



# **Hot Chili Limited**

**ACN 130 955 725**

## **Notice of General Meeting, Explanatory Statement, and Proxy Form**

**General Meeting to be held at**

**1<sup>st</sup> Floor  
768 Canning Highway  
Applecross, Western Australia**

**On Tuesday, 6 June 2017 at 1.00pm WST**

### **IMPORTANT NOTE**

The Notice of General Meeting, Explanatory Statement and Proxy Form should be read in their entirety. If you are in doubt as to how you should vote, you should seek advice from your accountant, solicitor or other professional adviser prior to voting.

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## Important dates

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<b>Eligibility to attend Meeting and vote – snapshot date</b>	5.00pm WST on Sunday, 4 June 2017
<b>Last day for receipt of Proxy Forms*</b>	1.00pm WST on Sunday, 4 June 2017
<b>General Meeting</b>	1.00pm WST on Tuesday, 6 June 2017

\*Proxy Forms received after 1.00pm WST on this date will be disregarded.

## Important notices

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Certain statements in the Explanatory Statement relate to the future. Such statements involve known and unknown risks, uncertainties and other important factors that could cause the actual results, performance or achievements of the Company to be materially different from future results, performance or achievements expressed or implied by such statements. These statements reflect views only as of the date of the Explanatory Statement. Neither the Company nor any other person gives any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward looking statements in the Explanatory Statement will actually occur and you are cautioned not to place undue reliance on such forward looking statements.

# Notice of General Meeting

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Notice is hereby given that a General Meeting of Hot Chili Limited ACN 130 955 725 (**Hot Chili** or **Company**) will be held at **1st Floor, 768 Canning Highway, Applecross, Western Australia** on **Tuesday, 6 June 2017** at **1.00pm WST** for the purpose of transacting the business referred to in this Notice of General Meeting.

The Explanatory Statement that accompanies and forms part of this Notice of General Meeting describes the various matters to be considered.

Capitalised terms used in this Notice of General Meeting will, unless the context otherwise requires, have the same meaning given to them in the Glossary of the Explanatory Statement.

## Agenda

### **Resolutions 1(a), 1(b), 1(c) and 1(d): Approval of issue of Convertible Notes and Shares on conversion of Convertible Notes**

To consider and, if thought fit, to pass with or without amendment, the following resolutions as separate **ordinary resolutions**:

- (a) *"That, for the purposes of Listing Rule 7.1 and for all other purposes, Shareholders hereby approve:
  - (i) the issue of up to 85,000 Convertible Notes at an issue price of \$100 each; and
  - (ii) the issue of Shares on the conversion of the Convertible Notes,in the manner and on the terms and conditions described in the Explanatory Statement."*
- (b) *"That, for the purposes of Listing Rule 7.1 and for all other purposes, Shareholders hereby approve:
  - (i) the issue of up to 17,000 Convertible Notes to Compañía de Acero del Pacífico S.A. or its nominee at an issue price of \$100 each; and
  - (ii) the issue of Shares on the conversion of the Convertible Notes,in the manner and on the terms and conditions described in the Explanatory Statement."*
- (c) *"That, for the purposes of Listing Rule 7.1 and for all other purposes, Shareholders hereby approve:
  - (i) the issue of up to 16,509 Convertible Notes to Taurus Funds Management Pty Limited or its nominee at an issue price of \$100 each; and
  - (ii) the issue of Shares on the conversion of the Convertible Notes,in the manner and on the terms and conditions described in the Explanatory Statement."*
- (d) *"That, for the purposes of Listing Rule 7.1 and for all other purposes, Shareholders hereby approve:
  - (i) the issue of up to 11,491 Convertible Notes to sophisticated investors as arranged by the Company or the Finders at an issue price of \$100 each; and
  - (ii) the issue of Shares on the conversion of the Convertible Notes,in the manner and on the terms and conditions described in the Explanatory Statement."*

**Resolution 2: Approval of issue of Finder Options to the Finders**

To consider and, if thought fit, to pass, with or without amendment, the following resolution as an **ordinary resolution**:

*"That, for the purposes of Listing Rule 7.1 and for all other purposes, Shareholders hereby approve the issue of an aggregate of 20,000,000 Finder Options exercisable at A\$0.03333 each on or before the second anniversary of the Closing Date, to Sprott Capital Partners, a division of Sprott Private Wealth LP and Sprott Global Resource Investments, Ltd., or their nominees, in the manner and on the terms and conditions described in the Explanatory Statement."*

By order of the Board

A handwritten signature in black ink, appearing to be 'John Sendziuk', written over a horizontal line.

**Mr John Sendziuk**  
Company Secretary

3 May 2017

## Voting Exclusions

For the purposes of the Corporations Act and Listing Rule 14.11, the following voting exclusion statements apply to the Resolutions. The Company will disregard any votes cast on the following Resolutions by or on behalf of the following parties and their associates (as defined in the Listing Rules).

Resolution	Excluded Party(ies)
Resolution 1(a)	Any person who may participate in the issue and any person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities if this resolution is passed, and any of their Associates.
Resolution 1(b)	Any person who may participate in the issue and any person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities if this resolution is passed, and any of their Associates.
Resolution 1(c)	Any person who may participate in the issue and any person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities if this resolution is passed, and any of their Associates.
Resolution 1(d)	Any person who may participate in the issue and any person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities if this resolution is passed, and any of their Associates.
Resolution 2	Sprott Capital Partners, a division of Sprott Private Wealth LP and Sprott Global Resource Investments, Ltd., their nominees, and any other person who may participate in the issue and any person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities if this resolution is passed, and any of their Associates.

The Company need not disregard a vote on a Resolution if it is cast by:

- the person as a proxy for a person who is entitled to vote, in accordance with a direction on the Proxy Form; or
- the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with a direction on the Proxy Form to vote as the proxy decides.

# Proxy Appointment and Voting Instructions

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## Proxy Form

The Proxy Form (and any power of attorney or other authority, if any, under which it is signed) or a copy or facsimile which appears on its face to be an authentic copy of the Proxy Form (and the power of attorney or other authority) must be lodged no later than 48 hours before the time for holding the Meeting, being before **1.00pm WST on Tuesday, 6 June 2017**, as follows:

By post: Company Secretary, Hot Chili Limited, PO Box 1725, Applecross WA 6953

By hand: 1<sup>st</sup> Floor, 768 Canning Highway, Applecross, Western Australia

By fax: +61 8 9315 5004

By email: admin@hotchili.net.au

Any Proxy Form received after that time will not be valid for the scheduled Meeting.

## Appointment of a proxy

A member of the Company entitled to attend and vote at the Meeting is entitled to appoint a proxy. The proxy may, but need not be, a member of the Company.

If you wish to appoint the Chairperson of the Meeting as your proxy, mark the box. If the person you wish to appoint as your proxy is someone other than the Chairperson of the Meeting please write the full name of that person. If you leave this section blank, or your named proxy does not attend the Meeting, the Chairperson of the Meeting will be your proxy. A proxy need not be a Shareholder of the Company.

You are entitled to appoint up to two persons as proxies to attend the Meeting and vote on a poll. If you wish to appoint a second proxy, an additional Proxy Form may be obtained by telephoning the Company on +61 8 9315 9009 or you may photocopy the Proxy Form.

To appoint a second proxy you must on each Proxy Form state (in the appropriate box) the percentage of your voting rights which are the subject of the relevant proxy. If both Proxy Forms do not specify that percentage, each proxy may exercise half your votes. Fractions of votes will be disregarded.

## Corporate Shareholders

Corporate Shareholders should comply with the execution requirements set out on the Proxy Form or otherwise with the provisions of section 127 of the Corporations Act. Section 127 of the Corporations Act provides that a company may execute a document without using its common seal if the document is signed by:

1. two directors of the company;
2. a director and a company secretary of the company; or
3. for a proprietary company that has a sole director who is also the sole company secretary, that director.

## Corporate representatives

A corporation may elect to appoint an individual to act as its representative in accordance with section 250D of the Corporations Act, in which case the Company will require a certificate of appointment of the corporate representative executed in accordance with the Corporations Act. The certificate of appointment must be lodged with the Company and/or the Company's share registry before the Meeting or at the registration desk on the day of the Meeting.

## **Votes on Resolutions**

You may direct your proxy how to vote by placing a mark in the 'FOR', 'AGAINST' or 'ABSTAIN' box opposite the Resolution. All your votes will be cast in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on the Resolutions by inserting the percentage or number of Shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the Resolutions, your proxy may vote as he or she chooses. If you mark more than one box on a Resolution your vote on that Resolution will be invalid.

## **Chairperson voting undirected proxies**

If the Chairperson is your proxy, the Chairperson will cast your votes in accordance with your directions on the Proxy Form. If you do not mark any of the boxes on the Resolutions, then you expressly authorise the Chairperson to vote your undirected proxies at his/her discretion.

As at the date of this Notice of Meeting, the Chairperson intends to vote undirected proxies FOR each of the Resolutions. In exceptional cases the Chairperson's intentions may subsequently change and in this event, the Company will make an announcement to the market.

## **Voting eligibility – snapshot date**

The Company may specify a time, not more than 48 hours before the Meeting, at which a "snapshot" of Shareholders will be taken for the purposes of determining Shareholder entitlements to vote at the Meeting.

The Directors have determined that all Shares of the Company that are quoted on ASX at **5.00pm WST on Sunday, 4 June 2017** shall, for the purpose of determining voting entitlements at the Meeting, be taken to be held by the persons registered as holding the Shares at that time. Accordingly, transactions registered after that time will be disregarded in determining entitlements to attend and vote at the Meeting.

## **Defined terms**

Capitalised terms used in the Notice and the Explanatory Statement are defined in the Glossary.

## **Questions from Shareholders**

At the Meeting, the Chairperson will allow a reasonable opportunity for Shareholders to ask questions or make comments on the management of the Company.

In addition to asking questions at the Meeting, written questions to the Board about the management of the Company may be submitted by no later than **5.00pm WST on Sunday, 4 June 2017**:

**By post:** Company Secretary, Hot Chili Limited, PO Box 1725, Applecross WA 6953

**By hand:** 1st Floor, 768 Canning Highway, Applecross, Western Australia

**By fax:** +61 8 9315 5004

**By email:** admin@hotchili.net.au

Copies of written questions will be available at the Meeting.

# Explanatory Statement

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This Explanatory Statement has been prepared for the information of Shareholders in relation to the business to be conducted at the General Meeting.

The purpose of this Explanatory Statement is to provide Shareholders with all information known to the Company which is material to a decision on how to vote on the Resolutions in the accompanying Notice of General Meeting.

This Explanatory Statement should be read in conjunction with the Notice of General Meeting. Capitalised terms in this Explanatory Statement are defined in the Glossary or otherwise in the Explanatory Statement.

## 1. Background to the Resolutions

On 24 March 2017, the Company announced a capital raising by way of private placement of unsecured Convertible Notes at an issue price of A\$100 each.

A summary of the key terms of each Convertible Note is as follows:

- (a) mature five years after the Closing Date, which is anticipated to be on or about 7 June 2022 (**Maturity Date**);
- (b) principal will convert into Shares at a conversion price of A\$0.03333 per Share;
- (c) principal will automatically convert into Shares at the earlier of conversion by the Noteholder or on the Maturity Date; and
- (d) interest of 8% per annum to be paid to Noteholders on a quarterly basis, payable in cash or shares at the election of Hot Chili.

The Company has entered into a definitive finders agreement (**Finders Agreement**) with each of Sprott Capital Partners, a division of Sprott Private Wealth LP and Sprott Global Resource Investments, Ltd. (**Finders**) pursuant to which the Finders will seek to place to their clients, 85,000 of the Convertible Notes to raise A\$8.5 million. This placement to the clients of the Finders comprises the **Offering**.

In addition to the Offering, a maximum of 45,000 Convertible Notes to raise a maximum of A\$4.5 million, supported by Hot Chili's major shareholders, will be issued and offered as follows:

- (a) Compañía de Acero del Pacífico S.A. (**CAP**), which is the parent company of Compañía Minera del Pacífico S.A., Hot Chili's joint venture partner at its Productora Project in Chile, and which currently has a relevant interest in 14.7% of the Company's issued share capital, has agreed to subscribe for 17,000 Convertible Notes in the amount of A\$1,700,000; the approval of the issue of these Convertible Notes is the subject of Resolution 1(b);
- (b) Taurus Funds Management Pty Limited (**Taurus**), which currently has a relevant interest in 13.08% of the Company's issued share capital, has agreed to subscribe for 16,509 Convertible Notes in the amount of A\$1,650,900; the approval of the issue of these Convertible Notes is the subject of Resolution 1(c); and
- (c) up to 11,491 Convertible Notes in the amount of A\$1,149,100 may be offered and issued to sophisticated investors as arranged by the Company or the Finders; the approval of the issue of these Convertible Notes is the subject of Resolution 1(d).

The issue and offer of Convertible Notes to Hot Chili's major shareholders, CAP and Taurus, and any other sophisticated investors, comprises the **Concurrent Offering**.

Funds raised by the Offering and the Concurrent Offering will be applied to the repayment of Hot Chili's outstanding secured US\$6.5 million loan facility with Sprott Resource Lending



Partnership (**Existing Loan Facility**), an entity related to each of the Finders, eliminating all prior finance encumbrances over Hot Chili, its subsidiaries and their assets, and providing for exploration and general working capital requirements.

Pursuant to the Finders Agreement, the Finders are entitled to be issued an aggregate of 20,000,000 Finder Options exercisable at A\$0.03333 each on or before the second anniversary of the Closing Date. The Finders are entitled to be paid a finders' fee of a 5% commission on all Notes placed by the Finders in the Offering, up to a maximum fee of \$425,000.

The Finders will also be entitled to be paid a 5% commission on all Notes placed by the Finders in the Concurrent Offering (other than the Convertible Notes issued to CAP and Taurus), up to a maximum fee of \$57,455.

Resolution 1(a) seeks shareholder approval for the issue of up to 85,000 Convertible Notes to clients of the Finders, and the Shares that are issuable upon conversion of those Convertible Notes. These Convertible Notes comprise the Convertible Notes to be issued under the Offering and the Concurrent Offering, other than those to be issued to CAP and Taurus.

Resolution 1(b) seeks shareholder approval for the issue of up to 17,000 Convertible Notes to CAP, and the Shares that are issuable upon conversion of those Convertible Notes.

Resolution 1(c) seeks shareholder approval for the issue of up to 16,509 Convertible Notes to Taurus, and the Shares that are issuable upon conversion of those Convertible Notes.

Resolution 1(d) seeks shareholder approval for the issue of up to 11,491 Convertible Notes to sophisticated investors as arranged by the Company or the Finders, and the Shares that are issuable upon conversion of those Convertible Notes.

Resolution 2 seeks shareholder approval for the issue of 20,000,000 Finder Options to the Finders.

## **2. Resolutions 1(a), 1(b), 1(c) and 1(d): Approval of issue of Convertible Notes and Shares on conversion of Convertible Notes**

### **2.1 Effect of Resolution 1**

Listing Rule 7.1 provides that a company may not issue Equity Securities (including convertible notes) if those Equity Securities will, when aggregated with the Equity Securities issued by the company during the previous 12 months, exceed 15% of the number of Equity Securities on issue at the commencement of that 12 month period.

Equity Securities issued within 3 months of obtaining shareholder approval for the purpose of Listing Rule 7.1 do not utilise this 15% placement capacity.

In addition, Listing Rule 7.2, Exception 4 provides that Equity Securities issued on the conversion of Equity Securities approved for the purpose of Listing Rule 7.1 do not utilise the 15% placement capacity.

Consequently, if Resolution 1 is passed, neither of the following issues will utilise the Company's 15% annual placement capacity:

- (a) the issue of the Convertible Notes during the period of 3 months after the date of the Meeting; or
- (b) the issue of any Shares on the conversion of the Convertible Notes.

### **2.2 Listing Rules information requirements**

Pursuant to Listing Rule 7.3, the following information is provided to Shareholders in relation to Resolutions 1(a), 1(b) and 1(c) for the purpose of seeking approval under Listing Rule 7.1:

- (a) Maximum number of securities to be issued
  - (i) Pursuant to Resolution 1(a), the maximum number of securities the Company is to issue is 85,000 Convertible Notes.
  - (ii) Pursuant to Resolution 1(b), the maximum number of securities the Company is to issue is 17,000 Convertible Notes.
  - (iii) Pursuant to Resolution 1(c), the maximum number of securities the Company is to issue is 16,509 Convertible Notes.
  - (iv) Pursuant to Resolution 1(d), the maximum number of securities the Company is to issue is 11,491 Convertible Notes.
- (b) Date by which securities will be issued

The Convertible Notes will be issued at the same time within 3 months of the date of the Meeting (or such later date to the extent permitted by any ASX waiver or modification of the Listing Rules). It is anticipated that the Convertible Notes will be issued in or about the week commencing 5 June 2017.
- (c) Issue price of the securities

The Convertible Notes will be issued at an issue price of A\$100 each.
- (d) Name of the recipients of the securities
  - (i) Pursuant to Resolution 1(a), the Convertible Notes will be issued to clients and affiliates of Sprott Capital Partners, a division of Sprott Private Wealth LP and Sprott Global Resource Investments, Ltd.
  - (ii) Pursuant to Resolution 1(b), the Convertible Notes will be issued to Compañía de Acero del Pacífico S.A or its nominee.

- (iii) Pursuant to Resolution 1(c), the Convertible Notes will be issued to Taurus Funds Management Pty Limited or its nominee.
- (iv) Pursuant to Resolution 1(d), the Convertible Notes will be issued to sophisticated investors as arranged by the Company or the Finders.
- (e) The terms of the securities

The full terms of the Convertible Notes are set out in **Annexure 1** to this Explanatory Statement.

A summary of the key terms of the Convertible Notes is set out in the table below:

<b>Face value</b>	A\$100 per Note.
<b>Conversion Price</b>	A\$0.03333 per Share.
<b>Maturity Date</b>	The date five years after the closing date of the Offering, which is anticipated to be on or about 7 June 2017.
<b>Security</b>	The Notes will not be secured.
<b>Interest</b>	<p>8.0% calculated daily, compounded monthly and payable quarterly in arrears (<b>Interest</b>). Accrued Interest shall be cumulative and payable in cash or Shares at the election of the Company.</p> <p>If the Company elects to pay Interest by the issue of Shares, the number of Shares to be issued shall be calculated by dividing the amount of accrued Interest being paid by the VWAP for the five trading day period ending on the last day of the quarter for which Interest is due.</p>
<b>Redemption</b>	The Notes will not be redeemable by the Company before the second anniversary of their issue. On and after the second anniversary of the issue date of the Notes, and provided the VWAP traded on ASX for the 20 consecutive trading days preceding the date on which the notice of redemption is given is not less than 300% of the Conversion Price, the Notes may be redeemed in whole or in part by the Company on not more than 60 days and not less than 30 days prior notice at A\$100 for each Note held, plus accrued and unpaid Interest.
<b>Conversion</b>	The principal amount and accrued and unpaid Interest evidenced by the Notes will be convertible at the holder's option into Shares at any time prior to the earlier of the Maturity Date, and the date which is 5 business days immediately preceding the date specified for redemption by the Company at the Conversion Price, being a ratio of approximately 3,000 Ordinary Shares per Note (excluding Interest).
<b>Conversion at maturity</b>	On the Maturity Date, the principal amount and accrued and unpaid Interest evidenced by all outstanding Notes shall automatically be converted into the number of Shares obtained by dividing the Issue Price of the Notes plus accrued and unpaid Interest by 95% of the VWAP for the five trading day period ending on the day prior to the Maturity Date, or by the Conversion Price, whichever is lower.
<b>Bonus issues and reconstructions</b>	<p>If there is a Bonus Issue, the Company must issue to each Noteholder, that number of Bonus Securities which the Noteholder would have been entitled to receive, by way of participation in the issue of Bonus Securities, if the Convertible Notes had been converted into Shares immediately before the issue of Bonus Securities.</p> <p>If there is a reconstruction (including consolidation, subdivision, reduction or return) of the issued capital of the Company, then subject to the Listing Rules, the basis for conversion of the Notes will be reconstructed in the same proportion as the issued capital of the Issuer is reconstructed and in a manner which will not result in any additional benefits being conferred on the Noteholders which are not conferred on Members.</p>

<b>Ranking</b>	The Notes at all times constitute unsecured debt obligations of the Company, which together with any accrued and unpaid Interest, ranks for payment in a Winding Up of the Company, behind any secured debt of the Company, equally with all present and future subordinated and unsecured debt obligations of the Company, and ahead of all Shares.
<b>Negative Covenants</b>	<p>For so long as any of the Notes remain outstanding, the Company must not and must procure that its Subsidiaries do not without the approval of a Noteholders Resolution:</p> <ul style="list-style-type: none"> <li>(a) <b>(new debt)</b> incur any indebtedness for moneys borrowed or raised pursuant to any financial accommodation or agree to do so (including by entering into an indicative term sheet), except any Permitted New Debt;</li> <li>(b) <b>(sale of assets)</b> conduct or agree to conduct (including by entering into an indicative term sheet) any transaction or series of related transactions in which an entity in the Group sells significant assets or assets worth more than 10% of the Group's gross assets;</li> <li>(c) <b>(dividends)</b> declare or pay any dividends to Shareholders;</li> <li>(d) <b>(capital reduction)</b> other than in respect of the Notes, redeem, purchase, cancel, reduce, return capital on or otherwise acquire any share or other securities issued by a Shareholder of the Group for repayment or return of capital in a winding-up; or</li> <li>(e) <b>(Security Interests)</b> other than in the ordinary course of business: <ul style="list-style-type: none"> <li>(i) create or permit to exist a Security Interest over any of its assets or attempt or agree to do so (including by entering into an indicative term sheet), except to secure any Permitted New Debt; or</li> <li>(ii) if the creation of a Security Interest cannot by law be restricted, create such a Security Interest over any of its assets without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Trustee.</li> </ul> </li> </ul>
<b>Events of default</b>	<p>The key events of default are:</p> <ul style="list-style-type: none"> <li>(a) <b>(non-issue of Shares)</b> the Company fails to issue Shares on conversion in accordance within five Business Days after the date on which such issue is to be made;</li> <li>(b) <b>(non-payment)</b> the Company fails to pay any amount payable by it under the Note Terms within 10 Business Days after the date on which it is due and, where the sole reason for the default is a technical or administrative difficulty within the banking system being used to effect payment, such default is not remedied within five Business Days;</li> <li>(c) <b>(breach of Negative Covenants)</b> a member of the Group fails to comply with a Negative Covenant (as set out above) and such failure remains unremedied for a period of 10 Business Days;</li> <li>(d) <b>(breach of other obligations)</b> the Company fails to comply with any of its other obligations under the Note Terms or any Transaction Document and such failure remains unremedied for a period of 10 Business Days after the earlier of (A) the Company receiving notice from the Trustee in respect of the failure to comply and (B) the Company becoming aware of the failure to comply;</li> <li>(e) <b>(insolvency)</b> an Insolvency Event occurs in respect of a member of the Group;</li> <li>(f) <b>(sale of business or main undertaking)</b> there is a sale of the business or the main undertaking of the Company that would require approval of Shareholders in accordance with Listing Rule 11.2;</li> <li>(g) <b>(delisting)</b> a Delisting Event occurs in respect of the Company;</li> </ul>

	<p>(h) <b>(cessation of business)</b> a member of the Group ceases or suspends (or threatens to cease or suspend) the conduct of all of its business or a substantial part of its business;</p> <p>(i) <b>(unlawfulness)</b> at any time, it is unlawful for the Company to perform any of its payment obligations under the Notes, the Trust Deed or the Note Terms;</p> <p>(j) <b>(Government Agency)</b> all or substantially all of the assets of the Group is assumed or compulsory acquired by any Government Agency; or</p> <p>(k) <b>(vitiation)</b> all or any obligations of the Company or rights of the Noteholders or the Trustee under the Trust Deed or the Note Terms are terminated or are or become void, illegal, invalid, unenforceable or of limited force and effect.</p>
<b>Transfer</b>	The Notes are transferable.
<b>Rights of Noteholders</b>	<p>The Notes confer no rights on a Noteholder:</p> <p>(a) to vote at any meeting of Shareholders;</p> <p>(b) to subscribe for or participate in any new issue of securities by the Company; or</p> <p>(c) to otherwise participate in the profits or property of the Company, except as set out in the Note Terms or the Transaction Documents.</p>
<b>Quotation</b>	<p>Application will be made to list the Notes on ASX. Quotation of the Notes will be conditional upon the Company entering into the Trust Deed with the Trustee pursuant to which the Trustee will act for the benefit of the Noteholders with respect to the Offering and Concurrent Offering.</p> <p>Shares issued on the conversion of Notes and on payment of Interest will be quoted on ASX.</p>

- (f) The intended use of the funds raised

Funds raised will be applied to the repayment of the Existing Loan Facility (eliminating all prior finance encumbrances over Hot Chili, its subsidiaries and their assets), and to provide for exploration and general working capital requirements.

## 2.3 Advantages and disadvantages of the Offering and Concurrent Offering

The potential advantages of the Offering and Concurrent Offering include:

- (a) **(Repayment of existing debt)** The funds raised from the Offering and the Concurrent Offering will enable the Company to fully repay the outstanding balance of US\$6.5 million from the secured Existing Loan Facility, which is due on 30 June 2017.
- (b) **(Removal of all finance encumbrances)** The repayment of the Existing Loan Facility will facilitate the removal of all prior finance encumbrances over Hot Chili, its subsidiaries and their assets.
- (c) **(Provision of additional cash)** Hot Chili anticipates that after payment of the costs of the Offering and Concurrent Offer, and repayment of the Existing Loan Facility, Hot Chili will have additional funds to progress exploration of its Productora Project in Chile, and to apply to general working capital. The Offering and Concurrent Offering significantly strengthens Hot Chili's balance sheet.
- (d) **(Significant reduction of working capital requirements)** Repayment of the existing debt will significantly reduce the Company's ongoing working capital requirements related to annual interest payments of 12% on the Existing Loan Facility.
- (e) **(Conversion Price set at a premium)** The conversion price of Notes at A\$0.03333 per Ordinary Share represented a strong premium to Hot Chili's closing price of

A\$0.025 on 16 March 2017, prior to announcement of the issue of the Convertible Notes to ASX on 24 March 2017.

- (f) **(Unsecured Notes and automatic Conversion to Shares)** All Notes shall be unsecured and automatically convert to Ordinary Shares in Hot Chili at the earlier of conversion by the Noteholder or on the Maturity Date.
- (g) **(Interest repayable in Shares)** The Interest payable on the Convertible Notes may be paid in cash or Shares, at the election of Hot Chili. The payment of Interest in Shares will enable Hot Chili to preserve its existing cash.
- (h) **(Interest payments via Shares not locked to Conversion Price)** Should Hot Chili elect to make any quarterly Interest payment in Shares, the issue price of the Shares shall be set at the volume weighted average price of Shares traded on ASX for the five day period ending on the last day of the quarter for which the Interest payment is due.

The potential disadvantage of the Offering and Concurrent Offering is:

- (a) **(Dilution of existing Shareholders)** The Offering and Concurrent Offering, if fully subscribed, will result in the issue of 130,000 Convertible Notes. If all of those Notes are converted into Shares at the Conversion Price (being A\$0.03333 per Share), then approximately 390,039,003 Shares would be issued. As the Company currently has 543,080,278 Shares on issue, assuming the Company does not issue any other Shares (including on the conversion of interest payable with respect to the Convertible Notes), this would represent a 41.79% dilution of the Company's issued Share capital. Consequently, the Company's existing Shareholders who do not participate in the Offering or Concurrent Offering, will have their percentage interest in the Company diluted.

However, as the outstanding amount under the Existing Loan Facility will be due and payable on 30 June 2017, to avoid default under the Existing Loan Facility, the Company will require additional funds on or before that date. It is likely that any alternative to the Offering and the Concurrent Offering would similarly result in the dilution of existing Shareholders' interests in the Company.

## 2.4 Directors' recommendations

The Directors unanimously recommend Shareholders vote in favour of Resolution 1 because the issue of the Convertible Notes pursuant to the Offering and Concurrent Offering has the advantages set out in Section 2.3 above, and because passing Resolution 1 will enable the Company to issue, without using the Company's capacity to issue Equity Securities under Listing Rule 7.1:

- (a) Convertible Notes pursuant to the Offering and the Concurrent Offering; and
- (b) Shares on the conversion of those Convertible Notes.

### **3. Resolution 2: Approval of issue of Finder Options to the Finders**

#### **3.1 Background**

As set out in Section 0 above, the Company has entered into the Finders Agreement with the Finders pursuant to which the Finders will place to their clients the 85,000 Convertible Notes that comprise the Offering, to raise A\$8.5 million.

Under the Finders Agreement, the Company has agreed to issue 20,000,000 Finder Options to the Finders (or their nominees).

The Finders are also entitled to be paid a finders' fee of a 5% commission on all Notes placed by the Finders in the Offering, being a maximum fee of \$425,000.

#### **3.2 Listing Rule requirements**

As set out above, Listing Rule 7.1 provides that a company may not issue Equity Securities if those Equity Securities will, when aggregated with the Equity Securities issued by the company during the previous 12 months, exceed 15% of the number of Equity Securities on issue at the commencement of that 12 month period.

Equity Securities issued within 3 months of obtaining shareholder approval for the purpose of Listing Rule 7.1 do not utilise this 15% placement capacity.

If Resolution 2 is passed, the issue of Options to the Finders will not utilise the Company's 15% placement capacity.

#### **3.3 Listing Rules information**

Pursuant to Listing Rule 7.3, the following information is provided to Shareholders for the purpose of seeking approval under Listing Rule 7.1:

(a) **Maximum number of securities to be issued**

The maximum number of securities to be issued is 20,000,000 Finder Options.

(b) **Date by which securities will be issued**

The Finder Options will be issued at the same time within 3 months of the date of the Meeting (or such later date to the extent permitted by any ASX waiver or modification of the Listing Rules). It is anticipated that the Options will be issued in or about the week commencing 5 June 2017.

(c) **Issue price of the securities**

The Finder Options are to be issued pursuant to the Finders Agreement at an issue price of \$nil per Finder Option.

(d) **Name of the recipients of the securities**

The Options are being issued to Sprott Capital Partners, a division of Sprott Private Wealth LP and Sprott Global Resource Investments, Ltd., or their nominees.

(e) **The terms of the securities**

Each Finder Option will be exercisable at A\$0.03333 each within two years of the Closing Date.

The full terms of the Finder Options are set out in **Annexure 2** to this Explanatory Statement.

(f) **The intended use of the funds raised**

The Finder Options will be issued for nil cash consideration. Rather, the Finder Options are being issued pursuant to the Finders Agreement in consideration of the Finders placing to the clients, Convertible Notes under the Offering. Accordingly, funds will not be raised by the issue of the Finder Options.

**3.4 Directors' recommendations**

The Directors unanimously recommend Shareholders vote in favour of Resolution 2 as it will enable the Company to satisfy its obligations under the Finders Agreement without using the Company's capacity to issue Equity Securities under Listing Rule 7.1.



## Glossary of defined terms

In this Explanatory Statement, the following terms have the following meaning unless the context otherwise requires:

<b>ASIC</b>	The Australian Securities & Investments Commission.
<b>Associate</b>	Has the meaning given to that term in the Listing Rules.
<b>ASX</b>	ASX Limited (ACN 008 624 691) or the financial market known as the Australian Securities Exchange operated by ASX Limited, as the context requires.
<b>A\$ or \$</b>	Australian dollars.
<b>Board</b>	The Board of Directors of the Company.
<b>Bonus Issue</b>	Any issue of Securities by way of capitalisation of profits, reserves, share premium account or capital redemption reserve fund or otherwise, but excluding any issue of Securities made in place of a cash payment as a dividend under the Constitution.
<b>Bonus Securities</b>	Securities issued under a Bonus Issue.
<b>Business Day</b>	Has the meaning given to it in the Listing Rules.
<b>CAP</b>	Compañía de Acero del Pacífico S.A.
<b>Chairperson</b>	The chair of the General Meeting.
<b>Closing Date</b>	The date closing date of the Offering, anticipated to be on or about 7 June 2017.
<b>Concurrent Offering</b>	Has the meaning given to it in Section 0.
<b>Constitution</b>	Means the Company's constitution.
<b>Conversion Price</b>	Means A\$0.03333 per Share.
<b>Convertible Notes or Notes</b>	The convertible notes that are the subject of Resolution 1, the terms and conditions of which are set out in Annexure 1.
<b>Corporations Act</b>	The <i>Corporations Act 2001</i> (Cth).
<b>Delisting Event</b>	A delisting event will occur if the Shares cease to be quoted on ASX or trading of the Shares or Notes on ASX is suspended for a period of more than 20 consecutive Business Days.
<b>Director or Hot Chili Director</b>	A director of the Company.
<b>Equity Securities</b>	Has the meaning given to that term in the Listing Rules.
<b>Existing Loan Facility</b>	The Company's outstanding secured US\$6.5 million loan facility with Sprott Resource Lending Partnership.
<b>Explanatory Statement</b>	This explanatory statement which accompanies and forms part of the Notice.
<b>Finder Option</b>	An Option to be issued to the Finders pursuant to Resolution 2.
<b>Finders</b>	Sprott Capital Partners, a division of Sprott Private Wealth LP and Sprott Global Resource Investments, Ltd.
<b>Finders Agreement</b>	The definitive finders agreement entered into by the Company with the Finders, as described in Section 3.1.
<b>General Meeting or Meeting</b>	The general meeting of Shareholders or any adjournment thereof, convened by the Notice.

<b>Government Agency</b>	A government, a government department or a governmental, semi-governmental, statutory, administrative, parliamentary, provincial, public, municipal, local, judicial or quasi-judicial body.
<b>Group</b>	The Company and its Related Bodies Corporate.
<b>Hot Chili or Company</b>	Hot Chili Limited (ACN 130 955 725).
<b>Insolvency Event</b>	Occurs in relation to a body corporate if: <ul style="list-style-type: none"> <li>(a) it is (or states that it is) insolvent (as defined in the Corporations Act); or</li> <li>(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</li> <li>(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</li> <li>(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</li> <li>(e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or</li> <li>(f) it is otherwise unable to pay its debts when they fall due; or</li> <li>(g) something having a substantially similar effect to (a) to (f) happens in connection with it under the law of any jurisdiction.</li> </ul>
<b>Interest</b>	Interest payable on the Convertible Notes, as described in Section 2.2(e).
<b>Listing Rules</b>	The listing rules of ASX, as amended from time to time.
<b>Maturity Date</b>	The date five years after the Closing Date.
<b>Meeting Provisions</b>	The rules relating to meetings of Noteholders contained the Trust Deed.
<b>Negative Covenant</b>	Has the meaning given to that term in Section 2.2(e).
<b>Note Terms</b>	The terms and conditions of the Notes, as set out in Annexure 1.
<b>Noteholder</b>	A holder of a Convertible Note.
<b>Noteholders Resolution</b>	<ul style="list-style-type: none"> <li>(a) a resolution passed at a meeting of the Noteholders duly called and held under the Meeting Provisions: <ul style="list-style-type: none"> <li>(i) by at least 50% of the persons voting on a show of hands (unless clause (ii) below applies); or</li> <li>(ii) if a poll is duly demanded, then by a majority consisting of at least 50% of the votes cast; or</li> </ul> </li> <li>(b) a resolution passed by postal ballot or circular written resolution by Noteholders representing (in aggregate) at least 50% of the principal amount then outstanding of all of the Notes.</li> </ul>
<b>Notice or Notice of General Meeting</b>	The notice of general meeting which accompanies this Explanatory Statement.
<b>Offering</b>	Has the meaning given to it in Section 0.
<b>Option</b>	An option to acquire a Share.

<b>Permitted New Debt</b>	Indebtedness that is incurred by the Company to finance the development and placing of the Company's assets into commercial production, provided that the terms of the financial accommodation are commercial, at arm's length, and are not in any respect unusual or onerous.
<b>Productora or Productora Project</b>	The Productora copper project owned by SMEA and operated by the Company, located near Vallenar, Chile.
<b>Proxy Form</b>	The proxy form accompanying the Notice.
<b>Related Bodies Corporate</b>	Has the meaning given to it in the Corporations Act.
<b>Resolution</b>	A resolution set out in the Notice.
<b>Section</b>	A section of this Explanatory Statement.
<b>Securities</b>	Includes shares, options, convertible securities, debentures, debenture stocks, notes of the Issuer and any options or rights to subscribe for any of them
<b>Security Interest</b>	Any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset, including any retention of title other than in the ordinary course of business and any charge or lien arising by operation of law.
<b>Share</b>	A fully paid ordinary share in the Company.
<b>Shareholder</b>	The holder of a Share.
<b>SMEA</b>	Sociedad Minera El Águila SpA, a corporation organised and existing under the laws of Chile, with taxpayer identification number 76.032.211-3 and a subsidiary of the Company.
<b>Subscription Agreement</b>	A subscription agreement for Notes entered into by the Company and a Noteholder.
<b>Subsidiary</b>	Has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act) and, without limitation: <ul style="list-style-type: none"> <li>(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</li> <li>(b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.</li> </ul>
<b>Transaction Document</b>	The Trust Deed (including the Note Terms), each Subscription Agreement and each Note.
<b>Trust Deed</b>	The trust deed entitled 'Trust Deed for the Hot Chili Limited Note Trust' to be entered by the Issuer and the Trustee in accordance with the requirements of Part 2L.1 of the Corporations Act.
<b>Trustee</b>	The person from time to time acting as the trustee of the trust constituted by the Trust Deed (acting in that capacity), initially being Equity Trustees Limited, or such other person appointed by the Issuer who is qualified under section 283AC of the Corporations Act to act as trustee for the benefit of the Noteholders.
<b>VWAP</b>	The volume weighted average sale prices of the Shares sold on ASX, excluding any transaction defined in the ASX Operating Rules as 'special', crossings prior to the commencement of normal trading, crossings during the after-hours adjust phase and any overseas trades or exchange traded option exercises.

**Winding Up**

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).

**WST**

Australian Western Standard Time, being the time in Perth, Western Australia.

## **Annexure 1**

### **Terms and conditions of Convertible Notes**

#### **1. FORM OF NOTES**

##### **1.1 Form**

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

##### **1.2 Face Value and Issue Price**

- (a) The Notes are each issued fully paid with a Face Value of \$100.
- (b) Each Note will be issued by the Issuer at an issue price of \$100. The Issue Price must be paid in full on application.

##### **1.3 Currency**

The Notes are denominated in Australian dollars.

##### **1.4 Clearing System**

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

##### **1.5 No certificates**

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

##### **1.6 ASX quotation of Notes**

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

##### **1.7 No other rights**

The Notes confer no rights on a Noteholder:

- (a) to vote at any meeting of Members;
- (b) to subscribe for or participate in any new issue of securities by the Issuer; or
- (c) to otherwise participate in the profits or property of the Issuer, except as set out in these Note Terms or the Transaction Documents.

#### **2. INTEREST**

##### **2.1 Interest**

Each Note bears Interest from (and including) its Issue Date to (but excluding) its Maturity Date, Conversion Date or Redemption Date at the Interest Rate.

##### **2.2 Calculation and payment of Interest**

- (a) Interest is calculated daily and compounded monthly.
- (b) Interest is payable in arrears on each Interest Payment Date.
- (c) At the election of the Issuer, any amount of Interest may be paid in either cash or by the issue of Shares.

##### **2.3 Payment of Interest by the issue of Shares**

If the Issuer elects to pay Interest by issuing Shares pursuant to clause 2.2(c):

- (a) the number of Shares to be issued will be calculated by dividing the amount of accrued Interest that is to be paid, by the Interest Conversion Price; and
- (b) on the Interest Payment Date:
  - (i) the amount of Interest to be paid by the Issue of Shares will be deemed to have been paid;
  - (ii) the Noteholder will be deemed to have subscribed for Interest Shares at an issue price per Interest Share equal to the Interest Conversion Price;

- (iii) the Issuer will issue to the Noteholder, and must register the Noteholder as the holder of, the Interest Shares;
- (iv) the Noteholder will be deemed to have consented to be registered as the holder of the Interest Shares in the register of Members;
- (v) a holding notice in respect of the Interest Shares shall be sent to the Noteholder at its registered address in respect of the relevant Notes;
- (vi) the Issuer must use all reasonable endeavours to procure and maintain quotation of the Interest Shares on ASX; and
- (vii) upon issue of the Interest Shares, all other rights conferred or restrictions imposed by the Note under these Note Terms in respect of the Interest satisfied by the issuance of the Interest Shares will no longer have effect.

## 2.4 **Ranking of Shares**

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

## 2.5 **No fractional shares**

No fractional Shares will be issued on payment of Interest by issuing Shares. If the calculation under this clause 2 results in an entitlement to a number of Shares which includes a fraction of a Share, the fraction will be disregarded.

## 2.6 **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 clause 2.6(a)(i) arising from any extension or reduction in any Interest Period or calculation period.
- (b) The Issuer must give notice under this clause 2.4 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.

## 2.7 **Determination final**

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

# 3. **REDEMPTION**

## 3.1 **Early Redemption by the Issuer**

- (a) Subject to clauses 3.1(b) and 3.1(e), and compliance with any applicable law and the Listing Rules, the Issuer may Redeem some or all of the Notes by giving, not more than 60 days and not less than 30 days prior to the Redemption Date, Early Redemption Notice to the Trustee, the Noteholders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the intention of the Issuer to Redeem the Notes.
- (b) The Issuer may not Redeem any Notes unless:
  - (i) both the date of the Early Redemption Notice and the Redemption Date are on or after the second anniversary of the Closing Date and before the Maturity Date;
  - (ii) the VWAP of the Shares for the 20 consecutive trading days preceding the date on which the Early Redemption Notice is given is not less than 300% of the Conversion Price; and
  - (iii) if less than all of the Notes are proposed to be Redeemed, the Notes of all Noteholders are Redeemed in proportion to the principal amount held by each Noteholder.

- (c) The Redemption of any Notes pursuant to clause 3.1(a) must be at the Face Value, together with any Interest accrued on those Notes to (but excluding) the applicable Redemption Date.
- (d) Subject to clause 3.1(e), if an Early Redemption Notice is given by the Issuer, it will be effective (and Redemption will occur) on the Redemption Date as specified by the Issuer in the Early Redemption Notice.
- (e) If, no later than five Business Days prior to the Redemption Date specified in an Early Redemption Notice, a Noteholder delivers a Conversion Notice for some or all of its Notes, the Conversion Notice will prevail for the Notes subject to the Early Redemption Notice.

### **3.2 Early Redemption – Change of Control Event**

- (a) As soon as practicable after the occurrence of a Change of Control Event, the Issuer must give a Change of Control Notice to the Trustee, the Noteholders 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;
  - (ii) specifying the date on which the Change of Control Event occurred; and
  - (iii) notifying each Noteholder that the Issuer will Redeem all of the Noteholder's Notes on the Redemption Date specified in the Change of Control Notice (which date must be at least 20 but not more than 30 Business Days after the date of the Change of Control Notice), at the Face Value of those Notes, together with any Interest accrued on those Notes to (but excluding) the specified Redemption Date.
- (b) Subject to clause 3.2(c), if a Change of Control Notice is given by the Issuer under clause 3.2(a), the Redemption will be effective and will occur on the Redemption Date as specified by the Issuer in the Change of Control Notice in respect of any Notes subject to the Conversion Notice given under clause 3.2(c).
- (c) If, no later than five Business Days prior to the Redemption Date specified in the Change of Control Notice, a Noteholder delivers a Conversion Notice for some or all of its Notes, the Conversion Notice will prevail for the Notes that are the subject of the Conversion Notice.

## **4. 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) any of the Group (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 any of the Group, tenders must be available to all Noteholders alike; and
- (c) Notes purchased under this clause 4 may be held, resold or cancelled at the discretion of the purchaser (and, if the Notes are to be cancelled, the Issuer).

## **5. CONVERSION**

### **5.1 Scheduled Conversion on Maturity Date**

- (a) Each Note will automatically be Converted on the Maturity Date unless the Note has been:
  - (i) previously Converted;
  - (ii) previously Redeemed; or
  - (iii) purchased by the Issuer and cancelled.
- (b) Each Note that is Converted pursuant to clause 5.1(a) will be converted into the number of Shares determined by dividing the Face Value of the Notes plus accrued and unpaid Interest, by 95% of the VWAP for the 10 trading day period ending on the last day prior to the Maturity Date, or by the Conversion Price, whichever is lower.

### **5.2 Conversion at the Noteholder's election**

- (a) Each Noteholder has a Conversion Right to convert some or all of the principal and accrued but unpaid Interest due under its Notes into the number of Shares determined by dividing the Conversion Amount by the Conversion Price.
- (b) A Noteholder may only exercise its Conversion Right by giving the Registrar a Conversion Notice specifying its intention to convert some or all of the principal and accrued but unpaid Interest due under its Notes into Shares.

- (c) The Face Value of the Notes subject to a Conversion Notice must be at least the lesser of \$5,000 or the balance of the Noteholder's holding of Notes.
- (d) A Conversion Notice must:
  - (i) be in writing (in such form as the Issuer may accept or as is required by the Listing Rules);
  - (ii) specify the number of Notes to be converted; and
  - (iii) be signed by the Noteholder or an authorised representative or officer of the Noteholder.
- (e) Once a Conversion Notice has been given:
  - (i) it cannot be withdrawn without the written consent of the Issuer;
  - (ii) the Noteholder must not deal with, transfer, dispose or otherwise encumber any Notes the subject of the Conversion Notice; and
  - (iii) the Noteholder must provide such evidence of title to the Notes the subject of the Conversion Notice as may be reasonably required by the Issuer and the Registrar.
- (f) Despite receipt by a Noteholder of an Early Redemption Notice under clause 3.1 or a Change of Control Notice under clause 3.2, a Noteholder may still give a Conversion Notice (for some or all of its Notes) provided the notice is given not less than five Business Days before the Redemption Date specified in the Early Redemption Notice or Change of Control Notice (as applicable).
- (g) A Conversion Notice given to the Issuer 10 or more Business Days before an Interest Payment Date will be effective on such date as may be determined by the Issuer (in its absolute discretion), provided that date is not later than the next Interest Payment Date.
- (h) If a Conversion Notice is given to the Issuer less than 10 Business Days before an Interest Payment Date (Date 1), the Conversion Notice will be effective on such date as may be determined by the Issuer (in its absolute discretion), provided that date is not later than the next Interest Payment Date following Date 1.
- (i) A Conversion Notice will not be effective if it is given less than 10 Business Days before the Maturity Date.

### 5.3 Effect of Conversion

If principal and accrued but unpaid Interest due under a Note is Converted automatically on the Maturity Date pursuant to clause 5.1, or at the Noteholder's election pursuant to clause 5.2, on the Conversion Date:

- (a) the Noteholder's Note will be deemed to have been Redeemed, and the Noteholder will be deemed to have paid the Conversion Amount to the Issuer by way of subscription for Conversion Shares at an issue price per Conversion Share specified by either clause 5.1(b) or clause 5.2(a) (as applicable);
- (b) the Issuer will issue to the Noteholder, and must register the Noteholder as the holder of, the Conversion Shares;
- (c) the Noteholder will be deemed to have consented to be registered as the holder of the Conversion Shares in the register of Members;
- (d) a holding notice in respect of the Conversion Shares shall be sent to the Noteholder at its registered address in respect of the relevant Notes;
- (e) the Issuer must use all reasonable endeavours to procure and maintain quotation of the Conversion Shares on ASX; and
- (f) upon issue of the Conversion Shares, all other rights conferred or restrictions imposed by the Note under these Note Terms will no longer have effect.

### 5.4 Ranking of Shares

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



## 5.5 No fractional shares

No fractional Shares will be issued on Conversion. If the calculation under this clause 5 results in an entitlement to a number of Shares which includes a fraction of a Share, the fraction will be disregarded.

## 5.6 Adjustments for Bonus Issues and Reconstructions

- (a) If at any time after the Issue Date but before the earlier of the Convertible Notes being Converted, Redeemed or purchased by the Issuer and cancelled:
  - (i) the Issuer makes a Bonus Issue and issues to the holders of Shares any Bonus Securities, then the Issuer must issue to each Noteholder, that number of Bonus Securities which the Noteholder would have been entitled to receive, by way of participation in the issue of Bonus Securities, if the Convertible Notes had been Converted into Shares:
    - A. immediately before the issue of Bonus Securities; or
    - B. if before the Conversion there has been more than one issue of Bonus Securities, immediately before the first issue of Bonus Securities, and had retained all the Shares issued on Conversion together with all the Bonus Securities which would have been issued to it under these Note Terms following the first issue; or
  - (ii) there is a reconstruction (including consolidation, subdivision, reduction or return) of the issued capital of the Issuer, then subject to the Listing Rules, the basis for conversion of the Notes will be reconstructed in the same proportion as the issued capital of the Issuer is reconstructed and in a manner which will not result in any additional benefits being conferred on the Noteholders which are not conferred on Members (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of Members approving the reconstruction of capital) but in all other respects the terms for conversion of the Notes will remain unchanged.
- (b) Fractional entitlements are disregarded for the purposes of clause 5.6(a)(i).

## 6. STATUS, SECURITY AND RANKING

- (a) The Notes at all times constitute unsecured debt obligations of the Issuer.
- (b) Each Note (together with any accrued and unpaid Interest) ranks for payment in a Winding Up of the Issuer:
  - (i) after any secured Permitted New Debt of the Issuer;
  - (ii) equally with each other Note;
  - (iii) equally with all present and future unsubordinated and unsecured debt obligations of the Issuer (subject to the laws and principles of equity affecting creditor rights or obligations preferred by mandatory provisions of applicable law); and
  - (iv) ahead of all Shares.
- (c) In order to give effect to the ranking specified in clause 6(b), in any Winding Up of the Issuer, the claims of Noteholders are limited to the extent necessary to ensure that Noteholders of the Notes receive payments on a pro-rata basis.
- (d) Neither the Trustee nor any Noteholder has any right to prove in a Winding Up of the Issuer in respect of the Notes, except on the basis set out in clauses 6(b) and 6(c).
- (e) Neither the Trustee nor any Noteholder may exercise voting rights as a creditor in respect of the Notes in a Winding Up of the Issuer to defeat the subordination in this clause.
- (f) The ranking of Notes is not affected by the date of registration of any Noteholder in the Register.

## 7. NEGATIVE COVENANTS

For so long as any of the Notes remain outstanding, the Issuer must not and must procure that its Subsidiaries must not without the approval of a Noteholders Resolution:

- (a) (**new debt**) incur any indebtedness for moneys borrowed or raised pursuant to any financial accommodation or agree to do so (including by entering into an indicative term sheet), except any Permitted New Debt;

- (b) **(sale of assets)** conduct or agree to conduct (including by entering into an indicative term sheet) any transaction or series of related transactions in which an entity in the Group sells significant assets or assets worth more than 10% of the Group's gross assets;
- (c) **(dividends)** declare or pay any dividends to Members;
- (d) **(capital reduction)** other than in respect of the Notes, redeem, purchase, cancel, reduce, return capital on or otherwise acquire any share or other securities issued by a member of the Group for repayment or return of capital in a winding-up; or
- (e) **(Security Interests)** other than in the ordinary course of business:
  - (i) create or permit to exist a Security Interest over any of its assets or attempt or agree to do so (including by entering into an indicative term sheet), except to secure any Permitted New Debt; or
  - (ii) if the creation of a Security Interest cannot by law be restricted, create such a Security Interest over any of its assets without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Trustee.

## 8. EVENTS OF DEFAULT

### 8.1 Events of Default

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

- (a) **(non-issue of Shares)** the Issuer fails to issue Shares on Conversion in accordance with these Note Terms within five Business Days after the date on which such issue is to be made;
- (b) **(non-payment)** the Issuer fails to pay any amount payable by it under these Note Terms within 10 Business Days after the date on which it is due and, where the sole reason for the default is a technical or administrative difficulty within the banking system being used to effect payment, such default is not remedied within five Business Days;
- (c) **(breach of Negative Covenants)** a member of the Group fails to comply with clause 7 and such failure remains unremedied for a period of 10 Business Days;
- (d) **(breach of other obligations)** the Issuer fails to comply with any of its other obligations under these Note Terms or the Transaction Documents and such failure remains unremedied for a period of 10 Business Days after the earlier of (A) the Issuer receiving notice from the Trustee in respect of the failure to comply and (B) the Issuer becoming aware of the failure to comply;
- (e) **(insolvency)** an Insolvency Event occurs in respect of a member of the Group;
- (f) **(sale of business or main undertaking)** there is a sale of the business or the main undertaking of the Issuer that would require approval of the Members in accordance with Listing Rule 11.2;
- (g) **(delisting)** a Delisting Event occurs in respect of the Issuer;
- (h) **(cessation of business)** a member of the Group ceases or suspends (or threatens to cease or suspend) the conduct of all of its business or a substantial part of its business;
- (i) **(unlawfulness)** at any time, it is unlawful for the Issuer to perform any of its payment obligations under the Notes, the Trust Deed or these Note Terms;
- (j) **(Government Agency)** all or substantially all of the assets of the Group is assumed or compulsory acquired by any Government Agency; or
- (k) **(vitiation)** all or any obligations of the Issuer or rights of the Noteholders or the Trustee under the Trust Deed or these Note Terms are terminated or are or become void, illegal, invalid, unenforceable or of limited force and effect.

### 8.2 Notification

If an Event of Default occurs, the Issuer must, promptly after becoming aware of it but in any event no later than two Business Days after the Event of Default occurs, notify the Trustee of the occurrence of the Event of Default (specifying details of it) and use its reasonable endeavours to promptly notify the Noteholders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the occurrence of the Event of Default. The Trustee is taken not to have knowledge of the occurrence of an Event of Default unless the Trustee has received notice from the Issuer or a Noteholder stating that an Event of Default has occurred and describing it.

### 8.3 Consequences of an Event of Default

- (a) If an Event of Default occurs and is continuing in relation to the Notes, the Trustee may:
  - (i) declare by notice to the Issuer (with a copy to the Noteholders and the Registrar) that all the Notes are to be Redeemed at their Face Value (together with any accrued and unpaid 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; and
  - (ii) take enforcement action against the Issuer and the relevant Group member (as applicable) in relation to the Event of Default in accordance with the Transaction Documents.
- (b) The Trustee shall not be bound to take the action referred to in clause (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 Transaction Documents unless:
  - (i) it shall have been so directed by a Special Resolution of the Noteholders;
  - (ii) it is indemnified, to its satisfaction, against all costs, charges, liabilities and expenses which may be incurred by it (including legal costs on a solicitor and own client basis) in connection with that action;
  - (iii) it is first placed in funds by the Issuer or Noteholders sufficient to cover the costs that it may incur as a result of doing so; and
  - (iv) it is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

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

### 8.4 No enforcement by Noteholders

Unless the Trustee, having become obliged to take action to enforce the rights of the Noteholders under the Transaction Documents and these Note Terms, fails to do so within 15 Business Days of being obliged to do so and such failure is continuing, the rights of each Noteholder to enforce the obligations of the Issuer under the Notes are limited to the exercise of its rights to enforce and seek due administration by the Trustee of the Trust Deed. In particular, unless the Trustee, having become obliged to take action to enforce the rights of the Noteholders under the Transaction Documents and these Note Terms, fails to do so within 15 Business Days of being obliged to do so and such failure is continuing, no Noteholder may, with respect to payment of any amount due under the Notes held by it:

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

## 9. TITLE AND TRANSFER OF NOTES

### 9.1 Title

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

### 9.2 Effect of entries in Register

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

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

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

### 9.3 **Register conclusive as to ownership**

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

### 9.4 **Non-recognition of interests**

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

### 9.5 **Joint holders**

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

### 9.6 **Transfers in whole**

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

### 9.7 **Transfer**

- (a) A Noteholder may, subject to this clause 9.7, transfer any Notes:
  - (i) by a proper ASX Settlement 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.

### 9.8 **Market obligations**

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

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

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

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

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

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

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

If, in the exercise of its rights under clauses 9.9 and 9.10, the Issuer requests the application of a holding lock to prevent a transfer of Notes or refuses to register a transfer of Notes, it must, within five Business Days after the date the holding lock is requested or the refusal to register a transfer,

give notice of the request or refusal to the Noteholder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

**9.12 Delivery of instrument**

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

**9.13 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 Regulations or these Note Terms.
- (b) If the Issuer refuses to register a transfer, the Issuer must give the lodging party notice of the refusal and the reasons for it within five Business Days after the date on which the transfer was delivered to the Registrar.

**9.14 Transferor to remain Noteholder until registration**

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

**9.15 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 these Note Terms in respect of the transferred Notes and the transferee becomes so entitled in accordance with clause 9.2.

**9.16 Estates**

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

**9.17 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.

**9.18 Registration and restricted resale period**

The Notes, Interest Shares and Conversion Shares issued to Noteholders or transferred to persons located in:

- (a) the United States – will not be registered and will be subject to restrictions on resale under applicable United States securities legislation; and
- (b) Canada – will be subject to restrictions on resale in Canada under applicable Canadian securities regulations.

**10. PAYMENTS**

**10.1 Summary of payment provisions**

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

**10.2 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.

**10.3 Payments subject to law**

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

**10.4 Payments on Business Days**

If a payment:

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

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

#### **10.5 Payments to accounts**

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

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

#### **10.7 Unsuccessful attempts to pay**

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

- (a) decides that an amount is to be paid to a Noteholder by a method of direct credit and the Noteholder has not nominated an account to which amounts are to be paid by that method;
- (b) attempts to pay an amount to a Noteholder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful;
- (c) has made reasonable efforts to locate a Noteholder but is unable to do so; or
- (d) has issued a cheque which has not been presented within six months of its date and, as a consequence, the Issuer has cancelled such cheque,
- (e) then, in each case:
  - (i) the amount will be deemed to have been duly paid to the Noteholder and will not bear Interest; and
  - (ii) the amount will be held by the Issuer for the Noteholder in a non-interest bearing deposit with a bank selected by the Issuer until the Noteholder (or any legal personal representative of the Noteholder) nominates an account for payment or otherwise claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

#### **10.8 Payment to joint Noteholders**

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

### **11. DEDUCTIONS**

#### **11.1 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.

#### **11.2 Gross up**

If Taxes are required by law to be deducted or withheld from any sum payable in respect of a Note, then the Issuer must make additional payments (gross up) such that the Noteholder receives the full amount as if no such Tax had been imposed.

### **12. AMENDMENT OF NOTE TERMS**

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

At any time, and from time to time, but subject to the provisions of the Trust Deed governing the amendment of the Trust Deed, these Note Terms (which, for the avoidance of doubt include this clause) may be modified, altered, cancelled, amended or added to, without the consent of the Noteholders, if:

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

## **12.2 Amendment with the approval of the Noteholders**

- (a) At any time, and from time to time, but subject to clauses 12.2(b), 12.2(c) and 12.3 of these Note Terms and the provisions of the Trust Deed governing the amendment of the Trust Deed, these Note Terms (which, for the avoidance of doubt includes this clause) may be Modified if such Modification is authorised by a Noteholders Resolution.
- (b) If the Trustee reasonably considers the Modification will materially and adversely affect the rights of all Noteholders, then the Modification must be authorised by a Special Resolution.
- (c) If a clause in these Note Terms provides for Noteholders to give a direction to the Trustee by a Special Resolution, then that clause may only be Modified if such Modification is authorised by a Special Resolution.

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

If a Modification to these Note Terms (which, for the avoidance of doubt includes this clause) is proposed by the Issuer under clause 12.2 and the Trustee will not consent to the Modification, subject to compliance with the provisions of the Trust Deed governing the amendment of the Trust Deed, these Note Terms may be Modified in the manner proposed by the Issuer if such Modification is authorised by a Special Resolution.

## **13. GENERAL**

### **13.1 Calculations**

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

- (a) all figures must be rounded to five decimal places (with 0.000005 being rounded up to 0.00001); 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).

### **13.2 Reporting**

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

### **13.3 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.

### **13.4 Voting**

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

### **13.5 Notices**

All notices given under these Note Terms must be given in writing (which shall include e-mail).

### **13.6 Further documents**

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

### **13.7 Governing law and jurisdiction**

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

## **14. INTERPRETATION AND DEFINITIONS**

### **14.1 Interpretation**

In these Note Terms:

- (a) if there is inconsistency between these Note Terms and a Transaction Document, then, to the maximum extent permitted by law, these Note Terms will prevail;
- (b) the Directors may exercise all powers of the Issuer under these Note Terms as are not, by the Corporations Act or by the Constitution required to be exercised by the Issuer in a general meeting of Members;
- (c) calculations, elections and determinations made by the Issuer under these Note Terms are binding on Noteholders in the absence of manifest error;
- (d) if an event under these Note Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be deemed to be the next Business Day;
- (e) the singular includes the plural and vice versa, and a gender includes the other gender;
- (f) another grammatical form of a defined word or expression has a corresponding meaning;
- (g) a reference to a document includes all schedules, annexes and amendments to it;
- (h) a reference to a clause or clause is to a clause or clause of these Note Terms;



- (i) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (j) a reference to '\$', 'Australian dollars', 'A\$', 'AUS' or 'Australian cent' is a reference to the lawful currency of the Commonwealth of Australia;
- (k) a reference to time is to Perth, Western Australia time;
- (l) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a person includes a natural person, partnership, body corporate, association, Government Agency or other entity;
- (n) 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;
- (o) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (p) an Event of Default is subsisting if it has not been remedied or waived in writing; and
- (q) headings (including those in brackets at the beginning of clauses) are for convenience only and do not affect the interpretation of these Note Terms; and
- (r) terms used in the Corporations Act have the same respective meanings when used in this Deed.

## 14.2 Definitions

Terms defined in the Transaction Documents have the same meanings in these Note Terms. In addition, the following terms have the following meanings:

**Applicable Regulations** means such provisions of the 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.

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

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

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

**Bonus Issue** means any issue of Securities by way of capitalisation of profits, reserves, share premium account or capital redemption reserve fund or otherwise, but excluding any issue of Securities made in place of a cash payment as a dividend under the Constitution.

**Bonus Securities** means Securities issued under a Bonus Issue.

**Business Day** means a day which is a business day within the meaning of the 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 unanimously recommend acceptance of the offer under the takeover bid, and acceptance of that offer would result in the bidder having a relevant interest in 100% of the Shares on issue; or
- (b) a court approves a proposed scheme of arrangement which, when implemented, will result in a person having a relevant interest in 100% of the Shares on issue; or
- (c) the sale, lease or other disposition of all or substantially all of the Issuer's consolidated assets, excluding a sale, merger, reorganization or other similar transaction if the previous holders of the Shares hold at least 50% of the voting control in such merged, reorganized or other continuing entity.

**Change of Control Notice** means a notice given in accordance with clause 3.2(a).

**Clearing System** means the Clearing House Electronic Sub-register System operated by ASX Settlement or any other applicable securities trading or clearance system.

**Closing Date** means 7 June 2017 or such other date as the Issuer and the Finders may agree.

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

**Conversion** means the conversion of a Note in accordance with clause 5 and the words **Convert**, **Convertible**, **Converting** and **Converted** bear a corresponding meaning.

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

**Conversion Date** means the date (determined by the Issuer (in its absolute discretion) in accordance with these Note Terms) on which Shares will be issued to the Noteholder on conversion of the Notes under clause 5.

**Conversion Notice** means a notice of Conversion given in accordance with clause 5.2.

**Conversion Price** means \$0.03333 per Share.

**Conversion Right** means the right of a Noteholder to convert principal and accrued but unpaid Interest due under a Note into Shares in accordance with clause 5.2(a).

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

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

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

**Delisting Event** will occur if:

- (a) the Shares cease to be quoted on ASX; or
- (b) trading of the Shares or Notes on 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 3.1(a).

**Event of Default** means the happening of any event set out in clause 8.1.

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

**Finders** means Sprott Capital Partners, a division of Sprott Private Wealth LP, and Sprott Global Resource Investments, Ltd.

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

**Group** means the Issuer and its Related Bodies Corporate.

**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 section 459(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.

**Interest Conversion Price** means the VWAP of the Shares for the five trading day period ending on the last day prior to the Interest Payment Date.

**Interest Payment Date** means:

- (a) each 31 March, 30 June, 30 September and 31 December during the term of the Note, with the first Interest Payment Date being 30 June 2017;
- (b) the Conversion Date (if the Issuer or Noteholder elects not to include the Interest accrued but unpaid on the Note in the Conversion Amount);
- (c) the Maturity Date; and
- (d) any Redemption Date.

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

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

**Interest Rate** means, in respect of an Interest Period for a Note, 8% per annum

**Interest Shares** means Shares issued in satisfaction of accrued and unpaid Interest.

**Issue Date** means the date on which that Note is issued.

**Issue Price** means the price at which each Note is issued, being \$100.

**Issuer** means Hot Chili Limited ACN 130 955 725.

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

**Maturity Date** means the date which is the fifth anniversary of the Issue Date.

**Meeting Provisions** means the rules relating to meetings of Noteholders to be contained the Trust Deed.

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

**Modification** means any modification, alteration, cancellation or amendment of or addition to a Note and **Modified** bears a corresponding meaning.

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

**Note Terms** means, in relation to a Note, these terms and conditions.

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

**Noteholders Resolution** means:

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

**Permitted New Debt** means indebtedness

- (a) incurred by the Issuer to finance the development and placing of the Issuer's assets into commercial production
- (b) provided that the terms of the financial accommodation are commercial, at arm's length, and are not in any respect unusual or onerous.

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

- (a) subject to sub-clauses (b) and (c), the date which is eight calendar days before the applicable due date for payment; or
- (b) such other date as is determined by the Issuer in its absolute discretion, and communicated to ASX not less than eight calendar days before the Record Date which would have been determined under clause (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 3 and the words **Redeem**, **Redeemable** and **Redeemed** bear their corresponding meanings.

**Redemption Date** means the date, other than the Maturity Date, on which a Note is Redeemed.

**Register** means the register of Noteholders (established and maintained under the Trust Deed) and 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 Security Transfer Australia Pty Ltd ACN 008 894 488 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 Bodies Corporate** has the meaning given to it in the Corporations Act.

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

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

**Securities** includes shares, options, convertible securities, debentures, debenture stocks, notes of the Issuer and any options or rights to subscribe for any of them.

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset, including any retention of title other than in the ordinary course of business and any charge or lien arising by operation of law.

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

**Special Resolution** means:

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

**Subscription Agreement** means a subscription agreement for Notes entered into by the Issuer and a Noteholder.

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

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

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

**Transaction Documents** means:

- (a) the Trust Deed (including these Note Terms);
- (b) each Subscription Agreement; and
- (c) each Note.

**Trust Deed** means the trust deed entitled 'Trust Deed for the Hot Chili Limited Note Trust' to be entered by the Issuer and the Trustee in accordance with the requirements of Part 2L.1 of the Corporations Act.

**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 Equity Trustees Limited, or such other person appointed by the Issuer who is qualified under section 283AC of the Corporations Act to act as trustee for the benefit of the Noteholders.

**United States** means the United States of America, its states, territories and possessions and the District of Columbia.

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

**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).

## **Annexure 2**

### **Terms and conditions of Options**

The terms and conditions of the Finder Options are regulated by the Constitution, the Corporations Act, the ASX Listing Rules and general law.

Each Finder Option will be issued on the following terms:

(a) **Entitlement**

Each Finder Option entitles the holder (**Option Holder**) to subscribe for one fully paid ordinary Share in the Company.

(b) **No payment on grant**

The Option Holder is not required to pay any amount on the grant of a Finder Option.

(c) **Exercise price**

The exercise price of each Finder Option is A\$0.03333 (**Exercise Price**).

(d) **Expiry date**

Each Finder Option may be exercised at any time before 5.00pm (WST) on the date that is two years from the closing date of the placement of 85,000 convertible notes by the Company to raise A\$8.5 million, which is anticipated to be on or about 7 June 2019 (**Expiry Date**). Any Finder Option not exercised by the Expiry Date will automatically expire.

(e) **Certificate or holding statement**

The Company must give the Option Holder a certificate or holding statement stating:

- (i) the number of Finder Options issued to the Option Holder;
- (ii) the Exercise Price of the Finder Options; and
- (iii) the date of issue of the Finder Options.

(f) **Transfer**

The Finder Options are not transferable.

(g) **Quotation of Finder Options**

The Company will not apply to ASX for official quotation of Finder Options.

(h) **Quotation of Shares**

The Company will apply to ASX for official quotation of the Shares issued on exercise of Finder Options.

(i) **New issues**

The Option Holder is not entitled to participate in any new issue to the Company's shareholders of securities in the Company unless they have exercised their Finder Options before the record date for determining entitlements to the new issue of securities and participate as a result of holding Shares. The Company must give the Option Holder notice of the proposed terms of the issue or offer in accordance with the ASX Listing Rules.

(j) **Bonus issues**

If the Company makes a bonus issue of Shares or other securities to shareholders (except an issue in lieu of dividends or by way of dividend reinvestment) and a Share has not been issued in respect of the Finder Option before the record date for determining entitlements to the issue, then the number of underlying Shares over which the Finder Option is exercisable will be increased by the number of Shares which the Option Holder would have received if the Option Holder had exercised the Finder Option before the record date for determining entitlements to the issue.

(k) **Pro rata issues**

If the Company makes a pro rata issue of Shares (except a bonus issue) to shareholders (except an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) and a Share has not been issued in respect of the Finder Option before the record date for determining entitlements to the issue, the Exercise Price of each Finder Option will be reduced in accordance with the ASX Listing Rules.

(l) **Reorganisation**

- (i) If there is a reorganisation (including consolidation, sub-division, reduction or return) of the share capital of the Company, then the rights of the Option Holder (including the number of Finder Options to which the Option Holder is entitled to and the Exercise Price) will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganisation of capital at the time of the reorganisation.
- (ii) Any calculations or adjustments which are required to be made will be made by the Company's Board of Directors and will, in the absence of manifest error, be final and conclusive and binding on the Company and the Option Holder.
- (iii) The Company must, within a reasonable period, give to the Option Holder notice of any change to the Exercise Price of any Finder Options held by the Option Holder or the number of Shares which the Option Holder is entitled to subscribe for on exercise of a Finder Option.

(m) **Exercise**

- (i) To exercise Finder Options, the Option Holder must give the Company or its securities registry, at the same time:
  - A. a written exercise notice (in the form approved by the board of the Company from time to time) specifying the number of Finder Options being exercised and Shares to be issued;
  - B. payment of the Exercise Price for the Shares, the subject of the exercise notice, by way of bank cheque or by other means of payment, approved by the Company; and
  - C. any certificate for the Finder Options.
- (ii) The Option Holder may only exercise Finder Options in multiples of 10,000 Finder Options unless the Option Holder exercises all Finder Options held by the Option Holder.
- (iii) Finder Options will be deemed to have been exercised on the date the exercise notice and Exercise Price are received by the Company.

(n) **Re-issue of certificate or holding statement**

If the Option Holder exercises less than the total number of Finder Options registered in the Option Holder's name:

- (i) the Option Holder must surrender their Finder Option certificate (if any); and
- (ii) the Company must cancel the Finder Option certificate (if any) and issue the Option Holder a new Finder Option certificate or holding statement stating the remaining number of Finder Options held by the Option Holder.

(o) **Issue**

- (i) Within five business days after receiving an application for exercise of Finder Options and payment by the Option Holder of the Exercise Price, the Company must issue the Option Holder the number of Shares specified in the application.
- (ii) Subject to the Company's Constitution, all Shares issued on the exercise of Finder Options will rank in all respects (including rights relating to dividends) equally with the existing ordinary shares of the Company at the date of issue.

(p) **Governing law**

These terms and the rights and obligations of the Option Holder are governed by the laws of Western Australia. The Option Holder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia



**HOT CHILI LIMITED**  
**ACN 130 955 725**  
**PROXY FORM**

I/We (*name of Shareholder*) .....  
of (*address*) .....

being a Shareholder/Shareholders of Hot Chili Limited HEREBY APPOINT:

(*name*).....  
of (*address*) .....  
and/or failing him/her (*name*) .....  
of (*address*) .....

or, failing the person named, or if no person is named, the Chairperson of the Meeting as my/our proxy to act on my/our behalf at the General Meeting of Hot Chili Limited ACN 130 955 725 (**Company**) to be held at **1.00pm WST on Tuesday, 6 June 2017** at 1<sup>st</sup> Floor, 768 Canning Highway, Applecross, Western Australia (**Meeting**) and at any adjournment or postponement of the Meeting.

Except where I/we have marked a voting box for a Resolution below, I/we authorise my/our proxy to vote or abstain from voting on any Resolution in their discretion.

NOTE: The Company encourages you to you to direct your proxy to vote for or against the Resolutions or to abstain from voting on each of the Resolutions. If the chair of the Meeting (**Chairperson**) is appointed your proxy, the Chairperson intends to vote all undirected proxies **FOR** each Resolution.

**Should you wish to direct your proxy how to vote, please mark FOR, AGAINST or ABSTAIN in the voting boxes below.**

I/We direct my/our proxy to vote in the following manner:

		For	Against	Abstain
<b>Resolution 1(a)</b>	Approval of issue of Convertible Notes and Shares on conversion of Convertible Notes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 1(b)</b>	Approval of issue of Convertible Notes to Compañía de Acero del Pacífico S.A. or its nominee, and Shares on conversion of Convertible Notes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 1(c)</b>	Approval of issue of Convertible Notes to Taurus Funds Management Pty Limited or its nominee, and Shares on conversion of Convertible Notes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 1(d)</b>	Approval of issue of Convertible Notes to sophisticated investors, and Shares on conversion of Convertible Notes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Resolution 2</b>	Approval of issue of Finder Options to the Finders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*This Proxy is appointed to represent \_\_\_\_\_% of my voting right, or if two proxies are appointed Proxy 1 represents \_\_\_\_\_% and Proxy 2 represents \_\_\_\_\_% of my/our total votes.*

*My/our total voting right is \_\_\_\_\_ shares.*

**By:**

**Individuals and joint holders**

Signature

Signature

Signature

**Companies (affix common seal if appropriate)**

Director

Director/Company Secretary

Sole Director