

Insolvency · Forensic · Reconstruction



FACSIMILE	
TO: Stanfield Funds Management Limited (Receivers & Managers Appointed) (Subject to Deed of Company Arrangement)	FROM: Mr Matthew Steinfort Rodgers Reidy Chartered Accountants
ATTENTION: ASX Market Announcements	DATE: 8 October 2014
RE: Deed of Company Arrangement	FAX NO: 1300 135 638

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DEED OF COMPANY ARRANGEMENT

Stanfield Funds Management Limited
(Administrator Appointed)
(Company)

Mathew Gollant
(Deed Administrator)

NVNG Investments Pty Ltd
as trustee for the
NVNG Investments Trust
(Proponent)

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PRICE SIERAKOWSKI
CORPORATE

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This deed is dated the 6th day of October 2014.

Parties

Stanfield Funds Management Limited (Administrator Appointed) ACN 006 222 395 of Level 4 Podium, 120 Collins Street, Melbourne, Victoria, 3000 (**Company**)

Mathew Gollant of c/- Rodgers Reidy Chartered Accountants, Level 3, 326 William Street, Melbourne, Victoria 3000 (**Deed Administrator**)

NVNG Investments Pty Ltd ACN 600 403 398 as trustee for the NVNG Investments Trust of 283 Rokeby Road, Subiaco, Western Australia 6008 (**Proponent**)

Background

- A. On the Appointment Date Timothy MS Holden and Mathew Gollant were appointed as joint and several administrators of the Company pursuant to section 436A(1) of the Corporations Act, by resolution of the directors of the Company.
- B. At a meeting of Creditors held on 16 September 2014 pursuant to section 439A(1) of the Corporations Act, the Creditors resolved pursuant to section 439C of the Corporations Act that the Company enter into a deed of company arrangement in respect of, and for the purposes of giving effect to, the Recapitalisation Proposal.
- C. Timothy MS Holden resigned as joint and several administrator of the Company effective 1 October 2014.
- D. The Administrator has consented to its appointment as administrator of this deed.
- E. This deed sets out the terms of the deed of company arrangement pursuant to section 444A(3) of the Corporations Act.

Agreed terms

1 Interpretation

1.1 Definitions

In this deed:

(a) **Administration Liabilities** means:

- (i) any debts or other obligations incurred by the Company for which the Deed Administrator is liable and which were incurred during the period from the Commencement Date to the Administration Date;
- (ii) any debts or other obligations incurred by the Deed Administrator during the period from the Commencement Date to the Administration Date;
- (iii) all actions, suits, proceedings, accounts, claims and demands arising after the Commencement Date, out of or relating to this deed or out of or relating to the Deed Fund which may be commenced, incurred by or made

on the Administrator (in any capacity), or the Deed Administrator by any person and against all costs, charges and expenses incurred by the Administrator or the Deed Administrator in respect of them; and

- (iv) without limitation to paragraphs (a) and (i) above:
 - (A) any debts to which the statutory indemnity under section 443D of the Corporations Act applies;
 - (B) any amounts in respect of which the Deed Administrator is entitled to exercise a lien whether in law, equity or under section 443F of the Corporations Act on the property of the Company; and
 - (C) any amount in respect of which the Deed Administrator is entitled to the benefit of the indemnity in clause 31 of this deed;
- (b) **Administrator** means Mathew Gollant of c/- Rodgers Reidy Chartered Accountants, Level 3, 326 William Street, Melbourne, Victoria 3000 in his capacity as administrator of the Company;
- (c) **Administrator's Costs** means the remuneration and costs incurred by the Administrator and its staff with respect to acting as voluntary administrator from the Appointment Date to the Commencement Date calculated in accordance with the Scheduled Rates, plus any GST payable thereon, as approved by the Creditors on 16 September 2014;
- (d) **Administrator's Disbursements** means all incidental costs and disbursements incurred by the Administrator from the Appointment Date to the Commencement Date in connection with the implementation of this deed and the performance of the Administrator's duties including all legal costs incurred by the Administrator plus any GST payable thereon;
- (e) **Admitted Claim** means the amount of an Unsecured Creditor's Claim as determined by the Deed Administrator in accordance with clause 17;
- (f) **Admitted Creditor** means an Unsecured Creditor whose Claim has been admitted by the Deed Administrator in accordance with clause 17;
- (g) **Agreed Amount** means the amount of \$257,622;
- (h) **Appointment Date** means 12 August 2014;
- (i) **ASIC** means the Australian Securities and Investments Commission;
- (j) **Assets** means all property of the Company as at the Appointment Date, whether or not those assets have been identified by or otherwise made known to the Deed Administrator as at the Appointment Date;
- (k) **ASX** means Australian Securities Exchange Ltd ABN 83 000 943 377, or, as the context requires, the financial market operated by it;
- (l) **ASX Approval** means the written notice of approval referred to in clause 7.1(d);
- (m) **Board** means the board of Directors;
- (n) **Boardroom Capital** means Boardroom Capital Pty Ltd ACN 168 482 219;
- (o) **Business Day** means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia or Melbourne, Victoria;
- (p) **Claim** means a debt owing by, or a claim subsisting against the Company in favour of a person, or a debt or claim the circumstances giving rise to which occurred, or any action, suit, causes of action, arbitration, cost, demand, verdict,

or judgment at law or in equity or under any statute which arose (whether at law, in equity, whether present, prospective or contingent whether liquidated or sounding only in damages and whether sounding in contract, or tort or however arising) on or before the Appointment Date;

- (q) **Cleansing Prospectus** means a disclosure document issued by the Company complying with Part 6D.2 of the Corporations Act in respect of an offer of Shares;
- (r) **Commencement Date** means the date on which the Initial Condition is satisfied;
- (s) **Completion Date** means the date that is 3 Business Days after the satisfaction or waiver of the Conditions or any other date agreed by the parties in writing;
- (t) **Completion** means completion of the matters referred to in clause 13;
- (u) **Con Note Amount** means \$580,000;
- (v) **Conditions** means the conditions set out in clause 7.1;
- (w) **Convertible Note Agreement** means the convertible note agreement to be entered into between the Company and the Proponent (on behalf of Exempt Investors) in accordance with clause 9.2;
- (x) **Convertible Note** means a convertible note to be issued under the Convertible Note Agreement;
- (y) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (z) **Court** means any court having jurisdiction to hear and determine matters under the Corporations Act;
- (aa) **Creditor Offer** means the offer to Admitted Creditors of three Shares for every \$1.00 owed to each Admitted Creditor, and one attaching Creditor Option for each Share issued to the Admitted Creditor, under the Prospectus for nil cash consideration in accordance with clause 18;
- (bb) **Creditor Option** means an Option on terms and conditions consistent with those set out in clause 9.5;
- (cc) **Creditors** means all creditors of the Company having a Claim, and **Creditor** means one of them;
- (dd) **Creditors' Meeting** means a meeting convened in accordance with section 445F(1) of the Corporations Act;
- (ee) **Deed Administrator's Costs** means the remuneration and costs incurred by the Deed Administrator and its staff with respect to acting as Deed Administrator from the Commencement Date and until the termination of this deed, plus any GST payable thereon, as approved by the Creditors;
- (ff) **Deed Administrator's Disbursements** means all incidental costs and disbursements incurred by the Deed Administrator and its staff from the Commencement Date and until the termination of this deed in connection with this deed, including, but not limited to, all legal costs incurred by the Deed Administrator plus any GST payable thereon;
- (gg) **Deed Fund** means the aggregate of the monies and Property transferred to the Deed Administrator as described in clause 16.3;
- (hh) **Deed Period** means the period commencing on the Commencement Date and ending on the Termination Date;
- (ii) **Deposit** means the non-refundable deposit of \$100,000 paid by the Proponent to the Administrator in connection with the Recapitalisation Proposal;

- (jj) **Director** means any person who, by reason of the definition of director in section 9 of the Corporations Act, is a director of the Company;
- (kk) **Dividend** means the amount to be paid out of the Deed Fund to each Admitted Creditor in accordance with clause 17.2;
- (ll) **Employee** means a Creditor of the Company who was an employee of the Company within the meaning of section 556(2) of the Corporations Act;
- (mm) **End Date** means:
 - (i) where a Condition is expressly required to occur by a certain date, that date; or
 - (ii) otherwise, the date that is 6 months after the date of this deed;
- (nn) **Enforcement Process** has the meaning given in section 9 of the Corporations Act;
- (oo) **Exempt Investor** means an investor to whom securities may be offered by the Company without disclosure under section 708 of the Corporations Act (excluding section 708(1));
- (pp) **General Meeting** means the general meeting of the Company to be convened and held in accordance with clause 10.2;
- (qq) **General Security Deed** means the general security deed to be entered into between the Company and the Proponent (on behalf of Exempt Investors) in accordance with clause 9.2(b);
- (rr) **Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including a self-regulatory organisation established under statute, ASX, or any other securities exchange) in any part of the world;
- (ss) **GST** means the goods and services tax as imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), together with any related interest, penalties, fines or other charges;
- (tt) **Initial Condition** means the condition clause 2.1;
- (uu) **Intellectual Property** means the intellectual property of the Company at the Commencement Date;
- (vv) **Listing Rules** means the ASX Listing Rules published and distributed by the ASX;
- (ww) **Meeting Documents** means a notice of meeting, explanatory memorandum and such other documents (including, if necessary, an independent expert's report) as may be required under the Listing Rules or the Corporations Act for the purpose of convening and holding the General Meeting;
- (xx) **Noteholder Option** means an Option on terms and conditions consistent with those set out in clause 9.6;
- (yy) **Option** means an option to acquire a Share;
- (zz) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (aaa) **PPSR** means the Personal Property Securities Register established under the PPSA;

- (bbb) **Property** means a legal or equitable estate or interest in property of any description;
- (ccc) **Property Holding Costs** means all holding costs in respect of any Assets, including but not limited to insurance, rent, utilities costs and any relocation costs;
- (ddd) **Prospectus** means a prospectus prepared in accordance with Part 6D.2 of the Corporations Act and the ASX Approval under which the Company will offer the securities to be issued under the Prospectus Capital Raising, the Creditor Offer and any other offer that the parties consider is reasonably necessary to implement the Recapitalisation Proposal;
- (eee) **Prospectus Capital Raising** means the capital raising to be undertaken by the Company and co-ordinated by the Proponent under the Prospectus in accordance with clause 9.4(b);
- (fff) **Recapitalisation Proposal** means the proposal for the reconstruction and recapitalisation of the Company set out in Part C of this deed, including the:
- (i) payment of the Deposit to the Administrator;
 - (ii) raising of the Con Note Amount under the Convertible Note Agreement;
 - (iii) completion of the Prospectus Capital Raising;
 - (iv) completion of the Creditor Offer;
 - (v) payment of the Agreed Amount to the Deed Administrator;
 - (vi) termination of the administration of the Company as a result of this deed having been fully effectuated as it relates to the administration of the Company; and
 - (vii) achievement of Reinstatement;
- (ggg) **Receivable** means each amount owing to the Company from a debtor as at the Commencement Date, and includes any amount payable to the Company in relation to any claim under a policy of insurance held by the Company for losses arising from acts or omissions arising prior to the Commencement Date;
- (hhh) **Registered Securities** means the following security interests registered on the PPSR against the Company:

Secured party	Registration no.
Trevlynn Pty Ltd ACN 102 319 979	201112211449101
Blizzard Winds Pty Ltd ACN 163 663 885	201405230017670
Quinert Rodda & Associates Pty Ltd ACN 137 818 985	201406300113113
Quincetree Pty Ltd ACN 006 222 395	201406260100302

- (iii) **Regulations** means the *Corporations Regulations 2001* (Cth);
- (jjj) **Reinstatement** means reinstatement of the Company's securities to official quotation on the ASX;
- (kkk) **Resolution** means a resolution passed at a meeting of Creditors convened in accordance with this deed;

- (lll) **Retained Assets** has the meaning given in clause 11.1;
- (mmm) **Scheduled Rates** means the rates set out in the Schedule;
- (nnn) **Secured Creditor Amount** means the Con Note Amount less \$30,000;
- (ooo) **Secured Creditors** means:
 - (i) Trevlynn Pty Ltd ACN 102 319 979;
 - (ii) Blizzard Winds Pty Ltd ACN 163 663 885;
 - (iii) Quinert Rodda & Associates Pty Ltd ACN 137 818 985; and
 - (iv) Quincetree Pty Ltd ACN 006 222 395;
- (ppp) **Share** means a fully paid ordinary share in the Company;
- (qqq) **Shareholder** means a holder of one or more Shares;
- (rrr) **Specified Clauses** means clauses 1, 22.4, 31, 33, 36 and 37;
- (sss) **Surplus Assets** means the Assets other than the Retained Assets;
- (ttt) **Termination Date** means the date upon which this deed is terminated in accordance with clause 32;
- (uuu) **Underwriter** means Alignment Capital Pty Ltd ACN 167 124 754;
- (vvv) **Underwritten Amount** means \$2,000,000; and
- (www) **Unsecured Creditor** means a Creditor other than the Employee or a Secured Creditor.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) if a party comprises two or more persons, the covenants and agreements on their part bind and shall be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this deed and a reference to this deed includes any annexure, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;

- (j) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (k) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (m) a right includes a benefit, remedy, discretion or power;
- (n) includes, including, for example or similar expressions means that expression without limitation;
- (o) '\$' or 'dollars' is a reference to Australian currency;
- (p) a reference to time is to local time in Perth, Western Australia;
- (q) where the day on or by which any thing is to be done is not a business day, that thing must be done on or by the next business day; and
- (r) where time is to be calculated by reference to a day or event, that day or the day of the event is included.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

Part A – Preliminary matters

2 Condition to this Deed

2.1 Initial Condition

Other than clauses 2 and 3 which will have force and effect from the date of this deed, this deed will have no force or effect unless and until the Administrator procures:

- (a) the termination by the Administrator, or the resignation, of John Pereira and Tao Liu as Directors; and
- (b) subject to the Administrator receiving signed consents to act as a Director, the appointment of four nominees of the Proponent as Directors, being:
 - (i) Xavier Kris;
 - (ii) Paul Doropoulos;
 - (iii) James Pearson; and
 - (iv) Carl Clump.

If the Proponent wishes to appoint a person as a Director in the stead of any of the foregoing persons, the Proponent must first obtain the prior written consent of the Administrator to the appointment of that person as a Director.

2.2 Reasonable commercial endeavours

The Deed Administrator must use all reasonable commercial endeavours to procure the satisfaction of the Initial Condition as quickly as possible and in any event within 7 days of the date of this deed (or such later date that the parties may agree).

2.3 Obligation to Inform

The Deed Administrator must:

- (a) keep the other parties informed in a timely manner of the steps it has taken and of its progress towards satisfaction of the Initial Condition, including the status of any discussions or negotiations with third parties regarding the Initial Condition; and
- (b) promptly notify the other parties on becoming aware of the fulfilment of the Initial Condition.

2.4 Waiver

The Initial Condition can only be waived by the Proponent by written notice to the other parties.

2.5 Termination

If the Initial Condition is not satisfied within 7 days of the date of this deed (or such later date that the parties may agree), the Proponent may terminate this deed by notice to the other parties.

2.6 Remedies

If this deed is terminated under clause 2.5 then it will have no further force or effect and the parties will have no further obligations under this deed, provided that:

- (a) this clause 2.6 and any other clause which is expressly stated to survive termination will continue to apply despite termination of this deed; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this deed.

3 Interim effect

Insofar as a person would be bound by this deed if this deed had already been executed, the person must not, at any time after Creditors resolve that the Company enter into this deed but before this deed is executed, do anything inconsistent with the terms of this deed except with the leave of a Court.

4 Scope of this deed

This deed binds:

- (a) all parties to this deed;
- (b) in accordance with section 444D of the Corporations Act, all persons having a Claim against the Company; and
- (c) in accordance with section 444G of the Corporations Act, the Company, the Deed Administrator and the members and officers of the Company.

5 Prescribed provisions

5.1 Regulations

Except as expressly included in this deed, each of the prescribed provisions contained in Schedule 8A of the Regulations is expressly excluded from this deed.

5.2 Part 5.3A

This deed is intended to take effect in accordance with Part 5.3A of the Corporations Act.

6 Deposit

- (a) By entering into this deed, the Administrator acknowledges receipt of the Deposit from the Proponent.
- (b) The payment of the Deposit by the Proponent to the Administrator is unconditional and the Deposit is non-refundable by the Administrator and the Deed Administrator (as applicable).

Part B – Reconstruction

7 Conditions to Completion

7.1 Conditions

The obligations of the parties at Completion are conditional on each of the following conditions being satisfied or waived:

- (a) **(Convertible Note Agreement)** contemporaneous with the execution of this deed, and in accordance with clause 9.2, the Company and the Proponent (on behalf of Exempt Investors) entering into the Convertible Note Agreement under which the Company will issue Convertible Notes to the Proponent and the Proponent will advance the Con Note Amount to the Company;
- (b) **(General Security Deed)** contemporaneous with the execution of this deed, the Company and the Proponent (on behalf of Exempt Investors) entering into the General Security Deed to secure the amount outstanding under the Convertible Note Agreement and registering the general security interest over all present and future acquired property of the Company on the PPSR;
- (c) **(Secured Creditors)** on or before the date that is 3 Business Days after the Company receives the Con Note Amount, the Administrator paying the Secured Creditor Amount to the Secured Creditors in accordance with clause 15.1;
- (d) **(Agreed Amount)** the Proponent co-ordinating a capital raising on behalf of the Company to raise an amount equal to the Agreed Amount and, on or before the date that is 28 days after the date of this deed, the Company paying the Agreed Amount to the Deed Administrator. The parties expressly acknowledge that the Deed Administrator will not be entitled to terminate this deed on the basis that this Condition is not satisfied unless it firstly satisfies the process set out in clause 32.1;
- (e) **(ASX Approval)** the Company obtaining written notice from ASX advising that it will not impose any requirements on the Company to re-comply with chapters 1 and 2 of the Listing Rules in relation to the Recapitalisation Proposal and that, subject to conditions that are reasonably satisfactory to the Company and the

Proponent, it does not see reason why the securities of the Company should not be reinstated to official quotation on the ASX;

- (f) **(Underwriting Agreement)** the Company and the Underwriter entering into the Underwriting Agreement under which the Underwriter agrees to underwrite the Prospectus Capital Raising (or any of its components) up to the Underwritten Amount and on otherwise terms and conditions acceptable to the Proponent;
- (g) **(Determining Dividends)** the Deed Administrator determining the Dividend payable to each Admitted Creditor and providing written notice to the Proponent of the amounts of the Dividends payable to each Admitted Creditor in accordance with clause 17.2(a);
- (h) **(Shareholders Approvals)** the Company obtaining the approval of its Shareholders to the resolutions referred to in clause 10.2;
- (i) **(Prospectus close)** the Company closing the offers made in connection with the Prospectus Capital Raising, the Creditor Offer and any other offers made under the Prospectus, in accordance with the Prospectus;
- (j) **(Underwriter confirmation)** the Company having received confirmation from the Underwriter that it is ready, willing and able to attend Completion for the purposes of fulfilling its obligations under the Underwriting Agreement contemporaneously with Completion occurring under this deed, and
- (k) **(Reinstatement)** the Company being reasonably satisfied that it has complied with, or will be able to comply with, any conditions that ASX has imposed on the Company to Reinstatement.

7.2 Reasonable commercial endeavours

- (a) Each party must use all reasonable commercial endeavours to procure the satisfaction of the Conditions to the extent that they are within its control as quickly as possible and in any event on or before the End Date.
- (b) For the purposes of clause 7.2(a), the "all reasonable commercial endeavours" of a party will include a requirement for that party to (among other things) co-operate with the other parties or a Government Agency or third party in good faith with a view to satisfying the Conditions, including by providing all information reasonably required by the other parties in order to satisfy the Conditions and providing all information reasonably required by any Government Agency or other third party to such Government Agency or third party as appropriate.

7.3 Obligation to Inform

Each party must:

- (a) keep the other parties informed in a timely manner of the steps it has taken and of its progress towards satisfaction of the Conditions, including the status of any discussions or negotiations with relevant Government Agencies or other third parties regarding the Conditions; and
- (b) promptly notify the other parties on becoming aware of the fulfilment of any Condition or of any Condition becoming incapable of being fulfilled.

7.4 Waiver

A Condition cannot be waived without the written agreement of the parties.

7.5 Termination

If the Conditions are not satisfied or waived on or before the End Date, a party may terminate this deed by notice to the other parties provided that the terminating party has complied with its obligations under this clause 7.

7.6 Remedies

If this deed is terminated under clause 7.5 then it will have no further force or effect and the parties will have no further obligations under this deed, provided that:

- (a) this clause 7.6 and any other clause which is expressly stated to survive termination will continue to apply despite termination of this deed; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this deed.

8 The Board

8.1 Assistance

The Directors must use all reasonable endeavours to co-operate with and assist the Deed Administrator in carrying out its duties and functions under this deed.

8.2 Changes to the Board

Other than in accordance with clause 2.1, the parties agree that prior to Completion no changes are to be made to the Board without the prior written consent of the Proponent. The appointment of the Proponent's nominees to the Board is to be confirmed, as required, by the Deed Administrator. Upon their appointment to the Board, subject to clauses 22 and 23, the duties and obligations of clause 8.1 will apply.

8.3 Deed of access, indemnity and insurance

The Company must ensure that, as soon as reasonably practicable, each person appointed to the Board prior to Completion enters into a deed of access, indemnity and insurance with the Company on terms considered standard for such documents.

8.4 Control

Notwithstanding any other provision of this deed and to the extent that it is legally permitted to do so, the parties acknowledge and agree that from the Commencement Date, the new Board will assume control of the day to day operations of the Company to continue the Company's business in the ordinary course having regard to the current mandate of the Company being its focus on:

- (a) completing the Recapitalisation Proposal; and
- (b) enabling Shareholders and investors to participate in the growth and social change underway in Asia, particularly through technology and services industries.

9 Capital raisings

9.1 Capital raisings

The Proponent will co-ordinate three capitals raisings on behalf of the Company for the purposes of the Recapitalisation Proposal, being:

- (a) the raising of \$580,000 under the Convertible Note Agreement;
- (b) the raising of \$257,622 to pay the Agreed Amount; and

- (c) the raising of approximately \$2,360,297 under the Prospectus Capital Raising.

9.2 Convertible Note Agreement

- (a) On or prior to the Commencement Date, the Company (with the prior written consent of the Deed Administrator) and the Proponent will enter into the Convertible Note Agreement.
- (b) Contemporaneous with the execution of the Convertible Note Agreement, the Company and the Proponent will enter into the General Security Deed for the purposes of securing the amount owing under the Convertible Note Agreement by the registration of a security interest over all present and future acquired property of the Company on the PPSR.
- (c) The Proponent will procure the preparation of the Convertible Note Agreement, the General Security Deed and any other relevant documentation required in connection with the issue of the Convertible Notes and registration of the general security interest.
- (d) The Proponent must ensure that any person whom the Proponent enters into the Convertible Note Agreement on behalf of is an Exempt Investor.
- (e) Unless the parties agree otherwise, the Convertible Note Agreement must be on terms consistent with the following:
 - (i) The effect of Convertible Note Agreement will be subject to the Initial Condition being satisfied.
 - (ii) Upon receiving the Con Note Amount from the Proponent, the Company will issue 55 Convertible Notes to the Proponent to be held on behalf of Exempt Investors, each with a face value of \$10,000.
 - (iii) The Convertible Notes will have a maturity date that is 6 months from the date of the Convertible Note Agreement (**Maturity Date**).
 - (iv) Upon the Maturity Date, the Proponent may elect to either:
 - (A) convert the Convertible Notes into Shares and Noteholder Options, with each Convertible Note converting into 40,000 Shares and 80,000 Noteholder Options; or
 - (B) redeem the Convertible Notes for their face value plus interest at rate of 16% per annum.
 - (v) The Proponent can elect to convert and/or redeem the Convertible Notes in any combination it determines, however only one election can be made.
 - (vi) When making its election, the Proponent must provide the Company with necessary details of the persons to which the securities or funds are to be issued or paid (as applicable). Such persons must be Exempt Investors.
 - (vii) Conversion of the Convertible Notes into Shares will be subject to the Company having obtained all necessary Shareholder approvals under the Corporations Act and Listing Rules.
 - (viii) If some or all of the Convertible Notes are converted into Shares then the Company must lodge a Cleansing Prospectus with ASIC within 30 Business Days of the issue of the Shares.
 - (ix) The amount owing by the Company under the Convertible Note Agreement will be secured by a general security interest registered on the PPSR pursuant to the General Security Deed and the Convertible Note Agreement.

- (x) The Proponent will be paid a capital raising fee of \$30,000 in connection with the issue of the Convertible Notes, which will be paid by the Company using the funds raised under the Convertible Note Agreement.
- (f) The Secured Creditor Amount raised under the Convertible Note Agreement will be used by the Deed Administrator in accordance with clause 15.1.

9.3 Agreed Amount

- (a) The Proponent will determine (in its sole direction) the structure of, and will co-ordinate, a capital raising on behalf of the Company to raise an amount equal to the Agreed Amount.
- (b) On or before the date that is 28 days after the date of this deed, the Company must pay the Agreed Amount to the Deed Administrator to be applied to the Deed Fund in accordance with this deed.

9.4 Prospectus Capital Raising

- (a) Subject to the Company obtaining the Shareholder Approvals, the Proponent will procure the preparation of the Prospectus in a form reasonably satisfactory to the Company.
- (b) The Proponent will determine (in its sole direction) the structure of, and will co-ordinate, a capital raising under the Prospectus, which will include any combination of the following components, provided that such capital raising raises not less than \$2,360,297 before costs:
 - (i) **(Entitlement offer)** a non-renounceable, pro rata entitlement offer of Shares at an issue price of \$0.25 each on the basis of 1 new Share for every 1 Share held at the record date to raise approximately \$1,180,148 before costs, or on such other terms as the Proponent determines;
 - (ii) **(Placement)** an offer to investors of Shares at an issue price of \$0.25 each; and
 - (iii) **(Share purchase plan)** an offer to Shareholders of Shares at an issue price of \$0.25 to be structured as a share purchase plan.
- (c) The Prospectus will include the following offers of securities:
 - (i) **(Prospectus Capital Raising)** the necessary offer(s) to undertake the Prospectus Capital Raising;
 - (ii) **(Creditor Offer)** the Creditor Offer; and
 - (iii) **(Other)** any other offer that the parties consider is reasonably necessary to implement the Recapitalisation Proposal.
- (d) Subject to clause 17, under the Creditor Offer, Admitted Creditors will be entitled to:
 - (i) three Shares for every \$1.00 owed to the Admitted Creditor; and
 - (ii) one attaching Creditor Option for every Share issued to the Admitted Creditor under the Creditor Offer.
- (e) If the Prospectus is satisfactory to the Company and the Directors have signed-off on the Prospectus then the Company must lodge the Prospectus with ASX and ASIC and the Proponent may, subject to compliance with the requirements of the Corporations Act, distribute the Prospectus on behalf of the Company in such manner as the Proponent considers appropriate.

9.5 Creditor Options

Each Creditor Option will:

- (a) have an exercise price of \$0.20;
- (b) expire 12 months from issue;
- (c) vest 3 months after issue provided that the Admitted Creditor has retained legal and beneficial ownership of the Share to which the Option attached to when issue;
- (d) not be transferable without the prior written consent of the Company (which consent may be withheld in the Company's absolute discretion);
- (e) not be quoted on ASX; and
- (f) otherwise be on such terms and conditions as are determined by the Company and the Proponent.

9.6 Noteholder Options

Each Noteholder Option will:

- (a) have an exercise price of \$0.25;
- (b) expire 3 years from issue;
- (c) not be transferable without the prior written consent of the Company (which consent may be withheld in the Company's absolute discretion);
- (d) not be quoted on ASX; and
- (e) otherwise be on such terms and conditions as are determined by the Company and the Proponent.

10 Shareholder Approvals

10.1 Meeting Documents

Subject to receiving the ASX Approval, the Proponent will promptly procure the preparation of the Meeting Documents in a form reasonably satisfactory to the Company.

10.2 General Meeting

Subject to obtaining the approvals of ASX and, if necessary, ASIC to the Meeting Documents, the Company will issue the Meeting Documents to Shareholders and hold a general meeting of its Shareholders to consider certain resolutions to be determined by the Company, which may include the following:

- (a) **(Convertible Notes)** that, in accordance with the Corporations Act (including, as applicable, section 208 and item 7 of section 611) and the Listing Rules (including, as applicable, Listing Rules 7.1, 7.2 (exception 4) and 10.11) the Company be authorised to issue up to 2,320,000 Shares and 4,640,000 Noteholder Options to Exempt Investors on the conversion of Convertible Notes in accordance with the Convertible Note Agreement;
- (b) **(Agreed Amount)** that, in accordance with the Corporations Act (including, as applicable, section 208 and item 7 of section 611) and the Listing Rules (including, as applicable, Listing Rules 7.1 and 10.11), the Company be authorised to issue securities as deemed repayment of the Agreed Amount by applying the Agreed Amount as subscription monies on account of such issue of securities;
- (c) **(Prospectus Capital Raising)** that, in accordance with the Corporations Act (including, as applicable, section 208 and item 7 of section 611) and the Listing

Rules (including, as applicable, Listing Rules 7.1 and 10.11), the Company be authorised to issue up to 9,441,188 Shares via the Prospectus Capital Raising to raise approximately \$2,360,297 before costs;

- (d) **(Creditor Offer)** that, in accordance with the Corporations Act (including, as applicable, section 208 and item 7 of section 611) and the Listing Rules (including, as applicable, Listing Rules 7.1 and 10.11), the Company be authorised to issue the Shares and Creditor Options under the Creditor Offer; and
- (e) **(Other)** such other resolutions that the parties consider are reasonably necessary to implement the Recapitalisation Proposal.

10.3 Interdependence of resolutions

The resolutions referred to in clause 10.2 will be interdependent and the Condition in clause 7.1(g) will not be deemed to have been satisfied until Shareholders approve all of the resolutions referred to in clause 10.2.

10.4 Reasonable assistance

- (a) The Company undertakes to provide all reasonable assistance to the Proponent in the preparation of the Meeting Documents.
- (b) The Proponent undertakes to provide all reasonable assistance to the Company in issuing the Meeting Documents and convening and holding the General Meeting.

11 Retained Assets

11.1 ASX Approval

The Company will liaise with ASX to determine which Assets are required to be retained by the Company for the purposes of obtaining the ASX Approval (**Retained Assets**).

11.2 Dealing with Retained Assets

Neither the Company nor the Administrator (in any capacity) may transfer, assign, encumber or otherwise deal in any way with the Retained Assets which is or is likely to be detrimental to the implementation of the Recapitalisation Proposal.

12 Services agreement

Upon the execution of this deed, the Company and Boardroom Capital will enter into a services agreement under which Boardroom Capital will provide corporate consulting services to the Company in connection with the Recapitalisation Proposal, including:

- (a) managing director services;
- (b) finance director services; and
- (c) corporate advisory services.

The services will be provided by Boardroom Capital to the Company at its standard rates and fees.

13 Completion

13.1 Time, date and place

Completion is to take place at the offices of the Company at 1.00pm (Melbourne time) on the Completion Date, or at any other time and date agreed by the parties in writing.

13.2 Obligations of the Company

At Completion, the Company must:

- (a) **(Issue securities)** in accordance with the terms and conditions of the Prospectus, issue:
 - (i) the securities to applicants under the Prospectus Capital Raising (including to the Underwriter and its nominees in accordance with the Underwriting Agreement);
 - (ii) the Shares and Creditor Options to applicants under the Creditor Offer; and
 - (iii) any securities to be issued to applicants under the Prospectus;
- (b) **(Other)** do all other acts and sign all documents reasonably necessary to facilitate, and give effect to, Completion.

13.3 Obligations of the Administrator and Proponent

At Completion, the Administrator and the Proponent must do all acts and sign all documents reasonably necessary to facilitate, and give effect to, Completion.

13.4 Termination of administration

As soon as reasonably practicable after Completion, the Deed Administrator must comply with its obligations under clauses 19.1(a) and 32.6 for the purposes of terminating the administration of the Company and this deed.

13.5 Exceptions to Completion

The parties will be under no obligation to fulfil the obligations set out in this clause 13 in the event of:

- (a) an intervening Court order;
- (b) a takeover offer or other general offer relating to 50% or more of the Shares becoming or being declared unconditional; or
- (c) a Court approving a compromise or arrangement pursuant to section 411(4) of the Corporations Act.

Part C – Administration**14 Period of appointment**

The Deed Administrator's appointment begins on the Commencement Date and continues until the Termination Date or until its retirement or removal from office.

15 Payments to Employee and Secured Creditors**15.1 Payments to Secured Creditors**

Within 3 Business Days of the Company receiving the Con Note Amount, the Company:

- (a) must use the Secured Creditor Amount to pay out all liabilities of the Company to, the Secured Creditors; and

- (b) will, if required by the Proponent, enter into deeds of release with each Secured Creditor in connection with those liabilities in such form as the Company and the Proponent require.

15.2 Leftover amounts

Any portion of the Con Note Amount that is leftover after payment is made to:

- (a) the Secured Creditors under clause 15.1; and
- (b) the Proponent under clause 9.2(e)(x);

must be paid into, and form part of, the Deed Fund.

15.3 Release of Registered Securities

Within 5 Business Days after the payments referred to in clause 15.1 are made, the Deed Administrator must use its reasonable endeavours, and take all reasonable steps (including liaising with the Secured Creditors), to cause the Company to be fully released and discharged from:

- (a) the Registered Securities; and
- (b) from all liabilities and obligations secured by the Registered Securities,

which, to avoid doubt, includes the deregistration of the Registered Securities from the PPSR, insofar as such endeavours and steps are available to the Deed Administrator under the PPSA

16 Deed Fund

16.1 Establishment of the Deed Fund

The Deed Administrator must establish the Deed Fund as soon as practicable after the Commencement Date.

16.2 Deed Fund to be on trust

The Deed Administrator must hold all amounts in the Deed Fund on trust for the benefit of the Deed Administrator and for Creditors in accordance with the terms of this deed. The Deed Fund, once established, will not form part of the Assets.

16.3 The Deed Fund

The Deed Fund will comprise of:

- (a) the Deposit;
 - (b) the Agreed Amount;
 - (c) any balance of the Con Note Amount leftover in accordance with clause 15.1;
 - (d) any cash-on-hand or at bank held by the Administrator or the Company together with receipts of any Receivables on the Commencement Date;
 - (e) any realisations of the Receivables of the Company; and
 - (f) any other monies or Property transferred by the Company into the Deed Fund,
- and, to avoid doubt, excludes:
- (g) the Con Note Amount (other than any balance leftover in accordance with clause 15.1);
 - (h) the Intellectual Property; and

- (i) any Retained Assets; and
- (j) any Assets that are otherwise required by the Company for the purposes of giving effect to the Recapitalisation Proposal.

16.4 Sale of Assets

The Deed Administrator may only sell Assets and realise their monetary value for the purposes of the Deed Fund with the prior written consent of the Proponent, which consent may only be withheld if the sale of such Assets would materially affect the rights of the Proponent under this deed.

17 Determining Dividends

17.1 Ascertaining Creditors

The Deed Administrator must ascertain the Admitted Creditors and their Admitted Claims to the extent that are entitled to claim under this deed, and will thereby determine their maximum Dividend (if any) in accordance with clause 17.2.

17.2 Determining Dividends

- (a) Within 5 Business Days of the Commencement Date, the Deed Administrator will call for proofs of debt from the Creditors for the purposes of determining the Dividends to which the Admitted Creditors are entitled. Upon completing the proof of debt process, the Deed Administrator must promptly and without delay notify the Proponent in writing of the Dividends payable to each Admitted Creditor so that the Proponent can determine the entitlements of the Admitted Creditors to securities under the Creditor Offer.
- (b) Each Admitted Creditor is entitled to a Dividend up to the amount calculated in accordance with the following formula.

$$D = AC \times 0.25$$

Where:

D is the maximum amount of the Dividend payable to an Admitted Creditor; and

AC is the amount of the Admitted Claim in relation to the Admitted Creditor.
- (c) The Deed Administrator may, in its absolute discretion:
 - (i) admit Claims;
 - (ii) reject Claims;
 - (iii) admit part of a Claim but reject the other part; and
 - (iv) pay any Admitted Claim in accordance with this deed.
- (d) Subdivisions A, B, C, D and E of Division 6 of Part 5.6 of the Corporations Act apply to the admission of Claims under this deed as if the reference to the **liquidator** were references to the Deed Administrator and references to **winding-up** were references to this deed and with such other modifications as are necessary to give effect to this deed.
- (e) Regulations 5.6.37 and 5.6.39 to 5.6.73 inclusive of the Regulations apply to this deed and to the Deed Administrator as if the reference to the **liquidator** were references to the Deed Administrator and references to **winding up** were

references to this deed and with such other modifications as are necessary to give effect to this deed.

- (f) As soon as reasonably practicable after the Completion, the Deed Administrator must pay the Dividend to the Admitted Creditors out of the Deed Fund in one instalment.
- (g) A Creditor will have abandoned, and will be taken for all purposes to have abandoned, any and all Claims and all other entitlements (if any) to the Deed Fund:
 - (i) which have not been admitted by the Deed Administrator prior to the declaration of the Dividend; or
 - (ii) which have been rejected by the Deed Administrator and which are not the subject of any appeal or application to the Court within 21 days after the date of notification of the rejection to the Creditor.

18 Issues of securities to Unsecured Creditors

18.1 Issue of securities to Unsecured Creditors

Subject to clause 18.2 and the Company obtaining all necessary Shareholder and regulatory approvals, in addition to receiving a Dividend, Admitted Creditors who return a valid application under the Creditor Offer pursuant to the Prospectus will be entitled to be issued by the Company, for no cash consideration:

- (a) three Shares for every \$1.00 owed to the Admitted Creditor; and
- (b) one attaching Creditor Option for every Share issued to the Admitted Creditor pursuant to clause 18.1(a).

18.2 Deregistered Creditors

If the Admitted Creditor is a body corporate then the Admitted Creditor must be registered and not subject to deregistration or strike-off action under the laws of its place of incorporation as at the date the Company issues securities under the Creditor Offer in order for the Admitted Creditor to be eligible to receive securities under the Creditor Offer. If the body corporate Creditor is not registered or is subject to deregistration or strike-off action then neither it, nor any of its creditors or shareholders, will be entitled to any of the securities referred to in clause 18.1, nor any other form of benefit in lieu of the securities.

18.3 Application to ASX

The Company must apply to ASX for quotation of the Shares issued to Admitted Creditors in accordance with this clause at the same time as those Shares are issued to the Admitted Creditors.

19 Distribution of Deed Fund

19.1 Distribution of the Deed Fund

- (a) As soon as reasonably practicable after Completion, the Deed Administrator must distribute the Deed Fund in the following manner and order of priority:
 - (i) firstly, in payment of the Administration Liabilities, the Administrator's Costs, the Administrator's Disbursements, the Deed Administrator's Costs and the Deed Administrator's Disbursements and other costs payable under this deed;

- (ii) secondly, in payment any entitlements that would, in a liquidation, be accorded a priority under sections 556, 560 and 561 of the Corporations Act;
 - (iii) thirdly, in payment of the Dividends to the Admitted Creditors; and
 - (iv) fourthly, any remaining balance in payment to the Company.
- (b) In clause 19.1(a), the terms of sections 556, 560 and 561 of the Corporations Act will apply as if the references to the **liquidator** were references to the Deed Administrator, references to **winding up** were references to the Deed Fund and with such other modifications as are necessary to give effect to the terms of this deed.
- (c) Once the Deed Fund has been distributed by the Deed Administrator in accordance with clause 19.1(a), the Deed Fund will be deemed extinguished.

19.2 No interest

Interest will not accrue, and will not be payable, in respect of any of the Admitted Claims, other than interest which formed part of an Admitted Claim as at the Appointment Date.

19.3 Payments not made

In the event that the Deed Administrator, for any reason, is unable to locate an Admitted Creditor, or if any cheque sent by the Deed Administrator to an Admitted Creditor has not been presented, within 6 months after the day when the Dividend became payable, then:

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

19.4 Discharge and extinguishment

- (a) A payment made by the Deed Administrator to an Admitted Creditor in accordance with this deed will constitute a full and final discharge of the obligations of the Deed Administrator to the Admitted Creditor under this deed.
- (b) All claims and rights of action, remedies and Claims by an Admitted Creditor who has been notified by the Deed Administrator in accordance with clause 17.2, and has failed to submit a sworn proof of debt, and to whom the Deed Administrator has not granted an extension of time, are absolutely barred and extinguished against the Deed Fund.

20 Release and extinguishment of Claims

20.1 Discharge of debts

The Creditors must accept their rights and entitlements under this deed in full satisfaction and complete discharge of all debts or Claims which they have or claim to have against the Company as at the Appointment Date, and each of them will, if called upon to do so, execute and deliver to the Deed Administrator and the Company such forms of release of any such Claim as the Deed Administrator requires.

20.2 Claims extinguished

- (a) Payment of a Dividend by the Deed Administrator to Admitted Creditors in accordance with this deed, and the issue of Shares and Creditor Options by the Company to Admitted Creditors in accordance with this deed, will be in full satisfaction of all debts, liabilities or claims, present or future, actual or contingent, due or which may become due by the Company, as a result of anything done or omitted by or on behalf of the Company before the Appointment Date, and each Claim against the Company, as a result of anything done or omitted by or on behalf of the Company before the Appointment Date, will thereby be extinguished.
- (b) Once the Deed Fund has been distributed by the Deed Administrator in accordance with clause 19.1(a), and the Shares and Creditor Options have been issued by the Company to the Admitted Creditors in accordance with clause 18, all Claims held by the Creditors against the Company are discharged and extinguished.

20.3 Forms of release

Creditors must execute and deliver to the Company all such documents including forms of release of debts and claims as the Company or the Deed Administrator may reasonably require from time to time to give effect to a release in clause 20.2.

21 Bar to Creditor Claims

Subject to section 444D of the Corporations Act, this deed may be pleaded by the Company against any Creditor in bar of any debt or Claim that is admissible under this deed and a Creditor (whether the Creditor's debt or Claim is or is not admitted or established under this deed) must not, before termination of this deed;

- (a) take, or concur in the taking of, any step to wind up the Company;
- (b) except for the purpose and to the extent provided in this deed, institute or prosecute any legal proceedings in relation to any debt incurred or alleged to have been incurred by the Company before the Appointment Date;
- (c) take any further step (including any step by way of legal or equitable execution) in any proceedings pending against or in relation to the Company at the Appointment Date;
- (d) exercise any right of set-off or cross action to which the person would not have been entitled had the Company been wound up on the Appointment Date;
- (e) commence or take any further step in any arbitration against the Company or to which the Company is a party; or
- (f) begin or continue with any Enforcement Process in relation to the Company's Property.

22 Deed Administrator

22.1 Deed Administrator

The Deed Administrator is the sole deed administrator for the purpose of this deed and accepts its appointment as such by executing this deed.

22.2 Administer the deed

- (a) The Deed Administrator will administer this deed and have all the powers, functions and duties conferred on them by this deed and the Corporations Act.

- (b) The Deed Administrator may delegate to the Directors such operations, functions and powers as the Deed Administrator in its sole discretion thinks fit for anything done by the Directors in respect of any operations, function or power so delegated. In this regard, the parties acknowledge the powers and control conferred on the Company under clause 8.4.
- (c) On the Termination Date, the Company's Assets and undertakings (that have not or will not be transferred to the Deed Fund) will be returned to the control of the Company and its Directors.
- (d) The Deed Administrator will not be required to monitor the operations of the Company nor have any responsibility thereof.

22.3 Deed Administrator deemed agent of Company

In exercising the powers conferred by this deed and carrying out the duties arising under this deed, the Deed Administrator is taken to act as agent for and on behalf of the Company.

22.4 Deed Administrator not personally liable

Subject to any relevant provisions of the Corporations Act, in the performance or exercise of the Deed Administrator's powers, obligations, functions and duties under this deed, the Deed Administrator will not be personally liable for:

- (a) any debts, liabilities, obligations or claims of any kind whatsoever incurred by or on behalf of the Company whether before, during or after the period of the operation of this deed; or
- (b) any loss or damage of any kind whatsoever excluding loss or damage arising from fraud or gross negligence, default or omission of the Deed Administrator or any person or body corporate or incorporate acting on their behalf in exercising their powers, obligations, functions or duties under this deed.

22.5 Survival

Clause 22.4 will continue to apply despite termination of this deed.

23 Powers of the Deed Administrator

23.1 Powers of Deed Administrator

For the purpose only of administering this deed, the Deed Administrator has the power to:

- (a) enter upon or take possession of the property of the Company;
- (b) lease or let on hire property of the Company;
- (c) grant options over property of the company on such conditions as the Deed Administrator thinks fit;
- (d) insure property of the Company;
- (e) repair, renew or enlarge property of the Company;
- (f) call in, collect or convert into money the property of the Company;
- (g) administer the assets available for the payment of Claims of Creditors in accordance with the provisions of this deed;
- (h) purchase, hire, lease or otherwise acquire any property or interest in property from any person or corporation;

- (i) borrow or raise money, whether secured upon any or all of the assets of the Company or unsecured, for any period on such terms as the Deed Administrator thinks fit and whether in substitution for any existing security or otherwise;
- (j) bring, prosecute and defend in the name and on behalf of the Company or in the name of the Deed Administrator any actions, suits or proceedings;
- (k) refer to arbitration any question affecting the Company;
- (l) make payments to any Creditor of the Company and any person who is the owner or lessor of property possessed, used or occupied by the Company;
- (m) convene and hold meetings of the members or Creditors of the Company for any purpose the Deed Administrator thinks fit;
- (n) make interim or other distributions of the proceeds of the realisation of the assets available for the payment of claims of Creditors as provided in this deed;
- (o) appoint agents to do any business or to attend to any matter or affairs of the Company that the Deed Administrator is unable to do, or that it is unreasonable to expect the Deed Administrator to do, in person;
- (p) engage or discharge employees on behalf of the Company;
- (q) appoint a solicitor, accountant or other professionally qualified person to assist the Deed Administrator;
- (r) permit any person authorised by the Deed Administrator to operate any account in the name of the Company;
- (s) apply money in accordance with this deed and otherwise effectively and properly to carry out their duties as Deed Administrator;
- (t) do all acts and execute in the name and on behalf of the Company all deeds, receipts and other documents, using the Company's common or official seal when necessary;
- (u) subject to the *Bankruptcy Act 1966* (Cth), to prove in the bankruptcy of any contributory or debtor of the Company or under any deed executed under that act;
- (v) subject to the *Corporations Act*, to prove in the winding up of any contributory or debtor of the Company or under any scheme of arrangement entered into, or deed of company arrangement executed, under the *Corporations Act*;
- (w) draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Company;
- (x) take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot be conveniently done in the name of the Company;
- (y) bring or defend an application for the winding up of the Company;
- (z) carry on the business on such terms and conditions and for such purposes and times and in such manner as the Deed Administrator thinks fit subject only to the limitations imposed by this deed;
- (aa) subject to clause 16.4, to sell any or all of the property of the Company including the whole of the business or undertaking of the Company at any time the Deed Administrator thinks fit, either by public auction or by private contract and either for a lump sum or for a sum payable by instalments or for a sum on account and to obtain a mortgage charge or encumbrance for the balance or otherwise;

- (bb) close down the whole or any part of any business of the Company;
- (cc) enter into and complete any contract for the sale of shares in the Company;
- (dd) compromise any debts or claims brought by or against the Company on such terms as the Administrator thinks fit and to take security for the discharge of any debt forming part of the property of the Company;
- (ee) pay any class of Creditors in full, subject to Subdivision D of Division 6 of Part 5.6 of the Corporations Act;
- (ff) determine the Claims of Creditors;
- (gg) admit or reject Claims to proof in accordance with the terms of this deed;
- (hh) exercise those powers specified in clauses 2 and 8 of Schedule 8A of the Regulations in respect of the Company and the Deed Fund;
- (ii) do anything that is incidental to exercising a power set out in this clause 23.1; and
- (jj) do anything else that is necessary or convenient for the purpose of administering this deed.

23.2 Books and records

The Deed Administrator has the power to access books and records of the Company for the purposes of fulfilling its obligations under this deed. To the extent that the Deed Administrator is given access to or possession of the books and records of the Company, the Deed Administrator agrees to return these books and records in the same state as in which they were removed.

23.3 Overlap with Directors' powers

Where the powers of the Deed Administrator and the Directors overlap, the Deed Administrator's powers operate to the exclusion of the Directors' powers unless the Deed Administrator grants prior written consent in respect of the exercise of such Directors' powers or this deed provides that the power is within the sole and exclusive control of the Directors.

24 Register

24.1 Maintain a register

The Deed Administrator must maintain an up-to-date register at its offices and will enter in the register in respect of each Admitted Creditor:

- (a) the Admitted Creditor's name and address;
- (b) details of each Claim and the Admitted Creditor's Dividend including the balance outstanding after payment of any amount under this deed; and
- (c) amounts paid to each Admitted Creditor pursuant to this deed.

24.2 Register to be kept open

The Deed Administrator must keep the register open at all reasonable times during business hours for the inspection of Admitted Creditors or any person authorised in writing by an Admitted Creditor.

24.3 Register conclusive

The register is, in the absence of manifest error or fraud, conclusive evidence of the matters entered on the register.

25 Moratorium

A Creditor must not take actions or steps to enforce any rights the Creditor has to recover the whole or part of the Claim owed to the Creditor whilst the Deed Administrator remains the Deed Administrator on the terms of this deed.

26 Instructions from Admitted Creditors

26.1 Instructions from Admitted Creditors

In the exercise of the Deed Administrator's powers, the Deed Administrator:

- (a) may, if it sees fit, seek instructions from the Admitted Creditors, including instructions to vary the terms of this deed; and
- (b) must act in accordance with the Instructions of the Admitted Creditors delivered at a meeting convened in accordance with clause 27.

26.2 Best interests of Admitted Creditors

In the absence of an instruction received by the Deed Administrator from the Admitted Creditors at a meeting convened in accordance with clause 27 by the Deed Administrator to obtain their instructions, and except as otherwise provided in this deed, the Deed Administrator may, but is not obliged to, act as the Deed Administrator determines is in the best interests of the Admitted Creditors.

26.3 Binding effect

Any action taken by the Deed Administrator in accordance with clause 26.2 is binding on each Creditor.

26.4 Approval for variation

The Deed Administrator must not vary the terms of this deed without the approval of Creditors pursuant to a meeting of creditors convened in accordance with clause 27.

27 Meetings of Creditors

27.1 Convening meetings by Deed Administrator

Meetings of Creditors may be convened by the Deed Administrator from time to time in accordance with section 445F of the Corporations Act.

27.2 Convening meetings at the request of Admitted Creditors

The Deed Administrator must convene a meeting of the Creditors if so requested in writing by an Admitted Creditor or Admitted Creditors the value of whose Admitted Claims is not less than 10% of the value of the total of the Admitted Claims.

27.3 Corporations Regulations

Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this deed, regulations 5.6.12 to 5.6.36A of the Regulations apply, with such modifications as are necessary, to meetings of the Creditors as if the references to the liquidator, the liquidator or provisional liquidator, the liquidator, provisional liquidator or chairman, or a liquidator, provisional liquidator or trustee for debenture holders, as the case may be, were references to the Deed Administrator.

27.4 Right of Admitted Creditors to attend meetings

Admitted Creditors who have been paid the full amount of their Dividend under clause 19.1(a), and who have been issued the Shares and Creditor Options in accordance with

clause 18, will no longer be entitled to attend and participate in meetings of Admitted Creditors.

28 Reports to Creditors

During the Deed Period, the Deed Administrator may report to Creditors on the Company's state of affairs and on any matters which the Deed Administrator considers should be brought to their attention. The Deed Administrator must send a copy of the report to each Creditor.

29 Exclusion of liability

The Deed Administrator is not liable for any loss, damages, costs or expenses which may result from the exercise or attempted exercise of the trusts, rights, powers and remedies granted by law and exercisable by the Deed Administrator in the absence of fraud, gross negligence or breach of trust.

30 Remuneration, costs and expenses

30.1 Calculation of remuneration

The Deed Administrator will be remunerated by the Company, and will be entitled to draw from the Deed Fund for its work as Deed Administrator. The Deed Administrator will be entitled to employ staff to assist it in the performance or exercise of its duties, obligations, responsibilities and powers under this deed and the remuneration of the Deed Administrator, its employees and staff will be calculated in accordance with the Scheduled Rates plus GST payable thereon, determined according to and as required by law.

30.2 Payment to Deed Administrator

The Administrator's Costs, Administrator's Disbursements, Deed Administrator's Costs, Deed Administrator's Disbursements and Administration Liabilities must be paid to the Deed Administrator's firm, Rodgers Reidy Chartered Accountants.

31 Deed Administrator's indemnity

31.1 Nature of indemnity

The Administrator and Deed Administrator are entitled to be indemnified and to be kept indemnified out of the Deed Fund for:

- (a) the Administrator's Costs;
- (b) the Administrator's Disbursements;
- (c) the Deed Administrator's Costs;
- (d) the Deed Administrator's Disbursements; and
- (e) the Administration Liabilities.

31.2 Continuing Indemnity

This indemnity will take effect on and from the Appointment Date and be without limitation as to time and will ensure for the benefit of the Administrator and Deed Administrator respective legal personal representatives notwithstanding the removal of the Deed Administrator and the appointment of replacement administrator or the termination of this deed for any reason whatsoever.

31.3 Indemnity not to be affected or prejudiced

- (a) The indemnity under clause 31.1 will not be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrator or Deed Administrator and will extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrator or Deed Administrator, the approval and execution of this deed or otherwise.
- (b) The indemnity under clause 31.1 will not affect or prejudice all or any rights that the Administrator or Deed Administrator may have in respect of the Company's Property or against any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Administrator or Deed Administrator or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrator by this deed or otherwise.

31.4 Deed Administrator's lien

The Administrator and the Deed Administrator are entitled to exercise a lien over the Deed Fund to secure the indemnity conferred by this clause 31. This lien is in addition to any lien or other right that may arise by operation of law, including pursuant to section 443E or 443F of the Corporations Act.

31.5 Survival

Clause 31 will continue to apply despite termination of this deed.

32 Termination

32.1 Meeting of creditors where unremedied breach

- (a) The Deed Administrator must convene a meeting of the Creditors in accordance with section 445F of the Corporations Act to consider a Resolution to terminate or vary the terms of this deed if any term of this deed is not complied with and the non-compliance is not remedied within 7 Business Days of notice in writing from the Deed Administrator to the person required to perform the relevant obligation, specifying the breach and requiring its remedy.
- (b) To avoid doubt, if the arrangement under this deed fails, unless the Deed Administrator is in breach of this deed, the Deposit is forfeited in favour of the Deed Administrator and the Deed Administrator will be entitled to pursue any alternative proposals for the reconstruction and recapitalisation of the Company, subject to meeting all the requirements under the Corporations Act in respect of varying the terms of, or terminating, this deed.

32.2 Meeting of creditors where deed no longer practicable or desirable

If the Deed Administrator or the committee of inspection determine(s) that it is no longer practicable or desirable to implement this deed, the Deed Administrator:

- (a) must convene a meeting of Creditors in accordance with section 445F of the Corporations Act to consider a Resolution to terminate this deed; and
- (b) must forward to each Creditor not less than 14 days prior to the meeting an up-to-date report as to the position of the Company accompanied by such financial statements as the Administrator think fit, together with a statement that either or each of them do not think it practicable to continue this deed and that this deed will be terminated if the Creditors so resolve.

32.3 Termination of deed by Court order or Creditors' Resolution

This deed will terminate if:

- (a) a Court so orders in accordance with section 445D of the Corporations Act; or
- (b) pursuant to a meeting convened pursuant to clause 32.1 or 32.2, the Creditors pass a Resolution terminating this deed.

A Resolution to terminate this deed may also include a requirement that the Company be wound up.

32.4 Creditors' Claims not released

If the Deed is terminated pursuant to clauses 32.1 or 32.2, Creditors' Claims are not released except to the extent of the amount or credits received, if any, by Creditors under this deed or otherwise.

32.5 Previous operation of deed preserved

- (a) The termination or avoidance, in whole or in part, of this deed does not affect the previous operation of this deed.
- (b) Upon termination of this deed to the extent that the Company or any other party bound by this deed make a covenant under this deed, which, by its terms, takes effect after termination of this deed, the Company covenants in favour of the Deed Administrator for its benefit and for the benefit of the Admitted Creditors, with the intent that those covenants will continue, subject to the terms of this deed, in full force and effect after the termination of this deed.

32.6 Termination of deed where deed effectuated

Upon the distribution of the Deed Fund by the Deed Administrator in accordance with clause 19.1(a), and the issue of Shares and Creditor Options by the Company to Admitted Creditors in accordance with clause 18,:

- (a) this deed will be wholly effectuated; and
- (b) the Deed Administrator must certify to that effect in writing and must within 2 Business Days lodge with ASIC a notice of termination of this deed in the following form:

Stanfield Funds Management Limited (Administrator Appointed) ACN 006 222 395

I, Mathew Gollant of c/- Rodgers Reidy Chartered Accountants, Level 3, 326 William Street, Melbourne, Victoria 3000, as Deed Administrator of the Deed of Company Arrangement executed on [Insert date] (Deed) CERTIFY that the Deed has been fully effectuated.

The execution of the notice referred to in clause 32.6(b) terminates this deed.

Part D – General**33 Confidentiality****33.1 Confidential Information**

- (a) All information disclosed by a party (**Discloser**) to another party (**Recipient**) under or in connection with this deed or during negotiations in respect of this deed is confidential to the Discloser (**Confidential Information**).

- (b) Subject to clause 33.2, each party will treat the existence and terms of this deed and the Recapitalisation Proposal as Confidential Information of the other party.

33.2 Restrictions on use

- (a) The Recipient must not use or reproduce Confidential Information for any purpose other than as is necessary for the purposes of this deed or implementing the transactions contemplated by this deed.
- (b) The Recipient must not disclose Confidential Information to any person except:
 - (i) to employees, legal advisers, auditors or other consultants of the Recipient or its Related Bodies Corporate on a need to know basis provided that the Recipient takes all practical steps to require the person receiving such information to treat the same as strictly confidential;
 - (ii) where such disclosure is required by law (including lodgement of a copy of this deed with ASIC) or in connection with legal proceedings related to this deed;
 - (iii) where such disclosure is required by the rules of any recognised stock exchange on which its shares are listed, provided that, to the extent possible, it must consult with the other party before making the disclosure and use its reasonable endeavours to agree on the form and content of the disclosure; or
 - (iv) where the information is in or becomes part of the public domain otherwise than through a breach of confidentiality owed to the Discloser.

34 Costs and duties

34.1 Duty and GST

The Proponent must pay (subject to clause 34.4) any duty and GST assessed on this deed and in relation to any transaction contemplated by this deed including any transfer of Assets to the Deed Fund.

34.2 Costs of this deed

Notwithstanding any other provision in this deed, but subject to the Deed Administrator's indemnity provided under clause 31, each party must bear its own costs of and incidental to the negotiation, preparation and execution of this deed.

34.3 Proponent to bear all costs

Subject to clauses 34.2 and 34.4, to the extent that such costs are not or cannot be paid using the funds raised under the Convertible Note Agreement, the Proponent must bear all costs in relation to the Recapitalisation Proposal and achieving Reinstatement, including all costs relating to:

- (a) obtaining all necessary approvals required from ASIC, ASX or any other Government Agency for achieving Reinstatement;
- (b) liaising with ASIC, ASX or any other Government Agency;
- (c) the preparation of all documents contemplated by the Recapitalisation Proposal including this deed, the Convertible Note Agreement, the Meeting Documents and the Prospectus;
- (d) preparation of all outstanding taxation and audit requirements necessary to implement the Recapitalisation Proposal and achieve Reinstatement;

- (e) the lodgement of all documents that are required to be lodged with the appropriate Government Agency;
- (f) payment of all costs in respect of maintaining the Retained Assets in good standing and for their proper purposes;
- (g) payment of all costs in respect of holding any Surplus Assets including insurance, rent, utilities costs and relocation costs in accordance with this deed;
- (h) payment of all costs associated with renewals of any intellectual property of the Company;
- (i) fees to be paid to ASX and ASIC, including listing fees and any re-listing fees, both arrears and future, by their final due date to ensure retention of the ASX listing of the Company;
- (j) fees of corporate and legal advisers incurred by the Proponent; and
- (k) the printing and posting of all necessary documentation and the hiring of premises for the purposes of the General Meeting.

34.4 Company to reimburse the Proponent

Subject to Completion occurring, the Company will reimburse the Proponent for all costs incurred by the Proponent in respect of the matters to which costs have been paid by the Proponent in fulfilling its obligations under this deed (including, to avoid doubt, the matters referred to in clause 34.3).

35 Goods and services tax

35.1 GST exclusive amounts

All amounts referred to in this deed, unless otherwise stated, are exclusive of GST.

35.2 Payment of GST

- (a) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply; and
- (b) the recipient must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

35.3 Reimbursements

Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claimed against or set-off against another party under this deed, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient under clause 35.2.

36 Notices

36.1 Notices in writing

A notice or other communication connected with or provided under this deed does not have any legal effect unless it is in writing.

36.2 Method of service

In addition to any other method of service provided by law, the notice may be:

- (a) delivered by hand at the address of the addressee party set out in this deed or subsequently notified;
- (b) sent by prepaid post to the address of the addressee party set out in this deed or subsequently notified;
- (c) sent by facsimile to the facsimile number of the addressee party at the commencement of this deed or such other number as may be notified; or
- (d) by electronic communication including email.

36.3 Deemed receipt

If a notice is sent or delivered in a manner provided by clause 36.2, it must be treated as given to and received by the addressee party if delivered or transmitted before 5.00pm on a Business Day in the place of receipt:

- (a) if delivered by hand, on the date of delivery;
- (b) if sent by post, on the second Business Day (at the address to which it is posted) after posting unless returned to the sender party;
- (c) if delivered by facsimile, upon the date of transmission provided that a transmission confirmation is generated by the sender party; or
- (d) if delivered by electronic communication, upon the date of transmission provided that a delivery receipt is obtained by the addressee party.

36.4 Facsimile transmission

A facsimile transmission is legible unless the addressee party telephones the sender party:

- (a) if during the hours of 9.00am and 5.00pm on a Business Day in the place of the addressee party, within 2 hours after transmission is received; or
- (b) if outside the hours specified in clause 36.4(a), by 11.00am on the next Business Day,

informing the sender party that it is not legible.

36.5 Address of parties

For the purposes of this clause 36.5, the address of a party is:

- (a) for a party that is an individual, that party's principal place of residence; and
- (b) for a party that is a corporation:
 - (i) that party's registered office; or
 - (ii) that party's principal place of business.

37 Trustee

The Proponent represents and warrants that:

- (a) it has power to enter into, deliver and perform each of the obligations of this deed in its capacity as trustee of the NVNG Investments Trust (Trust) and to carry out the transactions contemplated by this deed;
- (b) the Trust has been validly created and is in existence;

- (c) It has been validly appointed as trustee of the Trust and is the sole trustee of the Trust;
- (d) the Trust is solely constituted by the deed establishing the Trust (**Trust Deed**);
- (e) the Trust Deed is not void, voidable or otherwise unenforceable; and
- (f) it has complied with all of its obligations as trustee of the Trust and, to the best of its knowledge, no allegation has been made that it has breached those obligations;
- (g) no action has been taken or is proposed to terminate the Trust or the Trust Deed or to vest the assets of the Trust in any person;
- (h) no action has been taken or proposed to remove it as trustee of the Trust; and
- (i) it has a valid right of indemnity and neither that right of indemnity or its lien over the assets of the Trust has been limited in any way.

38 General

38.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in Victoria.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this deed.

38.2 Inconsistency with the Corporations Act

If there is any inconsistency between the provisions of this deed and the Corporations Act then the Corporations Act will, only to the extent of the inconsistency, prevail and this deed will be interpreted accordingly.

38.3 Inconsistency with constitution, contracts, etc.

If there is any inconsistency between the provisions of this deed and the constitution of the Company or any other obligations binding on the Company, then the provisions of this deed will prevail to the extent of the inconsistency.

38.4 Operation of indemnities

- (a) Each indemnity in this deed survives the expiry or termination of this deed.
- (b) A party may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.

38.5 Survival of clauses

The Specified Clauses will continue to apply despite termination of this deed.

38.6 Assignment

- (a) A party must not assign or deal with any right under this deed without the prior written consent of the other parties.
- (b) Any purported dealing in breach of clause 38.6 is of no effect.

38.7 Variation

An amendment or variation to this deed is not effective unless it is in writing and signed by the parties.

38.8 Severability

If any provision or part of a provision of this deed is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

38.9 Waiver

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (c) A waiver by a party is not effective unless it is in writing.

38.10 Consents

Where this deed contemplates that a party may agree, approve or consent to something (however it is described), that party may not unreasonably withhold or delay giving that agreement, approval or consent, unless this deed expressly contemplates otherwise.

38.11 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

38.12 Whole agreement

This deed contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

38.13 Further assurances

Each party must sign, execute and do all deeds, acts, documents and things as may be reasonably required by any other party to carry out and give effect to the terms and intentions of this deed.

38.14 Time of the essence

Time is of the essence in this Agreement and no extension or variation of time granted by any party operates as a waiver of this clause 38.14.

38.15 Remedies

- (a) Each party acknowledges that monetary damages alone may not be adequate compensation to it for the breach by the other party of its obligations under this deed and that accordingly, specific performance of those obligations may be an appropriate remedy.
- (b) All remedies, rights, undertakings, obligations or agreements of the parties arising by statute, common law, equity or otherwise:
 - (i) are cumulative; and
 - (ii) are not in limitation of any other right, remedy, undertaking, obligation or agreement of such party.
- (c) Each party may follow any remedy to which such party is entitled by statute, common law, equity or otherwise concurrently or successively at that party's option.

38.16 Counterparts

- (a) This deed may be signed in any number of counterparts and by facsimile transmission or email.
- (b) An executed counterpart sent by facsimile or email to a party is deemed to be a validly executed counterpart as if it were the original.

--end--

Schedule

Administrator's rates follows

Executed as a deed.

Executed by Stanfield Funds Management)
 Limited (Administrator Appointed) ACN 006)
 222 395 in accordance with section 127 of the)
 Corporations Act:)



 Director/Company Secretary

WILLIAM WAI LIAM NG.
 Name of Director/Company Secretary


 Director

John Pella RA.
 Name of Director

Signed by the said Mathew Gollant in the)
 presence of:)


 Witness Signature

Mathew Blum
 Witness Name

L3/326 William St, Melb, VIC
 Witness Address

Accountant
 Witness Occupation


 Mathew Gollant

Executed by NVNG Investments Pty Ltd)
 ACN 600 403 398 as trustee for the NVNG)
 Investments Trust in accordance with section)
 127 of the Corporations Act:)

 Director/Company Secretary

 Name of Director/Company Secretary

 Director

 Name of Director