

24 November 2014

# ASX Release:

## Unsecured Notes Trust Deed

Attached is an executed copy of the Trust Deed in relation to the Yancoal SCN Limited Subordinated Capital Notes.

A prospectus in relation to the Subordinated Capital Notes was lodged with ASIC and the ASX on 24 November 2014.



**Laura Zhang**  
**Company Secretary**



## Deed

# Unsecured Note Trust Deed

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Yancoal SCN Limited

Yancoal Australia Limited

Australian Executor Trustees Limited



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## Note Trust Deed

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Date ▶ 24.11.2014

Between the parties

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**Issuer**                      **Yancoal SCN Limited**  
ACN 602 841 556 of 363 George Street, Sydney, New South Wales  
**(Issuer)**

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**Guarantor**                      **Yancoal Australia Limited**  
ABN 82 111 859 119 of 363 George Street, Sydney, New South  
Wales  
**(Guarantor)**

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**Note Trustee**                      **Australian Executor Trustees Limited**  
ABN 84 007 869 794 of Level 22, 207 Kent Street, Sydney, New  
South Wales  
**(Note Trustee)**

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**Recitals**

- 1 The Issuer wishes to issue perpetual, subordinated and unsecured notes under this deed.
- 2 The Guarantor wishes to guarantee certain obligations of the Issuer and to provide certain undertakings to the Note Trustee under this deed.
- 3 The Note Trustee has agreed to act as trustee on behalf of the holders of the Subordinated Capital Notes on the terms and conditions contained in this deed.

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This deed witnesses as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of capitalised terms used in this deed are set out below. Capitalised terms which are not set out below have the meaning given to them in the Terms of Issue.

<b>Term</b>	<b>Meaning</b>
<b>Authorisation</b>	<p>includes:</p> <ol style="list-style-type: none"> <li>1 any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval (including any planning approval), authority or exemption from, by or with a Government Agency (including, without limitation, the Foreign Investment Review Board of Australia); or</li> <li>2 in relation to anything which could be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period the expiry of that period without intervention or action.</li> </ol>
<b>CHES Approved Securities</b>	securities in respect of which approval has been given by ASX Settlement Pty Limited in accordance with ASX Settlement Operating Rules.
<b>Confidential Information</b>	all information and other material (other than information or material in the public domain) provided to or obtained by the Note Trustee, or any officer, employee, delegate, adviser or other consultant of the Note Trustee under, in connection with or related to this deed or any obligation, duty or power of the Note Trustee under this deed.
<b>Costs</b>	includes costs, charges, fees, expenses (including expenses of advisors), commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.
<b>Default</b>	an Event of Default or event which, with the giving of notice or lapse of time, would become an Event of Default.
<b>Enforcement Action</b>	<ol style="list-style-type: none"> <li>1 the acceleration of any Liabilities or any declaration that any Liabilities are prematurely due and payable or payable on demand;</li> <li>2 the taking of any steps to enforce or require the enforcement of any security in connection with any Liabilities;</li> <li>3 the making of any demand against the Issuer or Guarantor in relation to Liabilities or in relation to any guarantee, indemnity</li> </ol>



<b>Term</b>	<b>Meaning</b>
	<p>or other assurance against loss in respect of any Liabilities or exercising any right to require the Issuer or Guarantor to acquire any Liability;</p> <p>4 the exercise of any right of set-off against the Issuer or Guarantor in respect of any Liabilities;</p> <p>5 the suing for, commencing or joining any legal or arbitration proceedings against the Issuer or Guarantor to recover any Liabilities;</p> <p>6 the entering into any composition, assignment or arrangement with any obligor; or</p> <p>7 petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in respect of the Issuer or Guarantor or any suspension of payments or moratorium of any indebtedness of the Issuer or Guarantor, or any analogous procedure or step in any jurisdiction.</p>
<b>Event of Default</b>	<p>the occurrence of any of the following events:</p> <p>1 the Winding Up of the Issuer and it becoming obliged to redeem the Subordinated Capital Notes under clause 5.1 (Redemption on Winding Up) of the Terms of Issue; or</p> <p>2 a default by the Issuer or the Guarantor under this deed or the Terms of Issue in respect of their payment obligations or the performance of any of their other obligations.</p>
<b>Government Agency</b>	<p>any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.</p>
<b>GST</b>	<p>any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty.</p>
<b>Guaranteed Moneys</b>	<p>all debts and monetary liabilities of the Issuer to the Note Trustee or the Holders in respect of any Distributions, Redemption Amounts or other amounts which are due and payable by the Issuer in accordance with the Terms of Issue or this deed.</p>
<b>Joint Holders</b>	<p>has the meaning in clause 3.3.</p>
<b>Liabilities</b>	<p>all present and future liabilities at any time of the Issuer or Guarantor to any Holder or the Note Trustee under or in connection</p>





<b>Term</b>	<b>Meaning</b>
	with this Deed, the Terms of Issue or any Subordinated Capital Note, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:
<b>Loss</b>	any claim, action damage, loss, liability, cost, charge, expense, fine, penalty, outgoing or payment.
<b>Meeting</b>	a meeting of Holders convened in accordance with this deed.
<b>Note Trustee</b>	the trustee for the time being of the Trust (being initially the person named as party to this deed as Note Trustee) in its capacity as such trustee.
<b>Official List</b>	the Official List of the ASX.
<b>Officially Quoted</b>	has the meaning in clause 3.4(b).
<b>Power</b>	a right, power, authority, discretion or remedy conferred on the Note Trustee by this deed or the Terms of Issue or by law.
<b>Privacy Act</b>	<i>Privacy Act 1988</i> (Cth) and all regulations passed pursuant to the <i>Privacy Act 1988</i> (Cth).
<b>Subordinated Guarantee</b>	has the meaning in clause 5.1.
<b>Subsidiary</b>	a subsidiary of an entity as defined in section 46 of the Corporations Act.
<b>Terms of Issue</b>	the terms of issue of the Subordinated Capital Notes, being the terms set out in Attachment 1.
<b>Trust</b>	the trust established by this deed.



<b>Term</b>	<b>Meaning</b>
<b>Trustee Company</b>	a body corporate eligible under section 283AC of the Corporations Act to act as a trustee for the holders of unsecured notes offered to the public.

## 1.2 Interpretation

In this deed, headings and boldings are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) terms defined in the Corporations Act have the same meaning in this deed;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (g) an annexure, exhibit or schedule to this deed forms part of this deed;
- (h) a reference to a part, clause, party, attachment, annexure, exhibit or schedule is a reference to a part and clause of, and a party, attachment, annexure, exhibit and schedule to, this deed, a reference to this deed includes any schedule, attachment, annexure or exhibit;
- (i) a reference to "law" includes common law, principles of equity and any statute, ordinance, code or other law made by any parliament, whether inside or outside Australia, and will be taken to include a reference to Sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended (or any consolidation, amendments, re-enactment or replacement of those sections and including any current or future regulations or official interpretations issued, agreements entered into (whether by the Issuer, a related body corporate of the Issuer or any other person) or non-US laws enacted in relation to those sections);
- (j) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (k) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (l) a reference to a party to a document includes that party's successors and permitted assigns;



- (m) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (n) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (o) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
- (p) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (q) a reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (r) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death; and
- (s) a reference to 'wilful default' in relation to the Note Trustee means any wilful failure to comply with, or wilful breach by, the Note Trustee of any of its obligations under this deed or at law other than a failure or breach which:
  - (1) is in accordance with a lawful court order or direction or required by law; or
  - (2) is in accordance with any proper instruction or direction of the Holders given at a Meeting of Holders convened pursuant to clause 12 of this deed.

### **1.3 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### **1.4 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the succeeding Business Day, other than in respect of a Conversion which must occur on the relevant Monthly Conversion Date.

### **1.5 Compliance with law**

- (a) This deed applies subject to all applicable laws.



- (b) Without limiting the generality of clause 1.5(a), to the extent a provision of this deed breaches or contravenes, or if complied with would result in a breach or contravention of any requirement of the law this deed is taken not to contain that provision.
- (c) Without limiting clause 1.5(a), this deed and the Terms of Issue are to be construed so as to not limit the Note Trustee's liability for breach of section 283DA, or entitle the Note Trustee to be indemnified against that liability, to any extent that would be void under section 283DB of the Corporations Act.
- (d) This clause 1.5 prevails over all other provisions of this deed including any that are expressed to prevail over it.

## 2 Appointment of Note Trustee and declaration of trust

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### 2.1 Appointment

The Note Trustee is hereby appointed by the Issuer as trustee for the Holders subject to and in accordance with this deed.

### 2.2 Declaration of trust

The Note Trustee declares that it enters into this deed as trustee for the Holders, and will hold the benefit of:

- (a) this deed;
- (b) the right to enforce the Issuer's duty to repay the Subordinated Capital Notes;
- (c) the right to enforce the Guarantor's duty under the Subordinated Guarantee;
- (d) the right to enforce all other duties of the Issuer and the Guarantor under the Terms of Issue, the provisions of this deed and Chapter 2L of the Corporations Act; and
- (e) any other Powers and any other property which the Note Trustee may receive or which may be vested in the Note Trustee,

in trust for the Holders subject to and in accordance with this deed and the Terms of Issue.

## 3 Issue, ownership and transfer of Subordinated Capital Notes

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### 3.1 Issue

- (a) The Issuer may issue Notes to any person by causing that person to be entered in the Register as the Holder of those Subordinated Capital Notes.
- (b) Upon the issue of a Subordinated Capital Note in accordance with clause 3.1(a) the Subordinated Capital Note will be duly constituted as a debt obligation by, and owing under, this deed.



- (c) Despite clause 3.1(b), the issue of a Subordinated Capital Note will be void, and the Subordinated Capital Note will confer no rights against the Issuer on the Holder or any other person, unless the Issuer has received payment in cleared funds in full of the moneys due on application for the Subordinated Capital Note.
- (d) The Issuer may pay a commission, procuration fee, brokerage or any other fees to any person for subscribing or underwriting the subscription of or subscription for the Subordinated Capital Notes.

### 3.2 Ownership

- (a) Subordinated Capital Notes are regarded as issued or transferred to a person if and when the person's name is recorded in the Register as the holder of the Subordinated Capital Notes in accordance with this deed.
- (b) Title to a Subordinated Capital Note vests in the Holder of the Subordinated Capital Note. The Issuer and the Note Trustee may treat Holders as the absolute beneficial owners of Subordinated Capital Notes held by them and are not bound by or obliged to recognise any other person as having any right or interest in any Subordinated Capital Note whether or not they have notice of such right or interest.
- (c) Despite clause 3.2(a), the Holder's title to a Subordinated Capital Note is subject to rectification of the Register for fraud or error.

### 3.3 Joint ownership

Where two or more persons are registered as the holders of a Subordinated Capital Note (**Joint Holders**):

- (a) the Joint Holders are deemed to hold the Subordinated Capital Notes as joint tenants and, except as provided below, a reference in this deed to the Holder of the Subordinated Capital Note means all of those persons;
- (b) on the death of a Joint Holder, the survivor or survivors are the only person or persons whom the Issuer or the Note Trustee will recognise as having any title to the Subordinated Capital Notes (but the Issuer or the Note Trustee may require any evidence of death which it thinks fit);
- (c) the Joint Holders are counted as a single holder of the Subordinated Capital Note for the purposes of calculating the number of Holders or requisitioners who have requested a Meeting of Holders;
- (d) the giving of notice to, or receipt of notice for, any one of the Joint Holders is taken to be the giving of notice to, or receipt of notice for, all of the Joint Holders; and
- (e) any one of the Joint Holders may give an effective receipt for payment on the Subordinated Capital Notes and a payment to any one of the Joint Holders will discharge the Issuer's liability with respect to that payment.

Subject to the ASX Settlement Operating Rules but despite any other provision of this deed or the Terms of Issue, the Issuer is not required to recognise or cause the registration of more than 3 persons as Joint Holders of a Subordinated Capital Note.



### 3.4 Transfer

- (a) Subject to this deed, the Subordinated Capital Notes are transferrable in whole in accordance with this clause but not otherwise.
- (b) So long as the Subordinated Capital Notes are quoted on the Official List (**Officially Quoted**), all transfers of the Subordinated Capital Notes must be effected in accordance with the ASX Settlement Operating Rules.
- (c) If at any time the Subordinated Capital Notes are not Officially Quoted, all transfers of the Subordinated Capital Notes must be effected by a proper instrument of transfer and in a manner approved by the Issuer. The Issuer may decline to register a transfer of Subordinated Capital Notes under this clause 3.4(c) unless the instrument of transfer:
  - (1) is duly stamped; and
  - (2) is accompanied by such evidence as the Issuer requires to prove the title of the transferor.
- (d) A transferor of Subordinated Capital Notes remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Subordinated Capital Notes.
- (e) The Issuer may refuse to register a transfer of Subordinated Capital Notes in the circumstances in which it is permitted to do so under the Listing Rules or ASX Settlement Operating Rules. The Issuer must not otherwise refuse to register a transfer of Subordinated Capital Notes which complies with this deed.
- (f) The Issuer may and must, despite any other provision of this deed but subject to compliance with applicable law, cause the Register to be updated to record the Purchaser as the Holder of any Subordinated Capital Notes the subject of a Resale following upon the transfer of the relevant Holders rights in respect of the Subordinated Capital Notes to the Purchaser in accordance with clause 5.4 of the Terms of Issue.

### 3.5 Restricted securities

Despite any other provisions of this deed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASX Settlement Operating Rules in respect of CHES Approved Securities, the Issuer must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) in the event of a breach of the Listing Rules in relation to Subordinated Capital Notes which are restricted securities, the Holder holding the Subordinated Capital Notes in question ceases to be entitled to any payment of interest and to any voting rights in respect of those Subordinated Capital Notes for so long as the breach subsists.



### **3.6 Death, legal disability**

- (a) Subject to clause 3.3, if a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the legal personal representative or the person entitled to Subordinated Capital Notes as a result of bankruptcy or liquidation, will be recognised as being entitled to require the transfer to it of Subordinated Capital Notes registered in the Holder's name.
- (b) The Issuer need not register any transfer or transmission under this clause unless the transferee provides evidence of its entitlement satisfactory to the Issuer and an indemnity in favour of the Issuer in a form determined by the Issuer in respect of any consequence arising from the transfer or transmission.

### **3.7 Holders bound**

The Holders and any persons claiming through any of them are deemed to have notice of, and are bound by, all the provisions of this deed and the Terms of Issue.

## **4 Terms of Subordinated Capital Notes**

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### **4.1 Terms of Issue**

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

### **4.2 Payments**

- (a) Without limiting clause 4.1, the Issuer must pay to the Note Trustee when due all amounts stated or determined to be payable on a Subordinated Capital Note under the Terms of Issue. The Note Trustee directs the Issuer to pay the amounts referred to in this clause 4.2(a) to the Holders, in accordance with their rights and entitlements unless the winding up of the Issuer has commenced in which case the payment must be made to the Note Trustee.
- (b) Payment of an amount payable in respect of a Subordinated Capital Note to the Holder of the Subordinated Capital Note (or to the person who was the holder at the time the entitlement to the payment is determined under the Terms of Issue) discharges the Issuer's obligation to pay that amount to the Note Trustee under clause 4.2(a).
- (c) Payment of an amount payable in respect of a Subordinated Capital Note to the Note Trustee discharges the Issuer's obligation to pay that amount to the Holder of the Subordinated Capital Note (or to the person who was the Holder at the time the entitlement to the payment is determined under the Terms of Issue) under the Terms of Issue.
- (d) Subject to all applicable law, where the Issuer is unable to make a payment or relieved from the obligation to make a payment under clause 7.3 (Manner of payment) of the Terms of Issue, the amount is to be held by the Issuer for the



Holder in a non-interest bearing deposit with a bank selected by the Issuer until the first of the following to occur:

- (1) the Holder or a legal representative of the Holder (or the person who was the Holder at the time the entitlement to the payment is determined under the Terms of Issue) claims the amount and provides evidence of its entitlement and details for payment to be effected to the satisfaction of the Issuer;
  - (2) the Issuer pays the amount in accordance with the law relating to unclaimed money; and
  - (3) the claim for payment of the amount becomes void under the Terms of Issue.
- (e) The Issuer's obligations to make payments in respect of the Subordinated Capital Notes are subject to all applicable laws. If a payment could not lawfully be made to a particular Holder due to any circumstance or matter affecting the Holder without the approval of a Government Agency or the satisfaction of some other condition then the Holder is not entitled to receive that payment, and the Issuer is not obliged to make that payment, unless that approval has been obtained or that other condition is satisfied. The Issuer is not obliged to pay any further interest to the affected Holder in such circumstances on account of the delay.
- (f) If the Issuer has determined that a person other than the Holder is or may be entitled to be registered as a Holder and receive a payment in respect of a Subordinated Capital Note, the Issuer may withhold the payment until it has established the respective entitlements of those persons to its satisfaction and (if applicable) the persons entitled have been registered as Holder and provided details for the payment to be effected to the satisfaction of the Issuer. The Issuer is not obliged to pay any further interest on account of the delay.

### 4.3 Subordination

Without limiting clause 4.1 or 4.2:

- (a) the Subordinated Capital Notes constitute direct, unsecured and subordinated debt obligations of the Issuer;
- (b) the Issuer's obligation to pay amounts due on the Subordinated Capital Notes is subject to, and subordinated on the terms set out in, clause 2 (Status and subordination) of the Terms of Issue; and
- (c) clause 2 (Status and subordination) of the Terms of Issue is binding on the Note Trustee in relation to any amount due on the Subordinated Capital Notes that it recovers or seeks to recover and applies to the Note Trustee as if references to the Holders in that clause were references to the Note Trustee.

To avoid doubt, this clause does not affect the Note Trustee's entitlement to be paid any amount under clause 10.



## 5 Subordinated Guarantee

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### 5.1 Subordinated Guarantee

- (a) The Guarantor guarantees to the Note Trustee the payment when due of the Guaranteed Moneys and the timely performance by the Issuer of all other obligations of the Issuer under this deed and the Terms of Issue.
- (b) In the event that the amount of the Guaranteed Moneys are reduced:
- (1) by clause 4.3;
  - (2) by clause 2 (Status and subordination) of the Terms of Issue; or
  - (3) by reason of the proviso to the definition of 'Redemption Amount' in clause 12 (Definitions) of the Terms of Issue,
- the Guarantor indemnifies the Note Trustee against and agrees to pay to the Note Trustee on demand the amount of the reduction (**Reduction Amount**). However, this indemnity will only apply in relation to a reduction referred to in clause 5.1(b)(3):
- (4) prior to a Winding Up of the Guarantor, to the extent the Guarantor has funds available to it to pay the Reduction Amount and remain solvent; or
  - (5) during a Winding Up of the Guarantor, to the extent that the Guarantor has funds available to it to pay the Reduction Amount following the Guarantor's discharge of all of its other debts.

### 5.2 Payments

- (a) All payments which the Guarantor is required to make under this deed must be made:
- (1) on demand by the Note Trustee;
  - (2) without any set off, counter claim, condition or deduction;
  - (3) in the same manner as they ought to have been paid by the Issuer.
- (b) Without limiting clause 5.2(a), the Note Trustee directs the Guarantor to pay all amounts referred to in clause 4.2(a) to the Holders (or former Holders) to whom the Issuer ought to have made the relevant payment (unless the winding up of the Issuer has commenced in which case the payment must be made to the Note Trustee) and such payment will discharge the Guarantor's liability to pay that amount to the Note Trustee.
- (c) Subject to all applicable law, where the Issuer would be unable to make a payment or relieved from the obligation to make a payment under clause 7.3 (Manner of payment) of the Terms of Issue, the Guarantor need not make that payment but the amount is to be held by the Guarantor (if not so held by the Issuer in accordance with clause 4.2) for the Holder in a non-interest bearing deposit with a bank selected by the Guarantor until the first of the following to occur:
- (1) the Holder or a legal representative of the Holder (or the person who was the Holder at the time the entitlement to the payment is



- determined under the Terms of Issue) claims the amount and provides evidence of its entitlement and details for payment to be effected to the satisfaction of the Issuer;
- (2) the Guarantor pays the amount in accordance with the law relating to unclaimed money; and
  - (3) the claim for payment of the amount becomes void under the Terms of Issue.
- (d) The Guarantor's obligations to make payments in respect of the Subordinated Capital Notes are subject to all applicable laws. If a payment could not lawfully be made to a particular Holder due to any circumstance or matter affecting the Holder without the approval of a Government Agency or the satisfaction of some other condition then the Note Trustee is not entitled to receive that payment, and the Guarantor is not obliged to make that payment, unless that approval has been obtained or that other condition is satisfied. The Guarantor is not obliged to pay any interest in such circumstances on account of the delay.
- (e) If the Guarantor has determined that a person other than the Holder is or may be entitled to be registered as a Holder and receive a payment in respect of a Subordinated Capital Note, the Guarantor may withhold the payment until it has established the respective entitlements of those persons to its satisfaction and (if applicable) the persons entitled have been registered as Holder and provided details for the payment to be effected to the satisfaction of the Guarantor. The Guarantor is not obliged to pay any further interest on account of the delay.

### 5.3 Continuing obligation

The Subordinated Guarantee is a continuing obligation of the Guarantor, despite any settlement of account or the occurrence of any other thing and remains in full force and effect until all Guaranteed Moneys have been paid in full.

### 5.4 Non avoidance

- (a) If any payment, conveyance, transfer or other transaction relating to or affecting the Guaranteed Moneys is:
- (1) void, voidable or unenforceable in whole or in part, or
  - (2) claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part,
- the liability of the Guarantor under this deed and any Power is the same as if:
- (3) that payment, conveyance, transfer or other transaction (or the void, voidable or unenforceable part of it); and
  - (4) any release, settlement or discharge made in reliance on any thing referred to in clause 5.4(a)(3),
- had not been made and the Guarantor must immediately take all action and sign all documents necessary or required by the Note Trustee to restore to the Note Trustee the benefit of the liability of the Guarantor under this deed in place immediately before the payment or transaction.
- (b) Clause 5.4(a) applies whether or not the Note Trustee or a Holder knew, or ought to have known, of anything referred to in clause 5.4(a).



## 5.5 Unconditional nature of obligations

The obligations of the Guarantor under the Subordinated Guarantee are principal obligations and are absolute, binding, unconditional and irrevocable in all circumstances and are not released, discharged or otherwise affected by anything that but for this provision might have that effect.

## 5.6 Status of the Subordinated Guarantee and subordination

- (a) The payment obligations under clause 5.1 are direct, unsecured and, except as specified in clause 5.6(f), subordinated debt obligations of the Guarantor.
- (b) Except as specified in clause 5.6(f), the Subordinated Guarantee ranks for payment in a Winding Up of the Guarantor:
  - (1) after all Senior Ranking Obligations;
  - (2) equally with all Equal Ranking Obligations; and
  - (3) ahead of all Junior Ranking Obligations.
- (c) In order to give effect to the ranking specified in clause 5.6(b), in any Winding Up of the Guarantor, the claims of the Note Trustee (other than in respect of amounts specified in clause 5.6(f)) are limited to the extent necessary to ensure that:
  - (1) all holders of Senior Ranking Obligations receive payment in full before any payment is made to Holders; and
  - (2) holders of any Equal Ranking Obligations receive payments on a pro-rata basis.
- (d) Neither the Note Trustee nor any Holder has any right to prove in a Winding Up of the Guarantor in respect of the Subordinated Guarantee, except on the basis set out in clauses 5.6(b) and 5.6(c).
- (e) Neither the Note Trustee nor any Holder may exercise voting rights as a creditor in respect of the Subordinated Guarantee in a Winding Up of the Guarantor to defeat the subordination in this clause.
- (f) This clause does not affect the Guarantor's obligations to pay, or the Note Trustee's right to recover from the Guarantor under clause 5.1 or any amount payable to the Note Trustee under clause 10.

## 6 Undertakings

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Subject to this deed, each of the Issuer and the Guarantor undertakes to the Note Trustee that for so long as any principal or interest due on Subordinated Capital Notes remains outstanding, it will:

- (a) comply with its obligations under the Subordinated Capital Notes, this deed, and Chapter 2L and section 318 of the Corporations Act;
- (b) ensure that any financial statements provided to the Note Trustee:



- (1) comply with generally accepted accounting practice in Australia, except to the extent disclosed in the financial statements; and
- (2) comply with all applicable laws;
- (c) use all reasonable endeavours to procure official quotation of the Subordinated Capital Notes on the Official List of the ASX and to procure such quotation is maintained;
- (d) do all things which are reasonably requested by the Note Trustee to enable the Note Trustee to comply with the Note Trustee's obligations under this deed, the Corporations Act (or any other laws binding on the Note Trustee with respect to the trust or the Subordinated Capital Notes), the Listing Rules or the ASX Settlement Operating Rules;
- (e) provide to the Note Trustee:
  - (1) at the same time as their issue, all documents sent to Holders;
  - (2) at the same time as their issue, all documents lodged with ASX in relation to the Subordinated Capital Notes; and
  - (3) promptly, all other information requested by the Note Trustee which is reasonably required for the purposes of discharging the duties, trusts and powers of the Note Trustee under this deed or law;
- (f) promptly, after becoming aware of any Event of Default that is continuing, notify the Note Trustee;
- (g) promptly, after becoming aware that any provision of this deed, the Subordinated Capital Notes or the Subordinated Guarantee cannot be complied with by the Issuer or the Guarantor (as the case may be), notify the Note Trustee of that fact;
- (h) promptly after any redemption or cancellation of any Subordinated Capital Notes, confirm in a certificate signed by any two directors of the Issuer details of that redemption or cancellation to the Note Trustee;
- (i) promptly, after any appointment, retirement, resignation or removal of an auditor of the Issuer, notify the Note Trustee;
- (j) comply with each undertaking stated to be given by it in the Terms of Issue; and
- (k) in the case of the Guarantor only:
  - (1) upon receipt of a Conversion Notice in respect of any Subordinated Capital Notes of a Holder, issue the relevant number of Yancoal Ordinary Shares to the relevant Holder on the relevant Conversion Date (whether or not the Issuer has applied the Face Value of the relevant Subordinated Capital Notes in payment to the Guarantor of the subscription price for those shares in accordance with clause 4.2 (Conversion process) of the Terms of Issue);
  - (2) use all reasonable endeavours and furnish any documents, information and undertakings as may be reasonably necessary in order to procure quotation of all Yancoal Ordinary Shares issued on any Conversion of the Subordinated Capital Notes into Ordinary Shares on ASX and any other stock exchanges on which the Yancoal Ordinary Shares are quoted on the Conversion Date;



- (3) comply with the restrictions on distributions in respect of its Equal Ranking Obligations or Junior Ranking Obligations in accordance with clause 3.5 (Restrictions on deferral) of the Terms of Issue; and
- (4) not dispose of any, and will maintain its holding of all, of the Issuer's Ordinary Shares, so long as the Subordinated Capital Notes remain Outstanding.

## 7 Enforcement of this deed

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### 7.1 Enforcement by Note Trustee

- (a) Subject to clause 7.3(a), the Note Trustee and only the Note Trustee is entitled to take any action in relation to a Default or to otherwise enforce this deed or the Terms of Issue.
- (b) Each of the Issuer and the Guarantor is not liable in damages for breach of any provision of this deed other than in respect of the Note Trustee's remuneration and expenses due and payable under clause 10 or any other loss suffered by the Note Trustee in its personal capacity. This does not affect the Issuer's or the Guarantor's obligations or liabilities under or in respect of the Terms of Issue or the Subordinated Guarantee (as the case may be) to pay the principal amount, interest, redemption amount or other amounts payable in respect of the Subordinated Capital Notes and Costs and other amounts due to the Note Trustee.

### 7.2 Enforcement on direction by Holders

The Note Trustee must take action in relation to a Default or to otherwise enforce this deed where all the following conditions are met:

- (a) the Note Trustee has been directed to take that action;
  - (1) by a Holder Resolution; or
  - (2) in the case of taking action under clause 6.1 (Consequences of a default) of the Terms of Issue, in writing by Holders of at least 10% of the aggregate of the principal amount of all Subordinated Capital Notes Outstanding (ignoring any Subordinated Capital Notes held by the Issuer, the Guarantor or any of the Guarantor's other Subsidiaries and not cancelled);
- (b) the Note Trustee is indemnified to its satisfaction:
  - (1) for all actions, proceedings, claims and demands to which the Note Trustee may render itself liable by taking such action;
  - (2) in respect of all costs, charges, damages and expenses which the Note Trustee may thereby incur; and
  - (3) in respect of the costs of all management time spent by employees or officers of the Note Trustee in relation to such action in the amount required under clause 10 of this deed; and



- (c) the Note Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Note Trustee forms the view that action it has been directed to take is or could be inconsistent with this deed, the Terms of Issue or any applicable law or is or could be otherwise objectionable, it may take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction and, while those steps are underway, the Note Trustee is not obliged to take any action or proceedings it has been directed to take.

For the avoidance of doubt, the Note Trustee may take action in relation to a Default or to otherwise enforce this deed or the Terms of Issue in any other circumstances and in its absolute discretion but is not obliged to act unless the conditions of this clause are satisfied.

### **7.3 Enforcement by Holder**

- (a) A Holder is entitled to take any action that the Note Trustee could take in relation to a Default or to otherwise enforce this deed if and only if the Note Trustee, having become bound to take that action under clause 7.2, fails to do so within 30 Business Days and that failure is continuing. Any such action may be taken by a Holder:
- (1) in the name of the Note Trustee; and
  - (2) following the giving to the Note Trustee of an indemnity satisfactory to it,
- but not otherwise.
- (b) Except as otherwise provided in clause 7.3(a), a Holder is prohibited from:
- (1) taking any Enforcement Action;
  - (2) taking any action in relation to a Default; or
  - (3) enforcing this deed or the Terms of Issue.
- (c) The Issuer may plead this clause in bar to any proceedings brought against it that are not permitted by this clause 7.

### **7.4 Distribution of proceeds**

All money received by the Note Trustee or by a Holder acting in its name under clause 7.3 in respect of amounts payable under this deed must be held by the Note Trustee on trust to be applied in the following order:

- (a) firstly, in payment of all Costs incurred by or other amounts owing to the Note Trustee under or in connection with this deed (including all remuneration and other amounts payable to the Note Trustee under this deed);
- (b) secondly, in or towards payment equally or rateably of all arrears of interest remaining unpaid in respect of the Subordinated Capital Notes and all principal due in respect of the Subordinated Capital Notes; and
- (c) thirdly, in payment of the balance (if any) to the Issuer.



## 8 Powers, duties and discretions of Note Trustee

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### 8.1 Powers generally

Subject to this deed, the Note Trustee has in acting as trustee of the Trust and in relation to all property of the Trust all the powers of a natural person or which it is otherwise possible to confer on a trustee.

### 8.2 Duties

- (a) The Note Trustee must:
- (1) act honestly and in good faith and comply with all laws in performing its duties and in the exercise of its Power;
  - (2) exercise such diligence and prudence as a person qualified to be a trustee under the Corporations Act in the position of the Note Trustee would exercise in performing its duties and in the exercise of its Power;
  - (3) if and to the extent the Note Trustee holds Trust assets, keep accounting records which correctly record and explain all amounts paid and received by the Note Trustee in its capacity as trustee under this deed; and
  - (4) if and to the extent the Note Trustee holds Trust assets, keep the assets of the Trust separate from all other assets of the Note Trustee which are held in a capacity other than trustee under this deed.
- (b) The Note Trustee must not interfere with the conduct of the ordinary business of the Issuer unless required to do so in order to comply with its duties under the Corporations Act.
- (c) The Note Trustee has no obligations or duties except those expressly set out in this deed and those imposed on it by any law that cannot be excluded.

### 8.3 Discretions

The Note Trustee may:

- (a) **(delegation)** by power of attorney or otherwise, authorise:
- (1) a Related Body Corporate of the Note Trustee; or
  - (2) any other person (including, without limitation, the Issuer and persons associated with the Issuer),
- to do anything which the Note Trustee may lawfully do (on such terms and conditions as the Note Trustee may think fit) including, without limitation, holding any trust property and executing documents on its behalf;
- (b) **(directions)** apply to court for directions in relation to any question arising either before or after Subordinated Capital Notes become repayable and assent to and approve of or oppose any application to any court made by or at the instance of any Holder;





- (c) **(reliance)** rely and act upon (without enquiry) any communication or document that it reasonably believes to be genuine and correct and to have been signed or sent by the appropriate person or persons;
- (d) **(expert advice)** engage and rely and act upon (without enquiry) the advice or opinion of or information of any barrister, solicitor, accountant, auditor, actuary, valuer or other consultant or adviser of the Issuer, the Guarantor or the Note Trustee;
- (e) **(certificates)** accept as conclusive evidence and act upon:
  - (1) a certificate which purports to be signed by any two directors of the Issuer as to any fact or matter, including without limitation as to whether or not any particular dealing, transaction, step or thing is commercially desirable or detrimental to the interests of the Holders or whether any circumstance exists entitling the Issuer to redeem the Subordinated Capital Note prior to the Redemption Date; and
  - (2) any information, report, accounts, certificate or statement supplied by the Issuer or the Guarantor, or the auditor or solicitor of the Issuer or the Guarantor, including without limitation, any statements or opinions contained therein.

The Note Trustee is not required to call for further evidence or information and is not responsible for any loss occurring as a result of such reliance, except to the extent that its reliance amounts to fraud, negligence or wilful default;

- (f) **(documents)** accept as conclusive evidence and act upon, any document, communication, information, report, balance sheet, profit and loss account, certificate or statement supplied by the Issuer, the Guarantor or any Subsidiary of the Guarantor or by any director, secretary, auditor, solicitor or duly authorised officer of the Issuer, the Guarantor or any Subsidiary of the Guarantor (including any electronic transmission);
- (g) **(statements)** accept as conclusive evidence and act upon, all statements (including statements made or given to the best of knowledge and belief or similarly qualified) contained in any statement, certificate, report, balance sheet or profit and loss account given pursuant to the provisions of, or in any way in relation to, this deed;
- (h) **(determinations)** determine as between itself and the Holders all questions and matters of doubt arising in relation to this deed (whether made upon a question actually raised or implied in acts or proceedings of the Note Trustee);
- (i) **(exercise of powers)** determine in any manner it thinks fit whether to exercise, and the manner, mode and time of exercise of, the Note Trustee's Powers. Unless it is fraudulent, negligent or wilfully defaults, the Note Trustee is not liable in its personal capacity for any loss, cost, claim, damage or expense which may result from the exercise or failure to exercise any of its Powers; and
- (j) **(waiver)** waive, so long as it is in writing, at any time and on any terms or conditions, any breach by the Issuer or the Guarantor under this deed or the Terms of Issue but where a breach is the failure of the Issuer or the Guarantor to redeem or repay any Subordinated Capital Notes in accordance with the Terms of Issue (as the case may be), or to the extent required by this deed, the Note Trustee may waive the breach only if the Holders have consented to or authorised the waiver, or the breach has been remedied.





## 8.4 Holders bound

The exercise by the Note Trustee of the Powers (including the discretions referred to in clause 8.3) binds all the Holders, whether or not the Holders concurred in their exercise.

## 9 Note Trustee protections

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### 9.1 Note Trustee not responsible for certain matters

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

- (a) **(application moneys)** has no responsibility in respect of moneys subscribed by applicants for Subordinated Capital Notes or to see to the application of those moneys.
- (b) **(form of documents)** has no responsibility for the form or contents of this deed and will have no liability arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this deed except insofar as it relates to the Note Trustee or to any representation or warranty given by the Note Trustee;
- (c) **(monitoring)** is not required to:
  - (1) provide to any person any information concerning the business, financial condition, status or affairs of the Issuer or the Guarantor;
  - (2) investigate the adequacy, accuracy or completeness of any information provided by the Issuer or the Guarantor;
  - (3) assess, investigate or keep under review the business, financial condition, status or affairs of the Issuer or the Guarantor;
  - (4) monitor compliance by the Issuer or the Guarantor of their respective obligations under this deed or take any steps to ascertain whether a Default has occurred (and will not be deemed to have knowledge that such has occurred until it has received written notice from the Issuer, the Guarantor or a Holder in relation to such);
  - (5) investigate or consider whether any issue of Subordinated Capital Notes or any payment in respect of a Subordinated Capital Note will be an unfair preference or other similar voidable transaction for the purposes of Chapter 5 of the Corporations Act;
- (d) **(notice)** is not required to notify any person of the execution of this deed or the occurrence of any Default or breach of this deed or any other document relating to the Subordinated Capital Notes or the Subordinated Guarantee;
- (e) **(exercise Powers)** has no obligation to exercise any Power in a particular manner or at all; or
- (f) **(notices)** subject to the Corporations Act, has no obligation to provide Holders with notices, documents or other information it has received from the Issuer or the Guarantor.



## 9.2 Knowledge of the Note Trustee

The Note Trustee:

- (a) will only be considered to have knowledge or notice of or be aware of any matter or thing if the Note Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual notice or awareness of the officers or employees of the Note Trustee who have day to day responsibility for the administration of the Trust; and
- (b) will be taken not to have knowledge of the occurrence of a Default unless the Note Trustee has received written notice from a Holder, the Issuer or the Guarantor stating that a Default has occurred and describing it.

## 9.3 Confidential information

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

## 9.4 Capacity as Holder

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

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

## 9.5 Other dealings with Issuer and Guarantor

The Note Trustee may, without being liable to account to the Issuer, the Guarantor or any Holder:

- (a) hold Subordinated Capital Notes, shares or any other marketable securities issued by the Issuer in any capacity;
- (b) represent or act for, or contract with, individual Holders in any capacity;
- (c) deal in any capacity with the Issuer, the Guarantor or any of their Related Bodies Corporate or associates; or
- (d) act in any capacity in relation to any other trusts,

provided that to do so would not preclude the Note Trustee from acting as Note Trustee under the Corporations Act.

## 9.6 Exclusions of liability

Neither the Note Trustee nor any of its directors, officers, employees, agents or attorneys or Related Bodies Corporate will be responsible for or liable to the Issuer, the Guarantor or any Holder or any other person for loss caused by:

- (a) the Note Trustee's acts or omissions in accordance with the terms of this deed in reliance on:



- (1) the Register;
  - (2) information or documents supplied by the Issuer, the Guarantor or any agent of the Issuer or Guarantor (as the case may be);
  - (3) the authenticity of any document it reasonably believes to be genuine and correct;
  - (4) opinion, advice or information of any consultant or adviser of the Note Trustee; or
  - (5) acting on any instruction or direction properly given to it by the Issuer, the Guarantor or Holders under this deed;
- (b) any loss arising due to the acts or omissions of any delegate, attorney or agent of the Note Trustee (other than a Related Body Corporate of the Note Trustee), unless the Note Trustee fails to use reasonable care in selecting and monitoring them;
- (c) any act, omission, neglect or default of the Issuer, the Guarantor or any other person under or in connection with this deed or the Subordinated Capital Notes;
- (d) any act or omission required by law or by any court of competent jurisdiction;
- (e) anything required to be done or omitted to be done in accordance with an instruction or direction given to it by the Holders at a Meeting;
- (f) any act or omission of an operator of any securities title, transfer or holding system or any absence of, or defect in, the title of the Issuer or the Guarantor to any asset;
- (g) any payment having been made to any fiscal authority; or
- (h) the Note Trustee waiving or excusing, subject to any conditions that the Note Trustee thinks fit, any breach by the Issuer or the Guarantor of their respective obligations under this deed.

## 9.7 Limitation of liability

- (a) The Note Trustee is not liable to the Issuer, the Guarantor or any other person in any capacity other than as trustee of the Trust.
- (b) A liability to the Issuer, the Guarantor or any other person arising under or in connection with this deed is limited to and can be enforced by the person against the Note Trustee only to the extent to which it can be satisfied out of any property held by the Note Trustee out of which the Note Trustee is actually indemnified for the liability. This limitation of the Note Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Note Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The Issuer, the Guarantor or a Holder may not sue the Note Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any other similar person to the Note Trustee or prove in any liquidation of or affecting the Note Trustee (exception in relation to the property of the Trust).
- (d) The Issuer, the Guarantor and Holders waive their rights and release the Note Trustee from any personal liability in respect of any loss or damage which any



of them may suffer as a consequence of a failure of the Note Trustee to perform its obligations under this deed, which cannot be paid or satisfied out of any property held by the Note Trustee.

- (e) The provisions of this clause will not apply to any obligation or liability of the Note Trustee to the extent arising as a result of the Note Trustee's fraud, negligence or wilful default.
- (f) The Issuer, the Guarantor and Holders acknowledge that they are responsible under this deed for performing a variety of obligations under this deed. No act or omission of the Note Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, negligence or wilful default of the Note Trustee for the purposes of this clause 9.7 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer, the Guarantor or any other person to fulfil its obligations relating to the deed or by any other act or omission of the Issuer, the Guarantor or any other person.
- (g) No attorney, agent or delegate appointed in accordance with this deed has authority to act on behalf of the Note Trustee in any way which exposes the Note Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Note Trustee for the purpose of this clause 9.7.

## 10 Note Trustee's remuneration and indemnities

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### 10.1 Remuneration

- (a) The Guarantor must pay to the Note Trustee by way of remuneration for its services as trustee under this Deed a fee or such other remuneration as may be agreed between the parties, and in the manner notified by the Note Trustee to the Guarantor, from time to time.
- (b) If the Note Trustee is required at any time to:
  - (1) undertake duties which relate to enforcement action in relation to the Subordinated Capital Notes or this deed upon a default by any other party under the terms of the Subordinated Capital Notes or this deed; or
  - (2) undertake duties which are agreed by the Guarantor to be of an exceptional nature or otherwise outside the scope of the normal duties of the Note Trustee,the Guarantor agrees to pay to the Note Trustee on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Note Trustee in consequence of taking such action, as shall from time to time be agreed between the Guarantor and the Note Trustee.
- (c) In the absence of agreement in relation to the additional remuneration referred to in clause 10.1(b) above, the Note Trustee shall be entitled to charge the Guarantor reasonable hourly rates for time spent by the Note Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall:



- (1) reflect the level of expertise required to perform the work; and
- (2) be commensurate with and referable to the hourly rates charged at the relevant time by members of the Insolvency Practitioners Association of Australia for work of the kind being performed by the Note Trustee's officers and employees.

## 10.2 Reimbursement

- (a) The Guarantor must pay to the Note Trustee on demand all reasonable Costs properly incurred by or on behalf of the Note Trustee in connection with:
  - (1) the negotiation, preparation and execution of this deed and any subsequent consent, agreement, approval, waiver or amendment required under this deed;
  - (2) the carrying out or exercise or the purported carrying out or exercise by the Note Trustee of any duty, obligation or power imposed or conferred expressly or impliedly by this deed on the Note Trustee or upon Holders or by law;
  - (3) any breach or default in the observance or performance by the Issuer or the Guarantor of any of the covenants, obligations, conditions and provisions of this deed or under the Subordinated Capital Notes;
  - (4) the convening and holding of any Meeting of Holders and the carrying out of any proper directions or resolutions of Holders; or
  - (5) all actions taken under this deed or under the Subordinated Capital Notes in relation to complying with any notice, request or requirement of any Government Agency and any investigation by any Government Agency into the affairs of the Issuer or the Guarantor.
- (b) If the Guarantor or any of its assets are placed in liquidation, the Note Trustee is entitled to claim and receive from any receiver, receiver and trustee, official trustee, liquidator, administrator or similar official amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Note Trustee (including on its own account) in connection with any enforcement or other action taken by it as trustee of the Trust.
- (c) Nothing in clause 10.2(a) limits, prejudices or otherwise affects any other provision of this deed or any rights of the Note Trustee under law.

## 10.3 Other indemnities

- (a) Except as otherwise agreed with any Holder or Holders in connection with the taking of any action by the Note Trustee, the Note Trustee is not entitled to be indemnified by any Holder personally.
- (b) Subject to clause 10.3(a), the Note Trustee's rights under clause 10.2 are in addition to any right of indemnity that may be conferred on the Note Trustee by law.

## 10.4 Priority and survival

All remuneration and Costs referred to in this clause 10 shall be paid in priority to any claim by any Holder and continue to be payable until paid notwithstanding that this deed



or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court. This priority of the Note Trustee will subsist whether or not a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Issuer or any of its assets or the Trust is in the course of administration by or under the order of any court.

## 10.5 GST

The Guarantor must pay to the Note Trustee on demand any goods and services tax, value added tax or any like tax (**GST**) which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this deed by the Note Trustee (together with any fine, penalty or interest payable because of a default by the Guarantor). The amount paid by the Guarantor to the Note Trustee on account of the GST must be sufficient to ensure that the economic benefit to the Note Trustee of this deed remains the same whether or not GST applies. The Note Trustee will give the Guarantor a tax invoice.

## 11 Retirement and removal of Note Trustee

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### 11.1 Retirement

Subject to compliance with the relevant statutory requirements for the time being, the Note Trustee may retire by giving notice to the Issuer, but such retirement will not be effective until the last to occur of the following:

- (a) the day which is 60 days after the date of the notice (or such shorter period as the Note Trustee and the Issuer may agree); and
- (b) the day upon which the appointment of a new Note Trustee becomes effective under clause 11.3.

### 11.2 Removal

- (a) Subject to compliance with the relevant statutory requirements for the time being, the Note Trustee must retire as trustee for the Holders under this deed and the Issuer may by written notice remove the Note Trustee if:
  - (1) the Note Trustee is in material breach of its obligations under this deed and has not rectified the breach within 10 Business Days of receiving a written notice from the Issuer to rectify the breach;
  - (2) the Note Trustee ceases to carry on business or ceases or refuses to act as Note Trustee under this deed;
  - (3) the Note Trustee has not been validly appointed;
  - (4) the Note Trustee is placed in liquidation or is wound up or dissolved;
  - (5) a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Note Trustee;
  - (6) any licence, consent, Authorisation, permit or similar thing the Note Trustee is required to hold to carry out its obligations and duties under or in respect of this deed is revoked or not renewed;



- (7) the Issuer reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred;
  - (8) the Note Trustee ceases to be a person who can be appointed a trustee under section 283AC(1) of the Corporations Act;
  - (9) the Note Trustee cannot continue to act as Note Trustee because of the operation of section 283AC(2) of the Corporations Act; or
  - (10) the Issuer is authorised or requested to do so by a Meeting of the Holders called in accordance with clause 12.
- (b) Any removal of the Note Trustee by the Issuer under this clause 11.2 will only take effect upon the appointment of a new Note Trustee under clause 11.3.
- (c) On the retirement or removal of the Note Trustee, the Note Trustee must at the cost of the Issuer do all such things and execute all such deeds and assurances as are necessary for the purpose of vesting in a new trustee all money, property, rights, powers, authorities and discretions vested in the Note Trustee under this deed.

### **11.3 Appointment of new Note Trustee**

- (a) Subject to section 283AC of the Corporations Act, the Issuer may appoint a Note Trustee Issuer to be a new Note Trustee following the retirement or removal of the Note Trustee in accordance with this clause 11, but if the Issuer fails to do so within 60 days after receiving a notice from the Note Trustee under clause 11.1 then the Note Trustee may appoint a new Note Trustee (or, if possible, apply to the court for the appointment of a new Note Trustee).
- (b) A new Note Trustee may be appointed by deed executed under seal by the new Note Trustee and the Issuer or the Note Trustee (as applicable) and such execution shall by force of this clause 11.3 vest in the new Note Trustee all Powers and all right title and interest of the Note Trustee in this deed and the Terms of Issue.

### **11.4 Release**

- (a) When the Note Trustee retires or is removed, the Note Trustee is by force of this clause 11.4 discharged and released from its obligations, covenants and liabilities under this deed arising after the date it retires or is removed. The Issuer must then, if required by the Note Trustee, execute a confirmation of release in favour of the Note Trustee in a form and substance reasonably acceptable to the Note Trustee.
- (b) The retirement, removal or departure of the Note Trustee does not prejudice any accrued right or obligation of the Note Trustee (including, without limitation, its right of indemnity or entitlement to be paid fees that continue to accrue up to the date of appointment of the new trustee).



## 12 Meetings of Holders

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### 12.1 Meetings of Holders

- (a) Subject to the Corporations Act, the Note Trustee or the Issuer may at any time convene a Meeting.
- (b) The Issuer must convene a Meeting on receipt of a direction in writing by Holders of at least 10% of the aggregate of the principal amount of all Subordinated Capital Notes Outstanding (ignoring any Subordinated Capital Notes held by the Issuer, the Guarantor or any of the Guarantor's other Subsidiaries and not cancelled) stating the object of the Meeting and the terms of any proposed resolution. The Issuer must serve a copy of the direction on the Note Trustee together with all other relevant information and comply with the Corporations Act.
- (c) The provisions of Part 2L.5 of the Corporations Act and Attachment 2 apply to any Meeting of Holders.
- (d) The Note Trustee may do all things (including executing documents) it reasonably considers necessary or desirable under or in connection with any Holder Resolution or Special Resolution.

### 12.2 Passing of resolution

A resolution passed at a Meeting of Holders held in accordance with this deed is binding on all Holders.

## 13 Register

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### 13.1 Maintenance of the Register

- (a) The Issuer must establish and maintain (or cause to be established and maintained) the Register and enter (or cause to be entered) on the Register:
  - (1) all information required by section 171 of or as otherwise required under the Corporations Act;
  - (2) any payment instructions or account details notified by the relevant Holder (or by the Issuer in respect of the relevant Holder) to the Registry, for the purpose of receiving payments in relation to the Subordinated Capital Notes held by such Holder; and
  - (3) any other particulars which the Issuer or Note Trustee thinks fit or that it is required to include on the Register under this deed.
- (b) The Issuer must promptly, on receipt of details of any change of name or address of a Holder notified in writing and accompanied, in the case of change of name, by any evidence which the Issuer may reasonably require, alter (or cause to be altered) the details recorded on the Register in respect of that Holder.





- (c) At any time the Issuer may (on such terms as it thinks fit) appoint a person to establish and maintain the Register and may terminate such appointment, however the Issuer will remain responsible for ensuring the Register is maintained in accordance with this deed. The Issuer must notify the Note Trustee of the name of any entity (and relevant contact details, including the location of the Register) that the Issuer has appointed to establish or maintain the Register under this clause.
- (d) Where a Holder transfers some but not all of its Subordinated Capital Notes, the transfer may be recorded in the Register in respect of any of the Holder's Subordinated Capital Notes.

### **13.2 Closed periods**

On giving a notice by advertisement or otherwise as may be required by law, or the requirements of the Listing Rules, the Issuer may from time to time close any Register for any period or periods not exceeding in any one year the maximum period permitted by law or those requirements in aggregate in any calendar year. The Issuer is not required to register any transfer during any period in which the Register is closed.

### **13.3 Notice of trust**

No notice of any trust (whether express, implied or constructive) will be entered in the Register except as may be ordered by a court of competent jurisdiction.

### **13.4 Copy of Register**

The Issuer must give a copy of the Register to the Note Trustee within 48 hours of a request by the Note Trustee for a copy of the Register.

### **13.5 Register conclusive**

- (a) In the absence of fraud or manifest error or proven error, each recording in the Register in respect of a Subordinated Capital Note constitutes sufficient and conclusive evidence to all persons and for all purposes that the person whose name is so recorded is the registered owner of the Subordinated Capital Note.
- (b) Neither the Issuer nor the Note Trustee is liable for any mistake in the Register or in any purported copy except to the extent that the mistake is attributable to its own fraud, negligence or wilful default.
- (c) If:
  - (1) an entry is omitted from the Register;
  - (2) an entry is made in the Register otherwise than in accordance with this deed;
  - (3) an entry wrongly exists in the Register;
  - (4) there is an error or defect in any entry in the Register; or
  - (5) default is made or unnecessary delay takes place in entering in the Register that any person has commenced, or ceased, to be the holder of Subordinated Capital Notes,



then the Issuer may rectify the same and is not liable for any loss, costs or liability incurred as a result of any of the foregoing occurring provided that it is not as a result of the Issuer's fraud or wilful default.

### **13.6 Holding statements and certificates**

- (a) So long as the Subordinated Capital Notes are Officially Quoted, the Issuer or the Register (as applicable) must issue to each Holder a holding statement as soon as reasonably practicable after the issue or transfer of the Subordinated Capital Notes.
- (b) Any holding statement in respect of Subordinated Capital Notes is no guarantee that any amounts will be paid to the Holder.
- (c) Certificates will not be issued to evidence the Subordinated Capital Notes unless required by law or otherwise determined by the Issuer.

### **13.7 Transaction advice after transfer**

If the Issuer accepts a transfer the Issuer may issue a transaction advice for:

- (a) the Subordinated Capital Notes which have been transferred; and
- (b) the balance of any Subordinated Capital Notes which were not transferred.

### **13.8 Participation in transfer systems**

The Issuer may determine that Subordinated Capital Notes which are Officially Quoted will participate in the 'Clearing House Electronic Sub-register System' or any other computerised or electronic system of transfer or registration. The Issuer may with the approval of ASX, create rules to facilitate such participation which may be additional to or may override this clause.

### **13.9 Location of Subordinated Capital Notes**

The Subordinated Capital Notes are to be treated as located where the Register is kept.

## **14 Amendments to deed**

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### **14.1 Amendment without consent**

- (a) Subject to paragraph 14.1(b) below, and to complying with the Corporations Act and all other applicable laws, the Issuer, the Guarantor and the Note Trustee may without the consent of the Holders, amend this deed or the Terms of Issue if the Note Trustee is of the opinion of that such amendments are:
  - (1) of a formal or technical or minor nature and not materially prejudicial to the interests of the Holders as a whole;
  - (2) made to cure any ambiguity or correct any manifest error; or
  - (3) necessary or expedient for the purpose of enabling the Subordinated Capital Notes to be:



- (A) listed for quotation, or to retain quotation, on any stock exchange; or
- (B) offered for subscription or for sale under the laws for the time being in force in any place,

and (in the case of each of paragraph (A) and (B), above) the Issuer has provided to the Note Trustee an opinion of independent legal advisers or counsel of recognised standing in New South Wales that such amendment is otherwise not materially prejudicial to the interests of Holders as a whole;

(4) necessary to comply with:

- (A) the provisions of any statute or the requirements of any statutory authority; or
- (B) the ASX Listing Rules or the listing or quotation requirements of any stock exchange on which the Issuer may propose to seek a listing or quotation of the Subordinated Capital Notes,

and (in the case of each of paragraph (A) and (B), above) the Issuer has provided to the Note Trustee an opinion of independent legal advisers or counsel of recognised standing in New South Wales that such amendment is otherwise not materially prejudicial to the interests of Holders as a whole; or

(5) not, and is not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to the interests of Holders generally and the Issuer has provided to the Note Trustee an opinion of independent legal advisers or counsel of recognised standing in New South Wales that it is open to the Note Trustee to form the opinion that such amendment is otherwise not materially prejudicial to the interests of Holders as a whole.

(b) Prior to making an amendment to this deed in the manner outlined in paragraph 14.1(a):

- (1) the Issuer must provide the Note Trustee with a copy of the proposed amendment and, if requested by the Note Trustee, draft legal opinion (or the Note Trustee may obtain its own opinion) in reasonably sufficient time to allow the Note Trustee to consider and consent to the proposed amendments;
- (2) the proposed amendment must not without the approval of the Note Trustee alter or conflict with any of the personal rights and obligations of the Note Trustee;
- (3) the Note Trustee may obtain the relevant opinion of an independent legal adviser; and
- (4) the Note Trustee may request the Issuer or Guarantor to, and the Issuer or Guarantor shall provide, its opinion in relation to whether the proposed amendment to the deed comes within a category described in clause 14.1(a),



and this clause 14.1(b) will apply to clause 10.1 (Amendments without consent) of the Terms of Issue as if references to 'clause 14.1(a)' were references to 'clause 10.1'.

## 14.2 Amendment by Special Resolution

Without limiting clause 14.1, at any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer or the Guarantor may by an instrument in writing amend this deed or the Terms of Issue if a Special Resolution is passed in favour of such amendment and (if the amendment alters or conflicts with any of the personal rights or obligations of the Note Trustee) the Issuer or Guarantor has obtained the Note Trustee's prior written consent to such amendment.

## 15 Termination and release

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### 15.1 Termination of trust

This deed terminates on the earlier of:

- (a) the date the last of the following occurs:
  - (1) the redemption of all Subordinated Capital Notes;
  - (2) payment of all amounts of principal and distributions due on Subordinated Capital Notes;
  - (3) payment of all Costs reasonably and properly incurred by the Note Trustee; and
  - (4) the satisfaction or waiver of all other obligations or liabilities of the Issuer to the Note Trustee and Holders;
- (b) the date on which Holders unanimously determine that the Trust be wound up; or
- (c) the date required by law.

### 15.2 Distribution of assets

If the Trust is terminated in accordance with clause 15.1, the Note Trustee must distribute the balance of any income and capital in accordance with clause 7.4.

### 15.3 Confirmation of release

- (a) At any time after the obligations of the Issuer and Guarantor have been discharged under clause 15.1, a party (**Released Party**) may request the other party to execute in favour of the Released Party, certification that the Released Party is released from the obligations under this deed and the other party must provide the Released Party with the confirmation and release so requested.
- (b) Without limiting the generality of clause 8.3(e), where the Trust terminates following satisfaction of the conditions in clause 15.1(a), no party is required to execute a release in favour of the Released Party unless and until the Issuer



has procured an auditor of the Issuer to certify the satisfaction of the conditions specified in clause 15.1(a) (**Termination Certificate**), and the Note Trustee may rely and act on the Termination Certificate.

## 16 Confidentiality and privacy

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### 16.1 Confidential information

The Note Trustee acknowledges that all Confidential Information is confidential to the Issuer and must not be disclosed to any person except as permitted by clause 16.2.

### 16.2 Permitted disclosure

The Note Trustee may disclose Confidential Information:

- (a) to the extent required by this deed or by law, but only to the extent so required;
- (b) on a confidential basis to its officers, employees and professional advisers, but only to the extent that such disclosure is necessary in order for the Note Trustee to perform its obligations (including exercising the Powers) under this deed; or
- (c) with the prior written consent of the Issuer (which may be given or withheld in its absolute discretion).

### 16.3 Privacy

- (a) The Issuer and the Guarantor must take all action necessary to comply with the Privacy Act.
- (b) Without limiting clause 16.3(a), the Issuer and Guarantor agrees to obtain sufficient authorisations from persons providing personal information to the Issuer to enable the Issuer or Guarantor (as the case may be) to:
  - (1) transfer that personal information to the Note Trustee; and
  - (2) permit the Note Trustee and its agents to collect, use, handle and disclose that personal information for the purposes of carrying out the Note Trustee's obligations under this document.

## 17 Representations and warranties

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The Note Trustee, the Issuer and the Guarantor each represent and warrant to the other that as at the date of this deed:

- (a) (**incorporation**) it is duly incorporated and has the power to own its property and to carry on its business as it is now being conducted;
- (b) (**requirements**) in the case of the Note Trustee only, it meets the requirements of a trustee as provided in sections 283AC(1) and 283AC(2) of the Corporations Act;



- (c) **(authority)** it has full power and authority to enter into, deliver and perform its obligations under this deed;
- (d) **(authorisations)**: it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms; and
- (e) **(documents binding)** this deed constitutes (or will, when signed and delivered constitute) legal, valid and binding obligations enforceable against it in accordance with its terms, subject to stamping and any necessary registration and except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganisation, moratorium or trust or general principles of equity or other similar laws affecting creditors' rights generally.

Each representation and warranty in this clause is deemed to be repeated by each of the Issuer, the Guarantor and the Note Trustee on each date Subordinated Capital Notes are issued with reference to the facts and circumstances existing on that date.

## 18 Change in law

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- (a) If, following a Regulatory Change, a Regulatory Obligation is imposed on the Note Trustee, then:
  - (1) the Note Trustee may seek any further information or advice (including, without limitation, legal advice) that it may reasonably require with respect to the performance of such Regulatory Obligations;
  - (2) the Issuer and Guarantor will take reasonable steps to assist the Note Trustee in connection with the obtaining of further information or advice in connection with such Regulatory Obligations; and
  - (3) the Note Trustee, the Issuer and Guarantor will, as soon as is reasonably practicable after the Note Trustee becomes aware of the Regulatory Change enter into negotiations with respect to such changes to the terms of this deed (including in respect of any additional remuneration that may be reasonably required in light of any such Regulatory Change) as may be reasonably necessary to reflect the Note Trustee's Regulatory Obligations,

however the parties agree that this clause 18, does not operate to exempt or excuse the Note Trustee from any obligation to perform its Regulatory Obligations.

- (b) For the purposes of this clause 18:
  - "Regulatory Change"** means any change in law, practice, regulation, ruling, confirmation, advice or action that represents the official requirements of any Government Agency, or the law in force in the State of New South Wales, Australia.
  - "Regulatory Obligation"** means an obligation or liability arising under, or in connection with, a Regulatory Change.

## 19 General

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### 19.1 Notices

Subject to clause 19.2, any notice or other communication including, but not limited to, any demand, consent or approval to or by a party under this deed:

- (a) must be in legible writing and in English addressed as shown below:
- (1) if to the Issuer and the Guarantor:  
Address: 363 George Street  
Sydney NSW 2000  
  
Attention: Company Secretary  
Facsimile: +61 2 8583 5399
  - (2) if to the Note Trustee:  
Address: Level 22, 207 Kent Street  
Sydney NSW 2000  
  
Attention: Corporate Trust  
Facsimile: +61 2 9028 5942  
Email: [corptrustnotes@aetlimited.com.au](mailto:corptrustnotes@aetlimited.com.au)
- or to any other address specified to the sender by any party by notice;
- (b) must be signed by an officer or under the common seal of the sender;
- (c) is deemed to be given by the sender and received by the addressee:
- (1) when delivered by hand to the street address during the hours of 9.00 am to 5.00 pm on a Business Day;
  - (2) within Australia, on the day following the day on which the envelope containing the same was posted with postage prepaid to the postal address and, outside Australia, on the seventh day following the day on which the envelope containing the same was posted with postage prepaid to the postal address;
  - (3) if sent by facsimile transmission or other electronic transmission, on production of a transmission report by the machine or other system by which the transmission is sent indicating that the transmission has been made in its entirety to the correct fax number or other transmission address and without error;
  - (4) if sent by email, on production of a report by the system by which the email is sent indicating that the email has been transmitted to the correct electronic address and without error. However, if the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day;
  - (5) if a notice is published in a newspaper, on the first date that publication has been made in all the required newspapers; and



- (6) any communication (including notices, consents, approvals, requests and demands) under or in connection with this deed to the Note Trustee may be given by email. Any communication sent by email in accordance with this clause 19.1 is deemed to have been received on the date the email is received (unless the sender receives notice that there has been an error with the transmission of the email to the intended electronic address). However, if the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day.

## **19.2 Service of information by Issuer to Note Trustee**

All information (including but without limitation, reports, financial statements, documents and any other information requested by the Note Trustee) to be provided by the Issuer or the Guarantor to the Note Trustee under clause 6 must be given to the Note Trustee by email to the email address set out in clause 19.1 (or by other electronic means determined by the Note Trustee and notified to the Issuer or Guarantor).

## **19.3 Service of notices by the Issuer to any Holder**

- (a) Without limiting anything else in this deed or the Terms of Issue, a notice may be given by the Issuer to any Holder, or in the case of Joint Holders to the Holder whose name appears first in the Register, personally, by leaving it at the Holder's registered address or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission addressed to the Holder's registered address or fax number (as the case may be) as shown on the Register or, by publishing such notice in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia, in any case, by other electronic means determined by the Issuer (including by email to an electronic address nominated by the Holder for such communication). If the notice is signed, the signature may be original or printed.
- (b) Yancoal must, at the request of the Note Trustee, post notices to Holders on its own internet website but such action shall not discharge the Issuer's obligation to give Holders a notice under this deed.
- (c) Where a notice is given by the Issuer to Holders generally, a copy of the notice must also be given to ASX.

## **19.4 Service of notices by the Note Trustee to the Holders**

- (a) A notice may be given by the Note Trustee to any Holder, or in the case of Joint Holders to the Holder whose name appears first in the Register, personally, by leaving it at the Holder's address as shown on the Register or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission to the Holder's address or fax number (as the case may be) as shown on the Register or, by publishing such notice in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia or in any case, by any other electronic means determined by the Note Trustee (including by email to an electronic address nominated by the Holder for such communication). If the notice is signed, the signature may be original or printed.





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

## **19.5 Service of notices by the Holders to the Note Trustee**

A notice given by a Holder to the Note Trustee must:

- (a) be in writing and signed by a person duly authorised by the sender; and
- (b) be left at, or sent by prepaid post (airmail if posted from a place outside Australia) to the address set out in clause 19.1 or the address last notified by the Note Trustee, or sent by facsimile transmission or email to the fax number or email set out in clause 19.1 or the fax number or email last notified by the Issuer or the Note Trustee.

Notices are considered to be received at the times set out in clause 19.1(c) and 19.1(d).

## **19.6 Notice to transferor binds transferee**

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

## **19.7 Notices when Issuer is in liquidation**

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

- (a) if the Note Trustee has not already done so, notify the Holders of each relevant Event of Default and of the receiver's, receiver and trustee's, official trustee's, liquidator's, administrator's or similar official's appointment; and
- (b) provide regular updates to the Note Trustee and the Holders as to the status of the liquidation and any other material developments affecting the Issuer, the Guarantor or its assets (as the case requires).

## **19.8 Service on deceased Holders**

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



### **19.9 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (b) If any clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this deed.

### **19.10 Governing law and submission to jurisdiction**

- (a) This deed is governed by the laws of New South Wales.
- (b) The Issuer, the Guarantor, the Note Trustee and each Holder submits to the exclusive jurisdiction of the courts of the New South Wales for the purpose of any legal proceedings arising out of this deed.

### **19.11 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed; or
  - (2) a Power created or arising upon default under this deed,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non exercise of a right or Power arising from a breach of this deed or on a default under this deed as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.

### **19.12 Cumulative rights**

The rights, powers, authorities, discretions and remedies arising out of or under this deed are cumulative and do not exclude any other right, power, authority, discretion or remedy.

### **19.13 Further assurances**

Each party must do all things and execute at the Issuer's cost all further documents necessary to give full effect to this deed.

### **19.14 To the extent not excluded by law**

The rights, duties and remedies granted or imposed under the provisions of this deed operate to the extent not excluded by law.



### **19.15 Counterparts**

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.



## Signing page

Executed as a deed

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### Issuer

Signed sealed and delivered by  
**Yancoal SCN Limited**  
by

sign here ▶   
\_\_\_\_\_  
Company Secretary/Director

print name *Laura* Ling Zhang

sign here ▶   
\_\_\_\_\_  
Director

print name BOYUN XU

---



HERBERT  
SMITH  
FREEHILLS

**Guarantor**

Signed sealed and delivered by  
**Yancoal Australia Limited**  
by

sign here ▶   
\_\_\_\_\_  
Company Secretary/Director

print name Laura Ling Zhang

sign here ▶   
\_\_\_\_\_  
Director

print name BOYUN XU

---

**Note Trustee**

Signed sealed and delivered by  
**Australian Executor Trustees Limited**  
by its attorney

sign here ▶ \_\_\_\_\_  
Attorney

print name \_\_\_\_\_

in the presence of

sign here ▶ \_\_\_\_\_  
Witness

print name \_\_\_\_\_

---



**Guarantor**

Signed sealed and delivered by  
**Yancoal Australia Limited**  
by

sign here ► \_\_\_\_\_  
Company Secretary/Director

print name \_\_\_\_\_

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

**Note Trustee**

Signed sealed and delivered by  
**Australian Executor Trustees Limited**  
by its attorney

*Handwritten initials*

sign here ► \_\_\_\_\_  
Attorney

print name Yvonne Kelaher Stuart Howard

Authorised Officer

Authorised Officer

in the presence of

sign here ► \_\_\_\_\_  
Witness

print name CARMELLA WILSON





## Attachment 1

### Terms of Subordinated Capital Notes

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#### 1 Form, denomination, title and information

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##### 1.1 Form

The Subordinated Capital Notes are perpetual, convertible, subordinated and unsecured notes of the Issuer, constituted by the Note Trust Deed and issued in registered form by entry in the Register.

##### 1.2 Face Value

Each Subordinated Capital Note is issued fully paid and with a Face Value of US\$100.

##### 1.3 Title and transfer

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

##### 1.4 Quotation

The Issuer must use all reasonable endeavours and furnish any documents, information and undertakings as may be reasonably necessary in order to ensure that the Subordinated Capital Notes are, and remain until Redeemed or Converted in accordance with these Terms of Issue, quoted on the Official List of ASX.

##### 1.5 Evidence of holdings

The Issuer must provide to each Holder such statements of the holdings of the Subordinated Capital Notes of the Holder as the Issuer is required to give under the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules. Subordinated Capital Note certificates will not be issued unless the Issuer determines that certificates should be made available or are required to be made available by law.

##### 1.6 Note Trust Deed

Holders are entitled to the benefit of, and are bound by the provisions of, the Note Trust Deed. The Note Trust Deed has been lodged with ASIC, and is available for inspection by Holders at the office of the Note Trustee.

##### 1.7 No other rights

The Subordinated Capital Notes confer no rights on a Holder:

- (a) to vote at any meeting of shareholders of the Issuer or Yancoal;

- (b) to subscribe for new securities or to participate in any bonus issues of securities of the Issuer or Yancoal; or
- (c) to otherwise participate in the profits or property of the Issuer or Yancoal, except as set out in these Terms of Issue or the Note Trust Deed.

## 1.8 Provision of information by Holders

If requested by the Issuer, the Holders must provide certain information required by the Issuer or the Note Trustee in order to comply with any applicable law, including the United States Foreign Account Tax Compliance Act.

## 2 Status and subordination

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### 2.1 Status and subordination of the Subordinated Capital Notes

- (a) The Subordinated Capital Notes are direct, unsecured and subordinated debt obligations of the Issuer.
- (b) Each Subordinated Capital Note ranks for payment in a Winding Up of the Issuer:
  - (1) after all Senior Ranking Obligations;
  - (2) equally with each other Subordinated Capital Note and all Equal Ranking Obligations; and
  - (3) ahead of all Junior Ranking Obligations.
- (c) In order to give effect to the ranking specified in clause 2.1(b), in any Winding Up of the Issuer, the claims of Holders are limited to the extent necessary to ensure that:
  - (1) all holders of Senior Ranking Obligations receive payment in full before any payment is made to Holders; and
  - (2) Holders of the Subordinated Capital Notes and holders of any Equal Ranking Obligations receive payments on a pro-rata basis.
- (d) Neither the Note Trustee nor any Holder has any right to prove in a Winding Up of the Issuer in respect of the Subordinated Capital Notes, except on the basis set out in clauses 2.1(b) and 2.1(c).
- (e) Neither the Note Trustee nor any Holder may exercise voting rights as a creditor in respect of the Subordinated Capital Notes in a Winding Up of the Issuer to defeat the subordination in this clause.

### 2.2 Status and subordination of the Subordinated Guarantee

- (a) The Issuer's obligations in respect of the Subordinated Capital Notes have been guaranteed to the Note Trustee under the Subordinated Guarantee, which is a direct, unsecured and subordinated obligation of Yancoal.
- (b) The Subordinated Guarantee ranks for payment in a Winding Up of Yancoal:
  - (1) after all Senior Ranking Obligations;
  - (2) equally with all Equal Ranking Obligations; and
  - (3) ahead of all Junior Ranking Obligations.





- (c) In order to give effect to the ranking specified in clause 2.2(b), in any Winding Up of Yancoal, the claims of the Note Trustee are limited to the extent necessary to ensure that:
  - (1) all holders of Senior Ranking Obligations receive payment in full before any payment is made to Holders; and
  - (2) holders of any Equal Ranking Obligations receive payments on a pro-rata basis.
- (d) The Note Trustee has no right to prove in a Winding Up of Yancoal in respect of the Subordinated Guarantee, except on the basis set out in clauses 2.2(b) and 2.2(c).
- (e) The Note Trustee may not exercise voting rights as a creditor in respect of the Subordinated Guarantee in a Winding Up of Yancoal to defeat the subordination in this clause.

## 3 Distributions

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### 3.1 Distributions

Each Subordinated Capital Note carries an entitlement to be paid interest on its Face Value in respect of each Distribution Period from (and including) the Issue Date to (but excluding):

- (a) the last day of the Distribution Period immediately preceding its Conversion Date; or
- (b) its Redemption Date,
- (c) subject to and in accordance with this clause 3.

### 3.2 Distribution Rate determination

- (a) Subject to clauses 3.2(c), (d) and (e) and clause 3.4, the Distribution payable on each Subordinated Capital Note in respect of any Distribution Period ending on a Distribution Payment Date is payable on that Distribution Payment Date and is the amount calculated in accordance with the following formula:

$$\text{Distribution} = \frac{\text{Distribution Rate} \times \text{US\$100}}{2}$$

where:

- (b) **Distribution Rate** is the Distribution Rate on the first day of the Distribution Period.
- (c) If a Distribution Payment Date falls less than 5 Business Days prior to the Redemption Date then the Distribution that would otherwise be payable on that Distribution Payment Date will not be payable on that Distribution Payment Date but will instead be added to the Distribution payable under clause 3.2(d) on the Redemption Date.
- (d) The Distribution payable on each Subordinated Capital Note in respect of the Distribution Period ending on its Redemption Date if the Redemption Date is not a Distribution Payment Date is payable on the Redemption Date as part of the Redemption Amount and is calculated according to the formula:



$$\text{Distribution} = \frac{\text{Distribution Rate} \times \text{US\$100} \times \text{N}}{365}$$

where:

**Distribution Rate** is the Distribution Rate on the first day of the Distribution Period; and

**N** is the number of days in the Distribution Period.

- (e) The Distribution payable on each Subordinated Capital Note in respect of the first Distribution Period is payable on the first Distribution Payment Date and is the amount calculated in accordance with the following formula:

$$\text{Distribution} = \frac{\text{Distribution Rate} \times \text{US\$100} \times \text{N}}{365}$$

where:

**Distribution Rate** is the Distribution Rate on the Issue Date; and

**N** is the number of days in the Distribution Period.

- (f) A Distribution will not be payable on a Subordinated Capital Note in respect of any Distribution Period if the Subordinated Capital Note is Converted before the date on which the Distribution for that Distribution Period is payable.
- (g) The Distribution Rate (as defined in clause 12) will be reset:
- (1) on each Reset Date based on the Market Rate at that time;
  - (2) on the Second Reset Date so as to include the Step Up; and
  - (3) on the first Distribution Payment Date following a Change of Control Event so as to include the Change of Control Step Up,

in each case to the extent that the Subordinated Capital Notes have not been Redeemed or Converted prior to that time.

### 3.3 Determination and notification of Distribution Rates and Distribution payable

- (a) The Issuer must promptly determine the:
- (1) Distribution Rate which will apply on or after each date on which the Distribution Rate is to be reset under clause 3.2(g);
  - (2) the amount of the Distribution that will (subject to this clause 3) be payable on each Subordinated Capital Note in respect of each Distribution Period for which the Distribution Rate referred to in clause 3.3(a)(1) is applicable; and
  - (3) if the Subordinated Capital Notes are to be Redeemed, the amount of the Distribution to be paid on each Subordinated Capital Note under clause 3.2(d),
  - (4) and promptly notify ASX of that determination.
- (b) The determination by the Issuer of all Distribution Rates and amounts required to be determined by it under these Terms of Issue is, in the absence of manifest error, final and binding on the Note Trustee and each Holder.

### 3.4 Distributions are perpetually deferrable and non-compounding

- (a) Subject to clause 3.4(b) and 3.5(a), the Issuer may, in its sole discretion, elect to defer payment of all or any part of the Distribution otherwise payable on the Subordinated Capital Notes on a Distribution Payment Date until such time as the Issuer elects to pay it under clause 3.4(c) or the Subordinated Capital Notes are required to be Redeemed.
- (b) The Issuer must notify the Note Trustee and ASX not later than the 5<sup>th</sup> Business Day prior to the Record Date for a Distribution Payment Date if the Distribution that would otherwise be payable on that Distribution Payment Date will be deferred.
- (c) The Issuer has no obligation to pay any amount of the Distribution deferred under this clause except as part of the Redemption Amount of the Subordinated Capital Notes if the Subordinated Capital Notes are required to be Redeemed. However, the Issuer may in its discretion elect to pay such amount as an Optional Distribution Payment at any time on not less than 5 Business Days' notice to the Note Trustee and ASX.
- (d) No additional Distribution or other amount is payable by the Issuer in respect of any Distribution deferred under this clause.

### 3.5 Restrictions on deferral

- (a) Subject to clause 3.5(c), the Issuer may not elect under clause 3.4(a) to defer payment of a Distribution that would otherwise be payable on a Distribution Payment Date if, since the Distribution Payment Date preceding that Distribution Payment Date (or in the case of the first Distribution Payment Date, since the Issue Date), Yancoal has undertaken a Restricted Action.
- (b) If, in accordance with clause 3.4(a), any Distribution is not paid to the Holders in full on a Distribution Payment Date, then, subject to clause 3.5(c), the Issuer must not and procure that Yancoal does not undertake a Restricted Action until such time as the Unpaid Distribution Amount has been paid as an Optional Distribution Payment or all Subordinated Capital Notes have been Converted or Redeemed.
- (c) For the purposes of the Terms of Issue, a "**Restricted Action**" means:
  - (1) a declaration, determination or payment of a dividend or distribution from the income or capital of Yancoal;
  - (2) a return of any capital or undertaking to buy-back or repurchase; or
  - (3) a payment of any interest,in relation to any Equal Ranking Obligations or Junior Ranking Obligations, other than:
  - (4) pro-rata dividends, distributions or payments on Equal Ranking Obligations;
  - (5) any action taken in connection with an employment contract, employee share scheme, employee rights or option plan, or similar arrangement with, or for the benefit of, any one or more employees, officers, directors or consultants of the Issuer, Yancoal or their Related Bodies Corporate;
  - (6) any dividend, distribution, return of capital, buy-back, repurchase or payment only in the form of, or for a consideration provided by Yancoal only in the form of, or where any amount paid by Yancoal is

- mandatorily invested in, securities, warrants, options or other rights where the securities, or the securities issuable upon exercise of the warrants, options or other rights, constitute Equal Ranking Obligations (where the action relates to Equal Ranking Obligations) or Junior Ranking Obligations (in any case); or
- (7) any repayment or redemption of Equal Ranking Obligations or Junior Ranking Obligations which Yancoal is obliged to pay or undertake on the legal maturity date of such Equal Ranking Obligations or Junior Ranking Obligations.

## 4 Conversion

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### 4.1 Conversion Notice

- (a) Subject to this clause 4, a Holder may request Conversion of the Subordinated Capital Notes held by it by giving a Conversion Notice to the Issuer and Yancoal at any time during the period commencing on the day falling 40 days after the Issue Date and ending on the date which falls 30 years from the Issue Date (**Conversion Period**).
- (b) A request under clause 4.1(a) requesting a Conversion may be in relation to some or all of the Holder's Subordinated Capital Notes, subject to the aggregate Face Value of the Subordinated Capital Notes the subject of the Conversion Notice being at least the lesser of US\$5,000 or the balance of the Holder's holding of Subordinated Capital Notes.
- (c) Once given by a Holder, a Conversion Notice cannot be withdrawn without the written consent of the Issuer and Yancoal, which they may choose to provide at any time (and any such consent may either be given in writing, or in the case of a consent applying to Holders or a class of Holders generally, by notice to ASX). If a Conversion Notice is withdrawn in accordance with this clause 4.1(c), it must not be acted upon and will be of no further force or effect despite any other provisions in this clause 4.
- (d) A Conversion Notice must be accompanied by such evidence of the authority of the person signing it as is reasonably acceptable to the Issuer and Yancoal and may be treated by the Issuer and Yancoal as not being a valid Conversion Notice unless and until such evidence is actually received by the Issuer and Yancoal.
- (e) A Conversion Notice must include:
- (1) such information as may be required by the Issuer in relation to the Holder's voting power in Yancoal to enable the Issuer and Yancoal to determine the maximum number of Yancoal Ordinary Shares that the Holder is able to acquire on the Conversion Date without contravening section 606 of the Corporations Act (or without exceeding such lesser percentage voting power in Yancoal as the Holder may specify in the Conversion Notice as being the percentage voting power that it does not wish to exceed as a result of Conversion of the Subordinated Capital Notes which are subject to the Conversion Notice) (the **Maximum Number**); and
  - (2) a warranty that the information referred to in clause 4.1(e)(1) is correct and that the Holder will not breach any other applicable law as a result of the Conversion (and that the Holder either (i) is not, and is not

acting on behalf of or for the account or benefit of, a U.S. person (as defined in Regulation S under the US Securities Act) and is acquiring the Yancoal Ordinary Shares the subject of the Conversion Notice in an offshore transaction within the meaning of Regulation S; or (ii) is an institutional “accredited investor” within the meaning of Rule 501 under the Securities Act and is acquiring the Yancoal Ordinary Shares the subject of the Conversion Notice in a private transaction exempt from or not subject to the registration requirements of the Securities Act, in which case the Yancoal Ordinary Shares to be delivered to such Holder will be “restricted securities” within the meaning of Rule 144(a)(3) of the Securities Act and such Holder will be required to make certain representations and agreements as to, among other matters, its eligibility to acquire such securities and restrictions on transfer of such securities; or (iii) is otherwise acquiring the Yancoal Ordinary Shares the subject of the Conversion Notice in a transaction exempt from or not subject to the registration requirements of the Securities Act, and to the extent the Yancoal Ordinary Shares delivered in such transaction are “restricted securities”, making the representations and agreements as referred to in (ii) above),

and the Issuer and Yancoal may rely on such information without further enquiry (or, if it so chooses, may require additional substantiation of such information).

- (f) If on the Conversion Date in respect of a Conversion Notice the Issuer or Yancoal determines in good faith that the number of Yancoal Ordinary Shares that would be required to be issued as a result of the Conversion of the Subordinated Capital Notes the subject of the Conversion Notice exceeds the Maximum Number, then:
- (1) the notice will be deemed to relate only to the maximum number of those Subordinated Capital Notes as can be Converted into in a number of Yancoal Ordinary Shares that does not exceed the Maximum Number;
  - (2) the Issuer must Convert that number of the Subordinated Capital Notes; and
  - (3) the balance of the Subordinated Capital Notes will be treated as having never been the subject of a Conversion Notice.
- (g) A Holder must not deal with, transfer, dispose of or encumber any Subordinated Capital Notes the subject of a Conversion Notice once that Conversion Notice has been given. Subject to the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules, the Issuer may refuse to register a transfer of any Subordinated Capital Notes the subject of a Conversion Notice and may arrange for the Subordinated Capital Notes to be subject to a holding lock or make other arrangements to ensure that the Subordinated Capital Notes are not dealt with by the Holder.
- (h) Where the Issuer and Yancoal have received a valid Conversion Notice in respect of any particular Subordinated Capital Notes, any Conversion Notice subsequently received will be taken to apply only to the Subordinated Capital Notes which were not the subject of the prior Conversion Notice. The Yancoal Directors may apply such adjustments (if any) as the Yancoal Directors consider to be reasonably necessary to reflect this.
- (i) If the Issuer issues a Redemption Notice or Resale Notice then a Holder may not (subject to clause 4.9) give a Conversion Notice in respect of any Subordinated Capital Notes to be Redeemed or subject to the Resale after the Conversion Cut-off Time prior to the specified Redemption Date or Resale Date



(as the case may be), unless the Issuer fails to Redeem the Subordinated Capital Notes on that date in accordance with the applicable Redemption Notice, or the Purchaser fails to pay the Purchase Price for the Subordinated Capital Notes on that date in accordance with the applicable Resale Notice, in which case the Holder may give a Conversion Notice at any time prior to the Redemption or Resale (as the case may be) of its Subordinated Capital Notes (or, if sooner, the expiry of the Conversion Period). To avoid doubt, for the purpose of this clause 4.1(i):

- (1) Subordinated Capital Notes which a Holder has elected will not be subject to a Resale under clause 5.4(c) are not to be treated as being subject to that Resale; and
- (2) Subordinated Capital Notes which have been acquired by the relevant Purchaser following the issue of a Resale Notice are no longer treated as being subject to the Resale to which that Resale Notice related.

## 4.2 Conversion process

- (a) Where a Subordinated Capital Note is to be Converted under these Terms of Issue, on the Conversion Date:
  - (1) the Issuer will redeem the Subordinated Capital Note for its Face Value, and apply the whole of that amount as payment to Yancoal by way of subscription by the Holder of the Subordinated Capital Note for the number of new Yancoal Ordinary Shares to be issued to the Holder calculated in accordance with clause 4.3; and
  - (2) the Issuer must cause to be issued to the relevant Holder the number of Yancoal Ordinary Shares calculated in accordance with clause 4.3.
- (b) By delivering a Conversion Notice, the relevant Holder irrevocably and unconditionally:
  - (1) directs that the amount payable under this clause 4.2 is to be applied as provided for in this clause and acknowledges and agrees that it has no right to payment in any other way;
  - (2) consents to be a member of Yancoal and agrees to be bound by the constitution of Yancoal; and
  - (3) acknowledges and agrees that the Issuer has no obligation to pay, and the Holder has no right to receive, any accrued Distributions or Unpaid Distribution Amounts in respect of the Subordinated Capital Notes the subject of the Conversion Notice.
- (c) Any issue of Yancoal Ordinary Shares under this clause 4.2 will have effect on and from, and be deemed to have been made on, the Conversion Date.
- (d) Yancoal Ordinary Shares issued on Conversion must rank equally with all other fully paid Yancoal Ordinary Shares other than in respect of any dividend or other entitlement for which the applicable record date falls prior to the Conversion Date.
- (e) The Issuer will procure that Yancoal uses all reasonable endeavours to procure the listing of the Yancoal Ordinary Shares issued on Conversion of the Subordinated Capital Notes on ASX.



### 4.3 Conversion Price

- (a) The number of Yancoal Ordinary Shares to which a Holder is entitled upon Conversion of Subordinated Capital Notes is determined by the following formula:

$$\text{Number of Yancoal Ordinary Shares} = \text{AFV} / \text{Conversion Price}$$

Where:

**AFV** is the aggregate Face Value of the Subordinated Capital Notes being Converted by the Holder.

**Conversion Price** is US\$0.10, as adjusted under clause 4.

- (b) Where the number of Yancoal Ordinary Shares to be issued to a Holder under clause 4.24.2(a) includes a fraction, that fraction will be disregarded.

### 4.4 Adjustments to Conversion Price for rights issues or bonus issues

- (a) Subject to clauses 4.4(b) and 4.4(c), if Yancoal makes a rights issue (including an issue of the kind known as a 'jumbo issue' or 'accelerated entitlement offer', where offers to certain institutional holders, or beneficial holders, are made in advance of offers to other holders) or bonus issue (in either case being a pro rata issue) of Yancoal Ordinary Shares to holders of Yancoal Ordinary Shares generally, the Conversion Price will be adjusted immediately under the following formula:

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

Where:

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

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

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

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

**RN** means the number of Yancoal Ordinary Shares issued under the rights or bonus issue; and

**A** means the subscription price per Ordinary Share for a rights issue (and is zero in the case of a bonus issue).

- (b) No adjustment to the Conversion Price will occur if **A** exceeds **P**.
- (c) Clause 4.4(a) does not apply to Yancoal Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
- (d) For the purpose of this clause 4.4, an issue will be regarded as a pro rata issue notwithstanding that Yancoal does not make offers to some or all Yancoal





Ordinary Shareholders with registered addresses outside Australia, provided that in so doing Yancoal is not in contravention of the ASX Listing Rules.

#### 4.5 Adjustments to Conversion Price for off market buy-backs

- (a) Subject to clause 4.5(b), if Yancoal undertakes an off market buy-back under a buy-back scheme which but for any applicable restrictions on transfer would be generally available to holders of Yancoal Ordinary Shares (or otherwise cancels Yancoal Ordinary Shares for consideration), the Conversion Price will be adjusted immediately using the following formula:

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

Where:

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

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

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

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

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

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

- (b) No adjustment to the Conversion Price will occur if **P** exceeds **A**.

#### 4.6 Adjustment to Conversion Price for dividends and return of capital

If:

- (a) at any time prior to the First Reset Date Yancoal pays any dividend to holders of Yancoal Ordinary Shares;
- (b) on or at any time after the First Reset Date Yancoal pays any dividend to holders of Yancoal Ordinary Shares other than an Ordinary Dividend; or
- (c) at any time Yancoal makes a pro rata return of capital to holders of Yancoal Ordinary Shares without cancellation of any Yancoal Ordinary Shares,
- (d) (a **Relevant Distribution**) the Conversion Price will be adjusted under the following formula:

$$CP = CPo \times \frac{P - RD}{P}$$

Where:

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

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

**P** means the VWAP during the period from (and including) the first Business Day after the announcement to ASX of the Relevant Distribution up to and including the last Business



Day of trading cum the Relevant Distribution (or if there is no period of cum Relevant Distribution trading, an amount reasonably determined by the Yancoal Directors as representing the value of an Ordinary Share cum the Relevant Distribution); and

**RD** means with respect to the Relevant Distribution, the amount of the cash and/or the value (as reasonably determined by the Yancoal Directors) of any other property distributed to holders of Yancoal Ordinary Shares per Ordinary Share (or such lesser amount such that the difference between P and RD is greater than zero).

#### **4.7 Adjustments to Conversion Price for reconstructions, etc**

Where the Yancoal Ordinary Shares are reconstructed, consolidated, divided or reclassified into a lesser or greater number of securities, the Conversion Price shall be adjusted by the Issuer as it reasonably considers appropriate (consistently with the way in which the exercise price and number of Yancoal Ordinary Shares (as applicable) the subject of an option over Yancoal Ordinary Shares would have been adjusted under the ASX Listing Rules) and having first obtained a letter from a reputable, international organisation independent to the Issuer and Yancoal with expertise in Australian financial market products which states that it considers the adjustment appropriate (consistently with the way in which the exercise price and number of Yancoal Ordinary Shares (as applicable) the subject of an option over Yancoal Ordinary Shares would have been adjusted under the ASX Listing Rules).

#### **4.8 Other adjustments to Conversion Price**

Despite the provisions of clauses 4.4 to 4.7, where:

- (a) the effect of any of the adjustment provisions set out in clauses 4.4 to 4.7 is not, in the opinion of the Issuer, appropriate in any particular circumstances (including because more than one adjustment provision applies); or
- (b) any other event other than payment of an Ordinary Dividend occurs in relation to Yancoal that in the Issuer's opinion may have a dilutive or concentrative effect on the value of the Yancoal Ordinary Shares,

and, in the opinion of the Issuer, such occurrence would affect the relative values of Subordinated Capital Notes and the Yancoal Ordinary Shares, the Issuer may:

- (c) make such adjustment to the Conversion Price as it considers appropriate or necessary to maintain that relativity; or
- (d) extend an entitlement to the Holders to participate in such event based upon the number of Yancoal Ordinary Shares to which those Holders would have been entitled if their Subordinated Capital Notes had been Converted on a date nominated by the Issuer to maintain the relativity,

provided that the Issuer will act reasonably and in good faith in determining whether clauses 4.8(a) or 4.8(b) apply in any particular circumstance or event and (if so) in determining what (if any) action should be taken under clauses 4.8(c) or 4.8(d). In forming any opinion or making any determination under this clause the Issuer will obtain and rely upon the opinion of a reputable, international organisation independent to the Issuer and Yancoal with expertise in Australian financial market products.

#### **4.9 Notification of conversions**

If by the Conversion Cut-off Time prior to any Monthly Conversion Date, Redemption Date or Resale Date, the Issuer has received Conversion Notices in respect of Subordinated Capital Notes which would result in a number of Yancoal Ordinary Shares being issued on the following Monthly Conversion Date, Redemption Date or Resale Date



(the **Relevant Conversion Date**) such that the total number of Yancoal Ordinary Shares on issue would be more than 10% greater than:

- (a) if no ASX Notification (as defined below) has previously been issued, the total number of Yancoal Ordinary Shares on issue at the Issue Date; or
- (b) if one or more ASX Notifications have previously been issued, the total number of Yancoal Ordinary Shares on issue immediately following Conversion of Subordinated Capital Notes on the Relevant Conversion Date which immediately followed the most recent ASX Notification,
- (c) then the Issuer must:
- (d) by no later than 10 Business Days before the Relevant Conversion Date (**ASX Notification Date**) notify ASX of that fact and the total number of Yancoal Ordinary Shares that would be issued pursuant to those Conversion Notices assuming all Subordinated Capital Notes the subject of those Conversion Notices were Converted (**ASX Notification**);
- (e) between the period commencing on the ASX Notification Date and ending on the date which is 7 Business Days prior to the Relevant Conversion Date (**Relevant Period**), permit Holders to submit Conversion Notices (or additional Conversion Notices in the case of those Holders who have already submitted Conversion Notices) to Convert Subordinated Capital Notes on the Relevant Conversion Date;
- (f) on each Business Day during the Relevant Period, notify ASX of the number of Subordinated Capital Notes for which Conversion Notices have been received since the ASX Notification Date and the number of Yancoal Ordinary Shares that would be issued pursuant to those Relevant Conversion Notices assuming all Subordinated Capital Notes the subject of those Conversion Notices on the Relevant Conversion Date were Converted; and
- (g) treat the Conversion Date for each Conversion Notice received during the Relevant Period (or before such later date as the Issuer may agree with the relevant Holder) as being the Relevant Conversion Date.

#### **4.10 Determination and notification of adjustments**

- (a) The Issuer must promptly determine all adjustments to the Conversion Price required under this clause 4 and must promptly notify ASX of that determination.
- (b) The Issuer's determination is, in the absence of manifest error, final and binding on the Note Trustee and each Holder.

## **5 Redemption and purchase**

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### **5.1 Redemption on Winding Up**

If an order is made by a court of competent jurisdiction, or an effective resolution is passed, for the Winding Up of the Issuer or Yancoal, the Issuer must Redeem each Subordinated Capital Note for its Redemption Amount.

### **5.2 Redemption at the option of the Issuer**

- (a) (**Redemption – Issuer's optional redemption**)



- (1) The Issuer may elect to Redeem all or some of the Subordinated Capital Notes on the First Reset Date or any Distribution Payment Date thereafter at their Redemption Amount by giving not less than 30 Business Days' notice of such Redemption to the Note Trustee, the Holders and ASX.
  - (2) If the Issuer elects to Redeem some but not all of the Subordinated Capital Notes under clause 5.2(a)(1), such Redemption must be made on a pro-rata basis in respect of all Holders' Subordinated Capital Notes on issue at the relevant time, subject to such adjustments as the Issuer or the Registry considers necessary or appropriate to take into account the effect of such Redemption on marketable parcels and whole numbers of any other Subordinated Capital Notes remaining on issue.
  - (3) The Issuer may give notice under this clause before the First Reset Date provided the Redemption Date specified in the notice falls on a Business Day on or after the First Reset Date.
- (b) **(Redemption - Redemption event)**
- (1) If:
    - (A) a Tax Event occurs;
    - (B) an Accounting Event occurs; or
    - (C) a Change of Control Event occurs,the Issuer may Redeem all (but not some) of the Subordinated Capital Notes at any time on the Redemption Date nominated in accordance with this clause 5.2(b) for their Redemption Amount.
  - (2) The Issuer may only Redeem a Subordinated Capital Note under this clause 5.2(b) if:
    - (D) the Issuer has given at least 30 Business Days' (and no more than 45 Business Days') notice to the Note Trustee, the Holders and ASX nominating the Redemption Date upon which the Issuer proposes to Redeem the Subordinated Capital Notes; and
    - (E) before the Issuer gives the notice under paragraph (F), the Note Trustee has received a certificate signed by two directors of the Issuer that the event or circumstances entitling the Issuer to Redeem the Subordinated Capital Notes has occurred.
- (c) **(Redemption – clean up option)**
- (1) If at any time the aggregate principal amount of the Subordinated Capital Notes Outstanding is less than 10% of the aggregate principal amount of the Subordinated Capital Notes originally issued, the Issuer may Redeem all (but not some) of the Subordinated Capital Notes that remain outstanding for their Redemption Amount.
  - (2) The Issuer may only Redeem a Subordinated Capital Note under this clause 5.2(c) if:
    - (F) the Issuer has given at least 30 Business Days' (and no more than 45 Business Days') notice to the Note Trustee, the Holders and ASX nominating the Redemption Date upon which the Issuer proposes to Redeem the Subordinated Capital Notes; and



- (G) the proposed Redemption Date nominated by the Issuer is a Distribution Payment Date.
- (d) **(Effect of notice)**
- Notice under this clause 5.2 is irrevocable and on the Redemption Date specified in the notice the Issuer must, subject to clause 5.2(e), Redeem each Subordinated Capital Note at its Redemption Amount. The accidental or inadvertent failure to give notice to an individual Holder will not invalidate notice under this clause.
- (e) **(Conversion)**
- Notwithstanding the issue of a Redemption Notice, a Holder may give a Conversion Notice in respect of any of its Subordinated Capital Notes which are the subject of the Redemption Notice up to the Conversion Cut-off Time before the relevant Redemption Date (or such later date as may be permitted under clause 4.9 or as the Issuer may agree with the relevant Holder), and only Subordinated Capital Notes for which Conversion Notices have not been so given or are treated as having not been given will be Redeemed on the specified Redemption Date.

### 5.3 Failure to Redeem

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

### 5.4 Resale

- (a) The Issuer may elect that Resale occur in relation to all or (subject to clause 5.4(b)) some of the Subordinated Capital Notes on any date (the **Resale Date**) that the Issuer would be entitled to nominate as a Redemption Date for the Subordinated Capital Notes by giving a Resale Notice at least 30 Business Days (and no more than 45 Business Days) before the Resale Date to the Note Trustee, the Holders and ASX.
- (b) The Issuer may not elect that a Resale occur in relation to less than all the Subordinated Capital Notes without the consent of any Holder whose Subordinated Capital Notes are not to be subject to the Resale.
- (c) Any Holder whose Subordinated Capital Notes are the subject of a Resale Notice may by notice to the Issuer at any time prior to the Conversion Cut-off Time for the Resale Date (or prior to such later time to which the time for delivery of Conversion Notices may be extended under clause 4.9) elect that their Subordinated Capital Notes will not be subject to the Resale. The delivery by a Holder of a Conversion Notice in respect of any Subordinated Capital Notes will be treated as an election that those Subordinated Capital Notes not be subject to the Resale for the purposes of this clause (and for this purpose, if the Holder has sought Conversion of a number of Subordinated Capital Notes that exceeds the Maximum Number as defined in clause 4.1(f), then it will still be treated as having delivered a Conversion Notice in respect of such excess number of Subordinated Capital Notes, despite clauses 4.1(f)(1) and 4.1(f)(3)).
- (d) If the Issuer issues a Resale Notice:
- (1) each Holder that has not given notice under clause 5.4(c) is taken irrevocably to offer to sell the relevant number of their Subordinated Capital Notes to the Purchaser on the Resale Date for a cash amount



- per Subordinated Capital Note equal to the Purchase Price (and to have appointed the Issuer as its agent and attorney to do and execute all things and documents which the Issuer considers may be necessary or desirable in connection with that offer and any resulting sale);
- (2) subject to payment by the Purchaser on or before the Resale Date (or thereafter as contemplated by clause 5.4(e)) of the Purchase Price to a Holder whose Subordinated Capital Notes are to be subject to the Resale, all right, title and interest in those Subordinated Capital Notes will be transferred from the Holder to the Purchaser on the Resale Date; and
  - (3) if the Purchaser does not pay the Purchase Price to the relevant Holders on the Resale Date, the relevant number of Subordinated Capital Notes will not be transferred to the Purchaser and a Holder has no claim on the Issuer as a result of that non-payment.
- (e) Clause 7 will apply to payments by the Purchaser as if the Purchaser was the Issuer. If any payment to a particular Holder is not made or treated as made on the Resale Date because of any error by or on behalf of the Purchaser, the relevant Subordinated Capital Notes of that Holder will not be transferred until payment is made but the transfer of all other relevant Subordinated Capital Notes will not be affected by the failure.
- (f) Notwithstanding the issue of a Resale Notice and that the Holder may not have elected that its Subordinated Capital Notes not be subject to the relevant Resale, a Holder may give a Conversion Notice in respect of any of its Subordinated Capital Notes which are subject to the Resale at any time before the Conversion Cut-off Time before the relevant Resale Date (or such later date as may be permitted under clause 4.9 or as the Issuer may agree with the relevant Holder), and only Subordinated Capital Notes for which Conversion Notices have not been so given will be subject to the Resale on the specified Resale Date.

## 5.5 Purchase

- (a) The Issuer, Yancoal and any of Yancoal's other Subsidiaries may at any time purchase Subordinated Capital Notes in the open market or otherwise and at any price.
- (b) Subordinated Capital Notes purchased under this clause 5.5 may be held, resold or cancelled at the discretion of the purchaser (and, if the Subordinated Capital Notes are to be cancelled, the Issuer), subject to compliance with any applicable law or requirement of ASX.

## 5.6 Cancellation

Subordinated Capital Notes Redeemed, or purchased by Yancoal, the Issuer or another Subsidiary of Yancoal which the purchaser and the Issuer elect to cancel, will be cancelled by the Issuer and may not be resold.

## 6 Enforcement

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### 6.1 Consequences of a default

- (a) Subject to clause 6.1(b) and the Note Trust Deed, if the Issuer or Yancoal is being wound up and the Issuer has become obliged to Redeem the Subordinated Capital Notes under clause 5.1 or if the Issuer or Yancoal is in default of payment or performance of any of its other obligations in respect of the Subordinated Capital Notes, the Subordinated Guarantee or the Note Trust Deed, the Note Trustee may take any action permitted by the Note Trust Deed to enforce the Subordinated Capital Notes, the Subordinated Guarantee or the Note Trust Deed.
- (b) The Note Trustee is not bound to take any action referred to in clause 6.1(a) to enforce the rights of the Holders against the Issuer or Yancoal in respect of the Subordinated Capital Notes or any other action pursuant to or in connection with the Note Trust Deed or the Subordinated Capital Notes unless:
- (1) it shall have been so directed by a Holder Resolution or so requested in writing by the Holders of at least 10% of the aggregate of the principal amount of all Subordinated Capital Notes Outstanding (ignoring any Subordinated Capital Notes held by the Issuer, Yancoal or any of Yancoal's other Subsidiaries and not cancelled); and
  - (2) it shall have been indemnified or secured (by way of advance payment or otherwise) to its satisfaction in respect of all liabilities, costs, charges, damages and expenses (including any management time) which it may incur, as more fully set out in the Note Trust Deed.

### 6.2 Enforcement by Note Trustee, Holders

The rights of the Note Trustee and the Holders to take any action against the Issuer or Yancoal to enforce the Subordinated Capital Notes or the Note Trust Deed are limited as provided in the Note Trust Deed.

### 6.3 Conversion right to remain exercisable

The right to Convert remains exercisable in accordance with these Terms of Issue notwithstanding any action taken by the Note Trustee under this clause 6 to enforce any provision of these Terms of Issue or the Note Trust Deed at any time up to the date the Subordinated Capital Notes are Redeemed.

## 7 Payments

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### 7.1 Payment of principal

Payments of the Redemption Amount in respect of a Subordinated Capital Note (including all Distributions payable on Redemption of the Subordinated Capital Note) will be made to the person registered at 10:00am on the relevant Redemption Date as the Holder of that Subordinated Capital Note.





## 7.2 Payment of Distributions

Distributions payable in respect of a Subordinated Capital Note (other than Distributions payable on Redemption of the Subordinated Capital Note) will be made to the person registered at the Record Date for that payment as the Holder of that Subordinated Capital Note.

## 7.3 Manner of payment

- (a) Amounts payable to a Holder in respect of the Subordinated Capital Notes will be paid by direct credit to an account nominated by the Holder at an Australian financial institution by notice to the Registry not less than eight calendar days before the date for payment.
- (b) Unless a Holder elects to receive payments in respect of its Subordinated Capital Notes in US Dollars, the Issuer will use the amount payable in US Dollars to purchase Australian Dollars from an Australian financial institution at the exchange rate quoted to the Issuer by that financial institution and pay the amount received in Australian Dollars (after deducting any applicable fees, charges or commissions) to the specified account. The Issuer is not obliged to make any payment in Australian Dollars in accordance with this paragraph until such time after the due date for payment as is reasonably required to effect the required conversion and payment arrangements and is not obliged to pay any additional Distributions or other amount to the Holder in respect of such delay.
- (c) An election under clause 7.3(b) must be made in the Holder's application form or by subsequent notice in a form approved by the Issuer and lodged with the Registry not less than eight calendar days before the relevant payment date. The Issuer may assume that the account nominated by a Holder who has made such an election is an account to which payments may be made in US Dollars.
- (d) Where a payment cannot be made in accordance with clauses 7.3(a) and 7.3(b) (as applicable) because a Holder has not provided account details, or the Issuer determines that the account details are incorrect or the relevant account has been closed or is not an account to which the relevant payment can be made, the Issuer is under no obligation to make the relevant payment until the required account details have been provided.
- (e) Where a payment is due on a day that is not a Business Day, or cannot be made in accordance with clause 7.3(a) on the due date because a financial institution is not open for business (or is not open for business in the place where the account is kept) on that date, the Issuer is under no obligation to make the relevant payment until the next Business Day on which payment can be made.
- (f) The Holder is not entitled to any interest or other amount in respect of a delay in payment under clauses 7.3(b), 7.3(c), 7.3(d) or 7.3(e).

## 7.4 Payment subject to fiscal laws

The Issuer's obligations to make payments on the Subordinated Capital Notes are subject to all applicable laws.

## 7.5 Payments net of deductions

- (a) The Issuer may deduct from any Distribution or other amount payable to a Holder the amount of any withholding or other tax, duty or levy required by law



to be deducted in respect of such amount. For the purposes of this paragraph, any amount deducted by the Issuer in accordance with:

- (1) sections 1471 to 1474 of the Internal Revenue Code of the United States of America (or any associated regulations or other official guidance); or
- (2) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (1) above; or
- (3) any agreement pursuant to the implementation of paragraphs (1) or (2) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction,

will be deemed to be a deduction required by law.

- (b) The Issuer will pay the full amount deducted to the relevant revenue authority within the time allowed for such payment without incurring a penalty under the applicable law and will, if required by any Holder, deliver to that Holder the relevant receipt issued by the revenue authority without unreasonable delay after it is received by the Issuer.

## 7.6 Payments generally

Payments in respect of the Subordinated Capital Notes and the Subordinated Guarantee will be made in accordance with the provisions relating to payment set out in clause 4.2 (Payments) of the Note Trust Deed.

## 8 Further issues

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- (a) The Issuer and Yancoal must not issue or guarantee any other bonds, notes or other form or type of securities, or incur or guarantee any indebtedness for moneys borrowed or raised pursuant to any other financial accommodation, in any case where such bonds, notes or other securities or indebtedness are issued or incurred to, or guaranteed by, Yanzhou, or in respect of which Yanzhou has provided (directly or indirectly) equivalent credit support, except:
  - (1) (subject to clause 8(b)) bonds, notes, securities or indebtedness arising from utilisation of credit lines or facilities subsisting at the Issue Date (or extensions thereof) or credit lines or facilities (**Replacement Facilities**) established after the Issue Date to replace or extend the maturity of such credit lines or facilities or credit lines or facilities previously established under this paragraph (1) (in each case whether drawn or undrawn);
  - (2) (subject to clause 8(b)) bonds, notes, securities or indebtedness (**Replacement Debt**) issued or incurred after the Issue Date for the purpose of refinancing or extending the maturity of any bonds, notes, securities or indebtedness of Yancoal or any of its subsidiaries subsisting at the Issue Date or issued or incurred after the Issue Date as permitted under paragraph (1) or this paragraph (2);
  - (3) indebtedness in respect of accrued but uncapitalised interest, fees and other charges;



- (4) indebtedness in respect of bank guarantees, letters of credit, performance bonds and similar instruments not securing the repayment by Yancoal or any of its subsidiaries of bonds, notes or other securities or indebtedness for moneys borrowed or raised pursuant to any other financial accommodation or of any other moneys due to Yanzhou;
  - (5) indebtedness in respect of bank guarantees, letters of credit and other transactional or short term facilities provided by banks or financial institutions up to a maximum aggregate principal amount outstanding at any time of not more than AUD50,000,000;
  - (6) bonds, notes, securities or indebtedness which comprise Equal Ranking Obligations and are issued or incurred:
    - (H) at a time when the average of the FOB Newcastle 6,322kcal/kg GAR export thermal coal price has exceeded US\$110/tonne over the preceding 30 consecutive trading days, there are no Unpaid Distribution Amounts and Yancoal has fully drawn down all commitments from Yanzhou subsisting at the Issue Date to provide Junior Ranking Obligations; or
    - (I) to refinance other Equal Ranking Obligations previously issued or incurred in compliance with this paragraph (6);
  - (7) indebtedness under the Yanzhou Support Facility or the Yanzhou Distribution Facility, or bonds, notes, securities or indebtedness which comprise Junior Ranking Obligations and in respect of which the Issuer or Yancoal is not obliged to make payments of interest or principal prior to the maturity date of the Yanzhou Support Facility except in circumstances where payments of interest or principal prior to the maturity date may also be required under the Yanzhou Support Facility;
  - (8) after Resale Notices have been given in respect of all of the Subordinated Capital Notes then outstanding (other than any held by Holders who consent under clause 5.4(b) to their Subordinated Capital Notes not being the subject of the Resale Notices) and the Purchase Price has been paid in respect of all Subordinated Capital Notes which are to be subject to the Resale in accordance with clause 5.4;
  - (9) after no Subordinated Capital Notes remain on issue; or
  - (10) with the approval of a Special Resolution.
- (b) For the purposes of clause 8(a)(1) and (2), Replacement Facilities and Replacement Debt:
- (1) may not exceed the amount of the replaced credit lines or facilities, or of the refinanced or extended bonds, notes, securities or indebtedness, as the case may be, or (in either case) its equivalent in other currencies (calculated at the date of establishment, issue or incurrence, as the case may be);
  - (2) may not comprise Senior Ranking Obligations except to the extent that the replaced credit lines or facilities, or the refinanced or extended bonds, notes, securities or indebtedness, as the case may be, comprised Senior Ranking Obligations; and



- (3) may not comprise Equal Ranking Obligations except to the extent that the replaced credit lines or facilities, or the refinanced or extended bonds, notes, securities or indebtedness, as the case may be, comprised Senior Ranking Obligations or Equal Ranking Obligations.
- (c) Nothing in these Terms of Issue other than clauses 8(a) and 8(b) limits the ability of the Issuer or Yancoal to issue or incur further Senior Ranking Obligations, Equal Ranking Obligations or Junior Ranking Obligations in such party's absolute discretion from time to time.

## 9 Time limit for claims

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

## 10 Amendments

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### 10.1 Amendments without consent

At any time and from time to time, but subject to the Note Trust Deed, compliance with the Corporations Act and all other applicable laws, the Issuer, Yancoal and Note Trustee may without the consent of the Holders, amend these Terms of Issue or the Note Trust Deed (including the Subordinated Guarantee) if the Note Trustee is of the opinion that such amendments are:

- (a) of a formal or technical or minor nature and not materially prejudicial to the interests of the Holders as a whole;
- (b) made to cure any ambiguity or correct any manifest error;
- (c) necessary or expedient for the purpose of enabling the Subordinated Capital Notes to be:
  - (1) listed for quotation, or to retain quotation, on any stock exchange; or
  - (2) offered for subscription or for sale under the laws for the time being in force in any place,

and (in the case of each of paragraph (1) and (2) above) the Issuer has provided to the Note Trustee an opinion of independent legal advisers or counsel of recognised standing in New South Wales that such amendment is otherwise not materially prejudicial to the interests of Holders as a whole;

- (d) necessary to comply with:
  - (1) the provisions of any statute or the requirements of any statutory authority; or
  - (2) the ASX Listing Rules or the listing or quotation requirements of any stock exchange on which the Issuer may propose to seek a listing or quotation of the Subordinated Capital Notes,

and (in the case of each of paragraph (1) and (2) above) the Issuer has provided to the Note Trustee an opinion of independent legal advisers or



- counsel of recognised standing in New South Wales that such amendment is otherwise not materially prejudicial to the interests of Holders as a whole; or
- (e) not, and not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to the interests of Holders generally and the Issuer has provided to the Note Trustee an opinion of independent legal advisers or counsel of recognised standing in New South Wales that it is open to the Note Trustee to form the opinion that such amendment is otherwise not materially prejudicial to the interests of Holders as a whole.

## 10.2 Amendments with consent

At any time and from time to time, but subject to the Note Trust Deed, compliance with the Corporations Act and all other applicable laws, the Issuer or Yancoal may amend these Terms or the Note Trust Deed (including the Subordinated Guarantee) if a Special Resolution is passed in favour of such amendment and (if the amendment alters or conflicts with any of the personal rights or obligations of the Note Trustee) the Issuer or Guarantor has obtained the Note Trustee's prior written consent to such amendment.

## 10.3 Notices

Notices under these Terms are to be given in accordance with the provisions of the Note Trust Deed.

# 11 Governing law and jurisdiction

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## 11.1 Governing law

The Subordinated Capital Notes and these Terms are governed by the laws of New South Wales, Australia.

## 11.2 Submission to jurisdiction

The Issuer, Yancoal, the Note Trustee and each Holder submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia in connection with matters concerning the Subordinated Capital Notes or these Terms of Issue. The Issuer, Yancoal, the Note Trustee and each Holder waive 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.

# 12 Definitions

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The following defined terms apply in these Terms of Issue:

<b>Abnormal Item</b>	includes, but is not limited to, unrealised foreign exchange gains or losses on foreign currency denominated borrowings.
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<b>Accounting Event</b>	means a determination is made by the Yancoal Directors or the directors of the Issuer, following receipt by them of an opinion from the auditor of Yancoal or the Issuer, that any change in Accounting Standards has had or will have in the current financial half-year, the effect that the Subordinated Capital Notes would be treated in Yancoal's or the Issuer's financial statements other than as equity.
<b>Accounting Standards</b>	<ol style="list-style-type: none"><li>1 the accounting standards as defined in the Corporations Act;</li><li>2 the requirements of the Corporations Act for the preparation and content of accounts; and</li><li>3 generally accepted accounting principles and practices consistently applied in Australia, including any domestically accepted international accounting standards, except principles and practices that are inconsistent with those referred to in paragraph 1 or 2 of this definition.</li></ol>
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited (ABN 98 008 624 691) or the market it operates.
<b>ASX Listing Rules</b>	the listing rules of ASX as amended or replaced from time to time, except to the extent of any express written waiver by ASX.
<b>ASX Settlement</b>	ASX Settlement Pty Ltd (ABN 49 008 504 532).
<b>ASX Settlement Operating Rules</b>	the settlement operating rules of ASX Settlement from time to time.
<b>AUD or Australian Dollars</b>	the lawful currency of the Commonwealth of Australia.
<b>Australian Tax Act</b>	the <i>Income Tax Assessment Act 1936</i> (Cth) and, where applicable, the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Business Day</b>	has the same meaning as in the Listing Rules, but where used in connection with any Redemption of or payment on the Subordinated Capital Notes, excludes a day on which major trading banks are not open for business in Sydney.
<b>Change in Law</b>	<ol style="list-style-type: none"><li>1 any amendment to, clarification of, or change (including any announced prospective change), in the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;</li></ol>

- 2 any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (**Administrative Action**); or
- 3 any amendment to, clarification of, or change in, an Administrative Action that provides for a position that differs from the current generally accepted position, in each case, by any legislative body, court, Government Agency or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known.

**Change of Control Event**

any one of the following events:

- 1 a takeover bid (as defined in the Corporations Act) is made by any person (other than Yanzhou or an associate of Yanzhou) to acquire all or some of the Yancoal Ordinary Shares and such offer is, or becomes, unconditional, all regulatory approvals necessary for the acquisition to occur have been obtained and the bidder has or obtains at any time during the offer period a relevant interest in more than 50% of the Yancoal Ordinary Shares on issue; or
- 2 a court approves a scheme of arrangement under Part 5.1 of the Corporations Act, which scheme would result in a person (other than Yanzhou or an associate of Yanzhou) having a relevant interest in more than 50% of the Yancoal Ordinary Shares that will be on issue after the scheme is implemented; or
- 3 any other step or steps are taken as a result of which the board of Yancoal Directors determine that a person (other than Yanzhou or an associate of Yanzhou) has or will acquire a relevant interest in more than 50% of the Yancoal Ordinary Shares on issue and that such step or steps should be treated as a Change of Control Event for the purposes of these Terms of Issue.

**Change of Control Step Up**

5.00% per annum.

**Conversion**

a Holder ceasing to hold Subordinated Capital Notes and receiving Yancoal Ordinary Shares in accordance with clause 4.2. **Convert** and **Converted** have corresponding meanings.

**Conversion Cut-off Time**

5.00pm on the 11<sup>th</sup> Business Day prior to a Monthly Conversion Date, Redemption Date or Resale Date.

**Conversion Date**

the date on which Subordinated Capital Notes are to be Converted pursuant to a Conversion Notice, being:

- 1 in the case of a Conversion Notice received after the issue of a Redemption Notice or Resale Notice and prior to the



Conversion Cut-off Time for the relevant Redemption Date or Resale Date (or such later time as may be permitted under clause 4.9 or as the Issuer may agree with the relevant Holder), that Redemption Date or Resale Date or such other date as may be reasonably determined by the Issuer having regard to its obligations to Holders;

- 2 in any other case, the first Monthly Conversion Date falling at least 11 Business Days after the receipt of the relevant Conversion Notice (or, in the case of a Conversion Notice to which clause 4.9 applies, the Monthly Conversion Date specified in that clause or as the Issuer may otherwise agree with the relevant Holder or such other date as may be reasonably determined by the Issuer having regard to its obligations to Holders).

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<b>Conversion Notice</b>	a notice, in a form prescribed by the Issuer, given by a Holder to the Issuer and Yancoal under clause 4.1.
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<b>Conversion Price</b>	has the meaning given in clause 4.3.
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<b>Conversion Process</b>	means the process described in clause 4.
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<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth).
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<b>Distribution</b>	interest payable on the Subordinated Capital Notes under these Terms of Issue.
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<b>Distribution Payment Date</b>	in relation to a Subordinated Capital Note, the last Business Day of each January and July of each year, commencing on 31 July 2015 and falling on or before the Redemption Date.
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<b>Distribution Period</b>	in respect of a Subordinated Capital Note: <ol style="list-style-type: none"><li>1 the period beginning on (and including) the Issue Date and ending on (but excluding) the first Distribution Payment Date; and</li><li>2 thereafter, the period beginning on (and including) a Distribution Payment Date and ending on (but excluding) the first to occur of:<ul style="list-style-type: none"><li>• the next Distribution Payment Date; or</li><li>• the Redemption Date.</li></ul></li></ol>
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<b>Distribution Rate</b>	in respect of each Distribution Period commencing: <ol style="list-style-type: none"><li>1 before the First Reset Date, 7.00% per annum;</li><li>2 on or after the First Reset Date and before the Second</li></ol>
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Reset Date, the distribution rate calculated in accordance with the following formula and expressed as a percentage per annum:

**Market Rate on the First Reset Date + Margin;**

and

- 3 on or after the Second Reset Date and before a Subsequent Reset Date, the rate calculated in accordance with the following formula and expressed as a percentage per annum:

**Market Rate on the Second Reset Date + Margin + Step Up;**

and

- 4 on or after a Subsequent Reset Date, the rate calculated in accordance with the following formula and expressed as a percentage per annum:

**Market Rate on the most recent Subsequent Reset Date (being the date of calculation if that date is a Subsequent Reset Date) + Margin + Step Up,**

provided that if a Change of Control Event occurs, then on and from the Distribution Payment Date following the date on which the Change of Control Event occurs the applicable Distribution Rate is the aggregate of:

- the rate determined in accordance paragraphs 1, 2, 3 or 4 of this definition (as applicable); and
- the Change of Control Step Up,

expressed as a percentage per annum.

**Equal Ranking Obligations**

- 1 any obligation in relation to claims of any unsecured, subordinated creditor of the Issuer or Yancoal (as the case may be), or claims of any holder of a preference share in the capital of the Issuer or Yancoal (as the case may be), which claims are expressed to rank equally with the Issuer's obligations under the Subordinated Capital Notes or Yancoal's obligation under the Subordinated Guarantee (as the case may be); and
- 2 in the case of Yancoal includes the Yanzhou Distribution Facility.

**Face Value**

US\$100 per Subordinated Capital Note.

**First Reset Date**

the first Distribution Payment Date falling at least 5 years after the Issue Date.

**Government Agency**

any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

<b>Holder</b>	in relation to any Subordinated Capital Note, a person whose name is for the time being registered in the Register as the holder of that Subordinated Capital Note.
<b>Holder Resolution</b>	<ol style="list-style-type: none"> <li>1 a resolution passed at a meeting of Holders duly called and held under the Meeting Provisions: <ul style="list-style-type: none"> <li>• by more than 50% of the persons voting on a show of hands (unless the second bullet point of this paragraph 1 applies); or</li> <li>• if a poll is duly demanded, then by a majority consisting of more than 50% of the votes cast; or</li> </ul> </li> <li>2 if the meeting is by postal ballot or written resolution, then by Holders representing (in aggregate) more than 50% of the principal amount of all of the outstanding Subordinated Capital Notes.</li> </ol>
<b>Intercompany Loan</b>	the loan provided by the Issuer to Yancoal on or about the Issue Date out of the proceeds of the issue of the Subordinated Capital Notes.
<b>Issue Date</b>	the date of issue of the Subordinated Capital Notes.
<b>Issuer</b>	Yancoal SCN Limited (ACN 602 841 556).
<b>Issuer Ordinary Share</b>	an ordinary share of the Issuer or shares of any class or classes resulting from any subdivision, consolidation or re-classification of those shares, which as between themselves have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation or dissolution of the Issuer.
<b>Junior Ranking Obligations</b>	<ol style="list-style-type: none"> <li>1 any obligation in relation to claims of any unsecured, subordinated creditor of the Issuer or Yancoal (as the case may be) which claims are expressed to rank after the Issuer's or Yancoal's obligations (as the case may be) in respect of the Subordinated Capital Notes;</li> <li>2 in respect of Yancoal, all Yancoal Ordinary Shares and its obligations in respect of the Intercompany Loan and the Yanzhou Support Facility; and</li> <li>3 in respect of the Issuer, all Issuer Ordinary Shares.</li> </ol>
<b>Listing Rules</b>	the listing rules of ASX, as amended or replaced from time to time.
<b>Margin</b>	the difference between 7.00% and the Market Rate as at the





Issue Date.

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**Market Rate**

on any date (the **Relevant Date**):

- 1 the 5 year semi-annual swap rate for USD swap transactions, expressed as an annual rate, as displayed on the Reuters screen "ISDAFIX1" (or any successor page) (the "**Screen Page**") under the heading "11:00 AM" (as such heading may appear from time to time) as at 11:00 a.m. New York time on the Relevant Date; or
- 2 in the event that the Market Rate does not appear on the Screen Page on the Relevant Date, Market Rate shall mean the percentage rate, expressed as an annual rate, determined on the basis of the 5 year Swap Rate Quotations provided by the Reference Banks to the Issuer at approximately 11.00 a.m. New York time on the Relevant Date. If at least three quotations are provided, the rate for that Relevant Date will be the arithmetic mean of the quotations, eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest). If only two quotations are provided, the Market Rate will be the arithmetic mean of the quotations provided. If only one quotation is provided, the Reference Rate will be the quotation provided. If no quotations are provided, the Market Rate will be equal to the last available 5 year semi-annual swap rate for USD swap transactions on the Screen Page, expressed as an annual rate.

Where:

**'5 year Swap Rate Quotations'** means the arithmetic mean of the bid and offered rates for the semi-annual fixed leg (calculated on the basis of a 360-day year of twelve 30-day months) of a fixed-for-floating USD interest rate swap transaction which:

- 3 has a term of 5 years commencing on the relevant Reset Date;
- 4 is in an amount that is representative of a single transaction in the relevant market at the relevant time with an acknowledged dealer of good credit in the swap market; and
- 5 has a floating leg based on the 6-months USD LIBOR rate (calculated on the basis of the actual number of days elapsed in a 360-day year).

**'Reference Banks'** means five leading swap dealers (as selected by the Issuer in good faith) in the interbank market.

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**Meeting Provisions**

the provisions for meetings of the Holders set out in Attachment 2 of the Note Trust Deed.

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**Monthly Conversion Date**

the last day of each calendar month during the Conversion Period.

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<b>Note Trust Deed</b>	the trust deed dated on or about 24 November 2014 between the Issuer, Yancoal and the Note Trustee as amended from time to time.
<b>Note Trustee</b>	Australian Executor Trustees Limited (ABN 84 007 869 794).
<b>Optional Distribution Payment</b>	the payment by the Issuer in its discretion of a previously Unpaid Distribution Amount.
<b>Ordinary Dividend</b>	<p>a regular interim or final dividend paid by Yancoal to holders of Yancoal Ordinary Shares in an amount not exceeding:</p> <ol style="list-style-type: none"><li>1 in the case of an interim dividend, 75% of Yancoal's net profit after tax (pre-Abnormal Items) for the first half of the financial year in respect of which it is paid, as shown in Yancoal's financial statements for that financial half year; or</li><li>2 in the case of any final dividend, in aggregate with any interim dividend paid in respect of the same financial year, 75% of Yancoal's net profit after tax (pre-Abnormal Items) for the financial year in respect of which it is paid, as shown in its financial statements for that financial year.</li></ol>
<b>Outstanding</b>	in relation to a Subordinated Capital Note means the Subordinated Capital Note has not been Redeemed or Converted or otherwise cancelled.
<b>Purchase Price</b>	in respect of any Resale of Subordinated Capital Notes, an amount equal to the Redemption Amount that would be payable in respect of the Subordinated Capital Notes if the Subordinated Capital Notes were being Redeemed on the Resale Date.
<b>Purchaser</b>	one or more third parties selected by the Issuer in its absolute discretion (which can include any of its Related Bodies Corporate, including Yanzhou) and specified in a Resale Notice.
<b>Record Date</b>	<p>means for payment of a Distribution (other than Distributions payable on Redemption of the Subordinated Capital Note):</p> <ol style="list-style-type: none"><li>1 the date which is eight calendar days before the Distribution Payment Date upon which such Distribution actually falls due for payment; or</li><li>2 such other date as is determined by the directors of the Issuer in their absolute discretion and communicated to ASX not less than seven Business Days before the specified Record Date,</li></ol> <p>or in either case such other date as may be required by ASX.</p>



<b>Redemption</b>	the redemption of a Subordinated Capital Note, other than in connection with its Conversion by payment of its Redemption Amount in accordance with these Terms of Issue. The terms “Redeem” and “Redeemed” have a corresponding meaning.
<b>Redemption Amount</b>	<p>in respect of any Subordinated Capital Note to be Redeemed, the aggregate of:</p> <ol style="list-style-type: none"><li>1 the Face Value of the Subordinated Capital Note; and</li><li>2 the aggregate of any accrued (but unpaid) Distributions up to but not including the Redemption Date and any Unpaid Distribution Amounts in respect of the Subordinated Capital Note,</li></ol> <p>provided that where Redemption is required due to a Winding Up of the Issuer or Yancoal, then accrued (but unpaid) Distributions and Unpaid Distribution Amounts will only be included in the calculation of the Redemption Amount to the extent that funds would be available to the Issuer to meet such payments after the discharge of all other debts of the Issuer.</p>
<b>Redemption Date</b>	in respect of any Subordinated Capital Note, the date for Redemption of that Subordinated Capital Note in accordance with the Terms of Issue.
<b>Redemption Notice</b>	a notice provided by the Issuer in accordance with clause 5.2.
<b>Register</b>	<p>the register of Holders established and maintained in accordance with the Note Trust Deed and, where appropriate, includes:</p> <ol style="list-style-type: none"><li>1 a sub-register conducted by or for the Issuer pursuant to the Corporations Act, the Listing Rules or ASX Settlement Operating Rules; and</li><li>2 any branch register.</li></ol>
<b>Registry</b>	Computershare Investor Services Pty Limited (ABN 48 078 279 277) or such other person appointed by the Issuer to maintain the Register on the Issuer’s behalf from time to time.
<b>Related Body Corporate</b>	has the meaning given to it in the Corporations Act.
<b>Resale</b>	a transfer of Subordinated Capital Notes from Holders to a Purchaser in accordance with clause 5.4.
<b>Resale Date</b>	the date on which a Resale of Notes is scheduled to occur under clause 5.4.



<b>Resale Notice</b>	a notice given by the Issuer in accordance with clause 5.4 specifying that, subject to clause 5.4, the Subordinated Capital Notes referred to in the notice are to be transferred on a Resale Date specified in the notice to a Purchaser specified in the notice and for a Purchase Price specified in the notice.
<b>Reset Date</b>	<ol style="list-style-type: none"><li>1 the First Reset Date;</li><li>2 the Second Reset Date; or</li><li>3 a Subsequent Reset Date.</li></ol>
<b>Restricted Action</b>	has the meaning given to in clause 3.5(c).
<b>Second Reset Date</b>	the Distribution Payment Date falling five years after the First Reset Date.
<b>Senior Ranking Obligations</b>	any obligation in relation to claims of any creditors (including subordinated creditors) of the Issuer or Yancoal (as the case may be), other than the Note Trustee (in respect of the principal of and Distributions payable on the Subordinated Capital Notes), the Holders, the holders of Equal Ranking Obligations and the holders of Junior Ranking Obligations.
<b>Special Resolution</b>	<ol style="list-style-type: none"><li>1 a resolution passed at a meeting of the Holders duly called and held under the Meeting Provisions:<ul style="list-style-type: none"><li>• by at least 75% of the persons voting on a show of hands (unless the second bullet point of this paragraph 1 applies); or</li><li>• if a poll is duly demanded, then by a majority consisting of at least 75% of the votes cast; or</li></ul></li><li>2 a resolution passed by postal ballot or written resolution by Holders representing (in aggregate) at least 75% of the principal amount of all of the outstanding Subordinated Capital Notes,  provided that a resolution will only be treated as passed as a Special Resolution if, in addition to being passed by the requisite majority referred to in paragraph 1 or 2 at least 75% of the votes cast on the resolution by any Holders that are not Related Bodies Corporate of Yancoal (or associates (within the meaning of the Corporations Act) of such Related Bodies Corporate) are cast in favour of the resolution (as determined in good faith by or on behalf of the chairman of the relevant meeting, or by the Issuer in the case of a postal ballot or written resolution).</li></ol>
<b>Step Up</b>	2.50% per annum.



<b>Subsequent Reset Date</b>	each Distribution Payment Date falling five years after a previous Reset Date.
<b>Subordinated Capital Notes</b>	the perpetual, subordinated and unsecured notes issued or to be issued by the Issuer on these Terms of Issue.
<b>Subordinated Guarantee</b>	the guarantee of the Issuer's obligations in respect of the Subordinated Capital Notes provided by Yancoal to the Note Trustee under clause 5 (Subordinated Guarantee) of the Note Trust Deed.
<b>Subsidiary</b>	<p>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:</p> <ol style="list-style-type: none"><li>1 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>2 an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.</li></ol>
<b>Tax</b>	any tax, levy, impost, deduction, charge or withholding or duty (including stamp duty and transaction duty) imposed by any authority together with any related interest, penalties and expenses in connection with them.
<b>Tax Event</b>	occurs upon the happening on or after the Issue Date of the Issuer or Yancoal receiving an opinion of a nationally recognised legal counsel or other tax adviser in Australia, experienced in such matters that, as a result of a Change in Law after the Issue Date, there is substantial risk that the Issuer or Yancoal would be exposed to a material increase in its costs in relation to the Subordinated Capital Notes, including in relation to Distributions payable under clause 3 or the delivery of Yancoal Ordinary Shares to the Holders.
<b>Terms of Issue</b>	these terms and conditions of issue.
<b>Unpaid Distribution Amount</b>	the whole or any part of any Distribution that would otherwise have been payable on a Subordinated Capital Note on a Distribution Payment Date which the Issuer has deferred in accordance with clause 3.4, other than an amount which has been paid pursuant to an Optional Distribution Payment.
<b>USD, US\$ or US Dollars</b>	the lawful currency of the United States of America.

<b>VWAP</b>	for any period, the volume weighted average prices for trading in Yancoal Ordinary Shares during that period, excluding for the purposes of this calculation trading which would not be included in the calculation by the ASX of a volume weighted average price, in each case as determined by the Issuer in good faith.
<b>Winding Up</b>	a winding up, other than in circumstances where a winding up order is made by a court of competent jurisdiction and that order is successfully appealed or permanently stayed within 30 days of that order. The term “ <b>wound up</b> ” has a corresponding meaning.
<b>Yancoal</b>	Yancoal Australia Limited (ABN 82 111 859 119).
<b>Yancoal Director</b>	a Director of Yancoal. References to the <b>Directors</b> are to the Board of Yancoal acting by resolution or through any person to whom it has delegated the relevant matter.
<b>Yancoal Ordinary Share</b>	an ordinary share of Yancoal or shares of any class or classes resulting from any subdivision, consolidation or re-classification of those shares, which as between themselves have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation or dissolution of Yancoal.
<b>Yancoal Ordinary Shareholder</b>	a registered holder of Yancoal Ordinary Shares.
<b>Yanzhou</b>	Yanzhou Coal Mining Company Limited or any of its Subsidiaries (other than Yancoal and its Subsidiaries).
<b>Yanzhou Distribution Facility</b>	the USD807 million Coupon Payment Loan agreement between Yanzhou and Yancoal dated on or around 24 November 2014.
<b>Yanzhou Support Facility</b>	the AUD1.4 billion Debt Support Loan agreement between Yanzhou and Yancoal dated on or around 24 November 2014.



## Attachment 2

### Meetings of Holders

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#### 1 Notice of Meeting

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- (a) At least 10 Business Days' notice in writing (15 Business Days' notice for a Special Resolution) of any Meeting must be given to the Note Trustee, the Issuer and the Holders by the party convening the Meeting.
- (b) If a Holder does not receive notice, the Meeting is still valid.
- (c) The party convening the Meeting must notify the Note Trustee, the Issuer and Holders (as the case requires) in writing of:
  - (1) the place, day and time of the Meeting; and
  - (2) the nature of the business to be transacted.
- (d) If either the Issuer or the Note Trustee omits to give notice to the other of them under paragraph 1(c) or if the other of them does not receive notice, the Meeting is invalid unless the person who did not receive notice waives the notice requirement.
- (e) For the purposes of any Meeting, or for determining whether any resolution is passed without holding a Meeting, any Notes held by the Guarantor or any Subsidiary of the Guarantor shall be treated as not being on issue.

#### 2 Who may attend and address Meeting

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Each Holder is entitled to attend and vote at any Meeting or any rescheduled Meeting (which was adjourned pursuant to paragraph 3(c)). The Note Trustee, the Issuer, any person invited by any of them and the Issuer's auditor is entitled to attend and address a Meeting or rescheduled Meeting of Holders.

#### 3 Quorum

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- (a) No business may be transacted at any Meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Holders is present at the time when the Meeting proceeds to business.
- (b) A quorum for any Meeting is at least 2 persons holding or representing by attorney, representative or proxy at least 10% of the Notes.
- (c) If a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting must be adjourned as the chair directs.
- (d) At a rescheduled Meeting (which was adjourned pursuant to paragraph 3(c)) the Holders with at least 5% of the Notes who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.



## 4 Chair

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- (a) Subject to the Corporations Act, a nominee of the Note Trustee (if any) may preside as chair at a Meeting of Holders.
- (b) If the Note Trustee does not appoint a person to be chairperson of a meeting, or the person does not appear within 15 minutes from the time appointed for the Meeting or is unwilling to act, the Holders present must elect one of their number to preside as chair.
- (c) The chair:
  - (1) need not be a Holder; and
  - (2) may be an officer or employee of the Issuer or the Note Trustee.

## 5 Voting

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- (a) Subject to Holders being entitled to vote, any question submitted to a Meeting must be decided in the first instance by a show of hands, but a poll will be taken in any case where:
  - (1) it is required by this deed or by law that the question be decided by a majority which is to be measured by a percentage of the votes cast by those present; or
  - (2) either before or immediately after any question is put to a show of hands a poll is demanded by the chair of the Meeting, the Note Trustee, the Issuer, or at least one or more Holders, present personally or by proxy, representative or attorney, holding or representing by proxy, representative or attorney at least 5% of the Notes.
- (b) In the case of equality of votes, the chair of a Meeting of Holders has a casting vote in addition to his votes (if any) as a Holder both on a show of hands and on a poll.

## 6 Votes

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At a Meeting:

- (a) on a show of hands each Holder present personally or by proxy, attorney or representative with the right to vote at that Meeting has one vote; and
- (b) on a poll each Holder present personally or by proxy, attorney or representative with a right to vote at that Meeting is entitled to one vote for each Note.

## 7 Voting by Joint Holders

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- (a) If Notes are held jointly, the most senior Holder's vote either in person or by proxy is accepted to the exclusion of the other Joint Holders.





- (b) The most senior Holder is the person whose name appears first on the Register.

## 8 Voting by corporation

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- (a) A corporation who is a Holder may vote through a representative authorised in writing.
- (b) The corporation's representative is regarded as a Holder and has the same rights as a Holder.

## 9 Voting by person of unsound mind

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If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or Note Trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting of Holders as if the committee, Note Trustee or other person were the Holder.

## 10 Objection to voter's qualification

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- (a) An objection may be raised to the qualification of a voter only at the Meeting where the vote objected to is given or tendered.
- (b) An objection must be referred to the chair whose decision is final.
- (c) The chair may consult with any representative of the Issuer and the Note Trustee present at the Meeting.
- (d) A vote allowed at a Meeting is valid for all purposes.

## 11 Proxies

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A Holder is entitled to appoint another person as his proxy to attend and vote at a Meeting. Any person including a Holder may act as a proxy, and that proxy has the same rights as the appointor to vote whether on a show of hands, to speak, and be reckoned in the quorum.

## 12 Proxy instrument

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- (a) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (b) If the appointer of a proxy is a corporation, the instrument of appointment must be:



- (1) under its common seal; or
- (2) under the hand of an officer or attorney who has been authorised by the corporation.

## 13 Voting authority to be deposited with Issuer

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- (a) The instrument appointing a proxy or a facsimile copy of it and the original or certified copy of the power of attorney or authority under which it is signed or a facsimile copy of it must be deposited with the Issuer (or the Note Trustee if it is the party convening the Meeting) at least 48 hours, or any shorter period determined by the Issuer from time to time, before the time appointed for the Meeting at which the proxy proposes to vote. The original of any facsimile instrument provided under this paragraph 13(a) must be deposited with the Issuer before the time appointed for the Meeting.
- (b) If paragraph 13(a) is not complied with, the proxy is invalid.
- (c) An instrument appointing a proxy is only valid for 12 months from its execution date.

## 14 Effect of death or insanity on vote under proxy

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- (a) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (b) Paragraph 14(a) does not apply if the Issuer has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

## 15 Adjournments

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The chair may, by Holder Resolution, adjourn a Meeting

## 16 Declaration by chair of voting

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Unless a poll has been demanded, a declaration by the chair that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.

## 17 Demand for a poll and manner of poll

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- (a) A poll is to be conducted as directed by the chair at the Meeting or any adjournment of the Meeting.
- (b) The demand for a poll may be withdrawn by the person who demanded it.



- (c) The demand for a poll does not discontinue the Meeting except to decide the question for which the poll is demanded.
- (d) The result of the poll is regarded as the resolution of the Meeting.

## 18 Poll on election of chair or question of adjournment

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A poll demanded on the election of a chair or on a question of adjournment must be taken forthwith.

## 19 Effect of resolution

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A resolution passed at a Meeting of Holders held in accordance with this deed is binding upon all the Holders.

## 20 Minutes

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- (a) The chair must ensure that minutes of proceedings at every Meeting of Holders are taken and entered in a minute book provided by the Issuer.
- (b) The signature by the chair of minutes of a Meeting is conclusive evidence of the matters stated in the minutes.
- (c) Unless there is proof to the contrary a minuted Meeting is regarded as properly held and a resolution passed at the Meeting is regarded as properly passed.

## 21 Resolution by postal ballot

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- (a) A resolution of Holders may be passed by the Holders completing, signing and returning copies of a written resolution, which has been sent by the Issuer with the approval of the Note Trustee, within a period specified by the Issuer.
- (b) In respect of such a resolution each Holder is entitled to have one vote for each Note held.

## 22 Powers

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- (a) Without derogating from the powers conferred on the Note Trustee by this deed, a Meeting of Holders may exercise the following powers by Special Resolution:
  - (1) power to authorise the Note Trustee to take or to refrain from taking any action which may be taken by the Note Trustee if such action is required by the Terms of Issue or the Note Trust Deed to be taken only by Special Resolution;
  - (2) power to sanction the release by the Note Trustee of the Issuer or the Guarantor from any obligation under the Terms of Issue or this deed



- either unconditionally or upon such conditions as the Note Trustee may arrange with the Issuer or the Guarantor (as the case may be);
- (3) power to sanction agreement by the Note Trustee to any modification or compromise of any of the rights of all the Holders against the Issuer or the Guarantor, including any amendment of the Terms of Issue or the Note Trust Deed;
  - (4) power to authorise the Note Trustee to agree to the postponement of the repayment of the principal in respect of any part of the Notes beyond their due dates and to the suspension or postponement of the payment of interest on any part of the Notes;
  - (5) power to authorise the Note Trustee to sanction on behalf of all the Holders any scheme for reconstruction of the Issuer or the Guarantor or for the amalgamation of the Issuer or the Guarantor with any other corporation;
  - (6) power to authorise the Note Trustee to accept on behalf of the Holders any other property or securities instead of any part of the Holder's rights and in particular any debt securities of the Issuer or the Guarantor; and
  - (7) power to give any release or waiver in respect of anything done or omitted by the Issuer or the Guarantor or any breach or default by the Issuer or the Guarantor.
- (b) Without derogating from the powers conferred on the Note Trustee by this deed, a Meeting of Holders may, by Holder Resolution, do anything for which a Special Resolution is not required.