereto accordingly.
- (b) The Issuer must give notice to the Holders of the result of the voting on a resolution within 10 Business Days of such result being known but failure to do so will not invalidate the resolution. Such notice to Holders must be given in the manner provided in the Terms.

## **10 Minutes to be kept**

- (a) The Issuer must ensure that:
  - (i) minutes of all resolutions and proceedings at every meeting (or resolutions otherwise passed in accordance with this schedule) are made and duly entered in books to be, from time to time, provided for that purpose by the Issuer;
  - (ii) minutes of each meeting are signed by the chairman of the meeting or by the chairman of the next meeting; and
  - (iii) written resolutions are signed by a director or secretary of the Issuer.
- (b) Any such minutes, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings transacted or by the chairman of the next succeeding meeting of Holders (or, where the resolution is passed otherwise than at a meeting, if purporting to be signed by a director or secretary of the Issuer), are, unless the contrary is proved, conclusive evidence of the matters contained in them.
- (c) Until the contrary is proved, every such minute in respect of the proceedings of which minutes have been made and signed in that manner is deemed to have been duly convened and held, and all resolutions passed or proceedings transacted at that meeting are deemed to have been duly passed and transacted (or, where the resolution is passed otherwise than at a meeting, such resolution is deemed to have been duly passed).

## **11 Notes of more than one Series**

### **11.1 Application**

This paragraph applies whenever there are outstanding Notes which do not form a single Series.

### **11.2 Resolutions affecting one Series**

A resolution which affects one Series of Notes only is taken to have been duly passed if passed at a meeting, or by a written resolution, of the Holders of that Series.

### **11.3 Resolutions affecting more than one Series**

- (a) A resolution which affects more than one Series of Notes but does not give rise to a conflict of interest between the Holders of any of the Series so affected is taken to have been duly passed if passed at a single meeting, or by a written resolution, of the Holders of all Series so affected (and, for the purposes of determining the requisite quorum and required proportions of holdings for determining if a resolution has been passed at such a meeting, all Series shall be aggregated as if they formed a single Series).
- (b) A resolution which affects more than one Series and gives or may give rise to a conflict of interest between the Holders of any of the Series so affected is taken to have been duly

passed if passed at separate meetings, or by separate written resolutions, of the Holders of each Series so affected.

#### **11.4 Legal opinions**

The Issuer and the Trustee may rely on, and the Holders are bound by, a legal opinion from independent legal advisers of recognised standing in Australia to the effect that a resolution:

- (a) affects one Series only; or
- (b) if it affects more than one Series of Notes, does not give rise to a conflict of interest, for the purposes of determining the meeting or meetings which need to be held for the purposes of this paragraph.

#### **12 Further procedures**

The Issuer and the Trustee may prescribe further regulations for the holding of, attendance and voting at meetings as are necessary or desirable and are not materially prejudicial to the interests of the Holders as a whole.

#### **13 Interpretation**

- 13.1 Words and expressions defined in the Deed have the same meaning in this Schedule 2, unless the context otherwise requires.
- 13.2 Where a meeting of Holders in a Series only is to be held, the references in this Schedule 2 to 'Holder' or 'Holders' is to a Holder or Holders in that Series only.
- 13.3 Unless the Terms otherwise provide, if there is any inconsistency between the provisions of the Terms and the Trust Deed, then, to the maximum extent permitted by law, the provisions of the Trust Deed (and this Schedule 2) will prevail.

**Executed** as a deed.

*[Execution blocks intentionally omitted]*