

CLAYTON UTZ

Execution Version

Convertible Note Deed Poll

HFA Holdings Limited
Issuer

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Convertible Note Deed Poll dated 3 December 2010

HFA Holdings Limited ACN 101 585 737 of Level 5, 151 Macquarie Street, Sydney NSW (**Issuer**)

In favour of the Convertible Noteholders from time to time.

Background

- A. The Issuer proposes to issue Convertible Notes on the terms and conditions contained in the Convertible Note Conditions.
- B. The Convertible Notes will be issued in uncertificated registered form by inscription in the Register.
- C. If the Issuer issues Convertible Notes it is intended that the Convertible Noteholders will have the benefit of this Deed Poll.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed Poll, unless the contrary intention appears:

- (a) **Convertible Note Conditions** means, generally, the terms and conditions contained in Schedule 1 as amended, varied or replaced from time to time; and
- (b) words and expressions defined, or incorporated by reference into, the Convertible Note Conditions have the same meanings when used in this Deed Poll.

1.2 Interpretation

Condition 1.2 of the Convertible Note Conditions applies to the interpretation of this Deed Poll as if every reference to "these Convertible Note Conditions" is replaced with "this Deed Poll" and every reference to a "Condition" is replaced with a "clause". For the avoidance of doubt, a reference to "this Deed Poll" is a reference to this Deed Poll and any annexure or schedule to it.

2. Nature and status of Notes

2.1 Constitution of Notes

Each Convertible Note is a debt obligation of the Issuer constituted by, and owing under, this Deed Poll.

2.2 Terms of Notes

Each Convertible Note is issued on, and subject to, the provisions of this Deed Poll and the Convertible Note Conditions.

2.3 Form of Convertible Notes

Each Convertible Note will be uncertificated and issued in registered form by entry in the Register.

2.4 Creation of Convertible Notes

Each Convertible Note will be created and issued immediately upon the entry in the Register.

2.5 Undertaking to pay

The Issuer unconditionally and irrevocably undertakes with each holder of a Convertible Note:

- (a) **(Make all payments):** to pay, in respect of that Convertible Note, all payments of principal, interest and other amounts in respect of the Convertible Note in accordance with this Deed Poll and the Convertible Note Conditions; and
- (b) **(Perform other obligations):** otherwise to observe its obligations under, and to comply with, the Convertible Note Conditions.

2.6 Register of Convertible Noteholders

The Issuer will establish and maintain at its principal office an up to date register, and shall maintain at such other place outside Australia as notified by the Issuer to the Convertible Noteholders from time to time an up to date branch register in relation to the Convertible Notes. Notwithstanding any provision of this Deed Poll or the Note Subscription Agreement to the contrary, the initial entries made in the Register established at the Issuer's principal office in relation to the Convertible Notes held by Apollo or any of its Affiliates shall, immediately be transferred to the branch register, and shall only be reflected in the branch register provided that if, at any time, the Issuer reasonably determines in good faith that the registration of the Convertible Notes in the branch register gives rise to a material adverse tax consequence for the Issuer, the Issuer may after giving written notice to the Representative, transfer the registration of such Convertible Notes to the Register established at the Issuer's principal office.

2.7 Assignment

- (a) **(Issuer):** The Issuer may not assign or otherwise deal with its rights under this Deed Poll except as expressly contemplated by, and in accordance with, the Convertible Note Conditions.
- (b) **(Noteholders):** Each Convertible Noteholder may not assign or otherwise deal with any of its rights under this Deed Poll except as expressly contemplated by, and in accordance with, the Convertible Note Conditions.

2.8 No Meetings of Convertible Noteholders

Under this Deed Poll and the Convertible Note Conditions, there will be no meetings of the Convertible Noteholders. Any matters affecting the interests of the Convertible Noteholders including, the variation of this Deed Poll or the Convertible Note Conditions, the giving of notices and the granting of approvals, consents and waivers under this Deed Poll or the Convertible Note Conditions will be dealt with on behalf of the Convertible Noteholders by the Representative of the Convertible Noteholders appointed under the Convertible Note Conditions.

3. Rights and obligations of Convertible Noteholders

3.1 Benefit and entitlement

This Deed Poll is executed as a deed poll. Each Convertible Noteholder has the benefit of, and is entitled to enforce, this Deed Poll even though it is not a party to, or is not in existence at the time of execution and delivery of, this Deed Poll.

3.2 Convertible Noteholders bound

Each Convertible Noteholder, and each person claiming through each Convertible Noteholder, is taken to have notice of, and is bound by, this Deed Poll and the Convertible Note Conditions, and this Deed Poll must be read together with the Convertible Note Conditions.

3.3 Rights independent

Each Convertible Noteholder may enforce its rights under this Deed Poll independently from each other Convertible Noteholder and any other person.

3.4 Provision of copies to Holders

Within 14 days of the Issuer receiving a written request from a Convertible Noteholder to do so, the Issuer must provide to that Convertible Noteholder a certified copy of this Deed Poll if the Convertible Noteholder requires such copy in connection with any legal proceeding, claim or action brought by the Convertible Noteholder in relation to its rights under a Convertible Note.

4. Governing law and jurisdiction

4.1 Governing law

This Deed Poll is governed by, and must be construed in accordance with, the laws applying in the State of New South Wales.

4.2 Jurisdiction

The Issuer and each Convertible Noteholder irrevocably:

- (a) **(Non-exclusive jurisdiction):** submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Deed Poll and the Convertible Notes; and
- (b) **(Waiver of objection):** waives any objection it may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 4.2(a).

Executed as a deed poll.

Signed sealed and delivered by HFA Holdings Limited ABN 47 101 585 737 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Schedule 1 – Convertible Note Conditions

The following are the terms and conditions of each Convertible Note.

1. Definitions and interpretation

1.1 Definitions

In these Convertible Note Conditions:

Accrual Date means, in respect of a Convertible Note, each date that occurs every six months after the Issuer Date on which accrued interest is capitalised (by increasing the Principal Amount of that Convertible Note by the amount of such accrued interest in respect of that Convertible Note).

Additional Interest means, in respect of any Outstanding Convertible Note, any additional interest payable on that Convertible Note in accordance with Condition 4(e).

Additional Interest Payment Date means each date on which Extraordinary Dividends are paid in cash by the Issuer on its Ordinary Shares.

Affiliate means, in relation to any person:

- (a) a wholly-owned Subsidiary of that person or a holding company (as defined for the purposes of the Corporations Act) of that person or any other wholly-owned Subsidiary of that holding company;
- (b) current and former officers, directors, employees and consultants of a person or entity referred to in paragraph (a) and members of the immediate family of any such person, or any estate planning vehicle formed for any such persons and/or members of their family, and transferees pursuant to charitable bequest of any such persons; and
- (c) a person Controlled by or that Controls or is under common Control with such person or a person referred to in paragraphs (a) or (b),

and, without limiting the foregoing:

- (d) in relation to each of the initial Convertible Noteholders, the other of them;
- (e) consultants will be persons who provide services to Apollo under agreement and who are not currently competing with the Issuer; and
- (f) for the avoidance of doubt an Affiliate need not exist or be an Affiliate at the Issue Date,

provided that for the purposes of Conditions 10.1 and 12.8, Affiliates shall not include those persons set out in paragraphs (b) and (e) above but shall, where PAHFA is the relevant Convertible Noteholder, include any investment fund managed by Apollo Global Management, LLC.

ASIC means Australian Securities and Investments Commission.

ASX means Australian Securities Exchange or ASX Limited ACN 008 624 691, as the context requires.

Authorisation means:

- (a) any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing or registration required by any Government Authority or any law; and
- (b) in relation to any act, matter or thing which will be prohibited or restricted either in whole or in part by any law if a Government Authority intervenes or acts in any way within a specified period after lodgement, filing, registration, notification or any other event, the expiry of that period without intervention or action.

Authorised Officer in relation to the Issuer or any Convertible Noteholder, means any Director of the Issuer or that Convertible Noteholder (as applicable) or any person appointed by the Issuer or that Convertible Noteholder to act as an Authorised Officer of the Issuer or that Convertible Noteholder for the purposes of the Convertible Note Deed Poll and these Convertible Note Conditions.

Board means the board of Directors of the Issuer.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

Capital Raising means an issue of equity securities in the capital of the Issuer to Ordinary Shareholders that is a pro rata issue as defined in the ASX Listing Rules (including an issue treated as a pro rata issue under the ASX Listing Rules even though offers are not sent to overseas security holders under ASX Listing Rule 7.7) but for the avoidance of doubt excludes any other issue of securities to holders of Ordinary Shares or an issue pursuant to any employee or executive share, option or performance right scheme, or any substitute, replacement or additional scheme, or any grants of Ordinary Shares or Other Securities to a Subscriber or Affiliate, a conversion of any Convertible Note or the exercise of any Option or an issue in lieu of dividends or by way of dividend reinvestment pursuant to any election by a holder of Ordinary Shares.

Change in Control Conversion Date means an Issuer Change in Control Conversion Date or an Apollo Change of Control Notice Date, as the case may be.

Control has the meaning given to that term in section 50AA of the Corporations Act.

Conversion Date in respect of a Convertible Note means:

- (a) subject to paragraph (b), the Maturity Date; and
- (b) the date on which the Convertible Note must be converted into Ordinary Shares in accordance with Condition 6.

Conversion Notice means a notice given by a Convertible Noteholder to the Issuer pursuant to Condition 6.1(a) or 11.3(b) and in substantially the same form as that contained in Schedule 2.

Conversion Percentage means, in respect of an Additional Interest Payment Date, the amount, expressed as a percentage, equal to (i) the total number of Ordinary Shares that would have been issued if all Outstanding Convertible Notes were converted on such date divided by (ii) the sum of the total number of Ordinary Shares on issue on that date and the total number of Ordinary Shares that would have been issued if all Outstanding Convertible Notes were converted on such date.

Conversion Price means:

- (a) US\$0.9766; or
- (b) if the Share Consolidation is not implemented on or prior to the Issue Date, US\$0.2442,

as adjusted from time to time in accordance with Condition 2.7(e) and Condition 7.

Convertible Note means an obligation of the Issuer to a Convertible Noteholder in respect of indebtedness of the Issuer to that Convertible Noteholder under the Convertible Note Deed Poll and these Convertible Note Conditions which is recorded in or evidenced by an entry in the Register.

Convertible Note Conditions means these terms and conditions.

Convertible Note Deed Poll means the deed entitled "Convertible Note Deed Poll" to which these Convertible Note Conditions are attached as Schedule 1.

Convertible Noteholder in relation to a Convertible Note means the person or persons registered as the holder of that Convertible Note in the Register.

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

Director means a person from time to time appointed to, or acting in the capacity of, the office of director of the Issuer, and includes any alternate director duly appointed and acting as a director.

Event of Default means any event specified in Condition 11.1.

Extraordinary Dividends means, in relation to each Financial Year, the amount of any dividends declared and payable in respect of any Ordinary Shares in that Financial Year that is, in aggregate, in excess of US\$6,000,000 (or its Australian dollar equivalent as determined by the Issuer based on the US\$/A\$ rate published on Bloomberg page "BFLX" at 10.00am on the relevant dividend declaration date).

Extraordinary Dividend Distribution Amount means, in respect of each Additional Interest Payment Date, an amount equal to (i) the Conversion Percentage for that Additional Interest Payment Date multiplied by the amount of Extraordinary Dividends to be paid in cash on that Additional Interest Payment Date divided by (ii) the total number of Convertible Notes that remain Outstanding on such date.

Financial Year means the financial year of the Issuer for the purposes of the Corporations Act.

Government Authority means any government or any governmental, semi-governmental or judicial entity or authority having relevant jurisdiction. It also includes any self-regulatory organisation established under statute or any stock exchange.

Independent Accountant means:

- (a) an independent accountancy firm of international standing and repute (acting as an expert) elected by the Issuer in its sole discretion and notified in writing by or on behalf of the Issuer to the Representative; or
- (b) if within 3 clear Business Days of being notified of the Issuer's election, the Representative notifies the Issuer in writing that it does not agree to the accountancy firm so notified, any independent accountancy firm of international standing and repute elected, at the Issuer's request, by the Chief Executive Officer

of the Australian International Disputes Centre (AIDC) and notified in writing by or on behalf of AIDC to the Issuer and the Representative.

Insolvency Event means any of:

- (a) a **controller** (as defined in section 9 of the Corporations Act), trustee, administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application stayed, withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b) other than under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (e) a person becomes, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be, insolvent or unable to pay its debts; or
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

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

- (a) each date after the Protection Period that occurs every six months after the Issue Date on which the Issuer pays the Convertible Noteholder the interest which has accrued during the Interest Period immediately prior to such date in accordance with Condition 4(d)(ii); and
- (b) if the Convertible Note is redeemed and converted, the Conversion Date.

Interest Period means all of the following periods:

- (a) the first Interest Period commences on (and includes) the Issue Date and ends on (but excludes) the immediately following Accrual Date;
- (b) subject to paragraph (c), each subsequent Interest Period commences on (and includes) an Accrual Date or Interest Payment Date, as the case may be, on which

the previous Interest Period ends and ends on (but excludes) the immediately following Accrual Date or Interest Payment Date (whichever first occurs); and

- (c) the final Interest Period ends on (but excludes) the date on which interest ceases to accrue on the Convertible Notes pursuant to Condition 4(a).

Interest Rate in relation to a Convertible Note means 6% per annum.

Issue means an issue of Convertible Notes in accordance with the terms of the Transaction Documents. **Issued** has a corresponding meaning.

Issue Date has the meaning given to that term in the Note Subscription Agreement.

Issuer Change in Control Event occurs when:

- (a) an offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) Shareholders other than the offeror and/or any associate (as defined in section 12 of the Corporations Act) of the offeror) to acquire the whole or any part of the Ordinary Shares in the Issuer, or
- (b) any person proposes a scheme of arrangement with regard to such acquisition, and (such offer or scheme having become or been declared unconditional in all respects) the right to cast more than 50% of the votes which may ordinarily be cast on a poll at a general meeting of Issuer has or will become unconditionally vested in the offeror and/or such associate(s) as aforesaid, or an event occurs which has a like or similar effect;
- (c) the Issuer consolidates with or merges into or sells or transfers all or substantially all of its assets to any other person, unless the consolidation, merger, sale or transfer will not result in any person or persons, acting together, acquiring Control over the Issuer or the successor entity; or
- (d) at any time after the Issue Date a person (or two or more persons acting in concert) who does not have control of Issuer on the Issue Date acquires Control of the Issuer.

Issuer Conversion Notice means a notice given by the Issuer to the Convertible Noteholders pursuant to Condition 6.2(a) and in substantially the same form as that contained in Schedule 3.

Listing Rules means the Listing Rules of ASX (including the ASX Settlement Operating Rules, the ASX Operating Rules and the ASX Clear Operating Rules and, where applicable, the ASIC Market Integrity Rules), as they apply to the Issuer while the Issuer is admitted to the official list of ASX, each as amended or replaced, except to the extent of any applicable express written waiver granted by ASX.

Maturity Date means the date falling on the eighth anniversary of the Issue Date.

Note Subscription Agreement means the agreement entitled "Note Subscription Agreement" dated on or about 3 December 2010 between each Subscriber named therein, Apollo Global Management, LLC and the Issuer.

Option has the meaning given to that term in the Note Subscription Agreement.

Ordinary Shares means fully paid ordinary shares in the Issuer.

Other Security means an option, security or other financial product, other than an Ordinary Share, issued by the Issuer and convertible or exchangeable into one or more Ordinary Shares.

Outstanding in relation to the Convertible Notes means all issued Convertible Notes other than those redeemed, or deemed to be redeemed, in full in accordance with Conditions 5 and/or 6.4(a).

Principal Amount in relation to a Convertible Note means the face value of that Convertible Note recorded in the Register at that time (including the amount of any increase in the Principal Amount for that Convertible Note by the amount of interest capitalised on such Convertible Note in accordance with Conditions 4(c) and/or (d) reduced by any withholding or deduction in respect of Taxes that the Issuer is obliged to make under applicable law in respect of such capitalised interest) to the extent not repaid or reduced in accordance with these Convertible Note Conditions.

Protection Period means the period from (and including) the Issue Date to (and including) the date falling on the fourth anniversary of the Issue Date.

Record Date in relation to a Conversion Date for a Convertible Note means the date which is 5 Business Days before the Conversion Date.

Register means the register of Convertible Noteholders, including any branch register that forms part of such register, established and maintained by the Issuer under the Convertible Note Deed Poll and these Convertible Note Conditions.

Regulation S means Regulation S under the Securities Act.

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act.

Representative means the Convertible Noteholder for the time being appointed to the role of Representative pursuant to Condition 14.

Securities Act means the U.S. Securities Act of 1933, as amended.

Senior Creditors means Westpac and any lender under any facility that replaces or refinances the Westpac Facility.

Senior Financial Indebtedness means any present or future indebtedness owing under the Westpac Facility and any facility that replaces or refinances the Westpac Facility.

Shareholder means a person whose name is entered in the register of members of the Issuer from time to time as the holder of Ordinary Shares.

Subscriber has the meaning given to that term in the Note Subscription Agreement.

Subordination Accession Deed means an accession deed to a Subordination Deed which is in form and substance satisfactory to each of the parties to the relevant Subordination Deed.

Subordination Deed means:

- (a) the subordination deed between the Issuer, APH HFA Holdings, LP, PA HFA Holdings, LLC, HFA Lighthouse Holding Corp, HFA Holdings Limited and Westpac Banking Corporation dated on or about 3 December 2010 (as amended from time to time); and
- (b) any other subordination deed entered into from time to time between the Issuer, a Convertible Noteholder, HFA Lighthouse Holding Corp and Westpac Banking Corporation (or any other Senior Creditor),

in each case, in substantially the same form as that contained in Schedule 4.

Subsidiary, in relation to any person, has the meaning given in the Corporations Act but as if "body corporate" included any person and for the purposes of which any beneficial interests will be deemed shares. A determination by the auditors of a person as to whether a person is a Subsidiary of another person will be evidence of the same until the contrary is proved.

Tax means any present or future tax, goods and services tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any government agency, other than any imposed on overall net income and Taxes should be construed accordingly.

Tax Event occurs in respect of a Convertible Noteholder and the Convertible Notes that it holds if:

- (a) on a date falling on or after the Issue Date (**Relevant Date**) (i) any change in, or amendment to, any law (or in the application or official interpretation of any law) or the enactment, promulgation, execution or ratification of any law occurs or (ii) a determination by the Australian Tax Office that the Convertible Notes shall be treated other than as contemplated by the parties in clause 16.4 of the Note Subscription Agreement (Equity Classification), that, in each case, results in a material increase in the rate of deduction or withholding in respect of Taxes on a payment (whether in cash or capitalised) which the Issuer is obliged to make with respect to such Convertible Noteholder in respect of any Convertible Notes; and
- (b) the Issuer does not, within 3 clear Business Days of the relevant payment date in respect of such Convertible Notes, notify the Convertible Noteholder in writing that it shall pay such additional amount (**Additional Amount**) that may be necessary to ensure that the Convertible Noteholder receives when due a net amount (after any deduction or withholding in respect of Taxes in relation to each Additional Amount) equal to the full amount it would have received if the rate of deduction or withholding had not been increased on the Relevant Date.

Transaction Documents means:

- (a) the Note Subscription Agreement;
- (b) the Convertible Note Deed Poll; and
- (c) these Convertible Note Conditions.

Transfer and Acceptance means an instrument for the transfer of a Convertible Note in the form specified by the Issuer from time to time, which shall, without limitation, include such representations and certifications that the Issuer may require to confirm compliance with Condition 10.1 (c).

U.S. Person means U.S. person as defined in Regulation S.

VWAP means, on any day, the average of the daily volume weighted average sale prices (rounded to the nearest full cent) of Ordinary Shares sold on ASX during a specified period of days prior to that day but does not include any transaction defined in the ASX Operating Rules as "special" crossings, any crossings during any Session State of the ASX Trading Platform for Cash Market Transactions (each as defined in the ASX Operating Rules) other than an Open Session State (as defined in the ASX Operating Rules), overnight crossings, or any overseas trades or trades pursuant to the exercise of options or warrants over Ordinary Shares or conversion of Convertible Notes.

Westpac means Westpac Banking Corporation (ABN 33 007 457 141).

Westpac Facility means the cash advance facility provided by Westpac to the Issuer under the Westpac Facilities Agreement.

Westpac Facilities Agreement means Cash Advance Facilities Agreement dated 1 November 2007 (as amended and restated on or about 3 December 2010) between the Issuer, Westpac and others, as amended from time to time.

1.2 Interpretation

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
- (b) **person** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a person includes that person's executors, administrators, successors, and permitted assigns, including persons taking by way of novation;
- (d) a reference to these Convertible Note Conditions is a reference to these Convertible Note Conditions as varied, novated, ratified or replaced from time to time;
- (e) a reference to amending a term, condition or a document includes supplementing, deleting or replacing the term, condition or document (as the case may be);
- (f) a reference to **the Register** in relation to a Convertible Note is to the Register on which that Convertible Note is entered;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a condition, clause, schedule, exhibit, attachment or annexure is a reference to a condition, clause, schedule, exhibit, attachment or annexure to or of these Convertible Note Conditions, and a reference to these Convertible Note Conditions includes all schedules, exhibits, attachments and annexures to it;
- (i) the expression **certified** by a corporation or person means certified in writing by 2 Authorised Officers of the corporation or by that person respectively;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) where any day on which a payment is due to be made or a thing is due to be done is not a Business Day, that payment must be made or that thing must be done on the immediately succeeding Business Day;
- (l) a reference to time is to local time in Sydney;
- (m) where time is to be determined by reference to a day or event, that day or the day of that event is to be excluded;
- (n) **includes** in any form is not a word of limitation; and
- (o) a reference to **AS** or **Australian dollar** is to Australian currency and a reference to **US\$** or **US dollar** is to the currency of the United States of America.

1.3 Business Day Convention

When the date on or by which any act, matter or thing is to be done under these Convertible Note Conditions is not a Business Day, the act, matter or thing must (unless expressly provided otherwise) be done on the next Business Day unless that day falls in the following calendar month, in which case, on the immediately preceding Business Day.

1.4 Listing Rules

Any provision of these Convertible Note Conditions to which the Listing Rules apply is subject to the Listing Rules and in the event of any inconsistency the Listing Rules prevail.

2. The Convertible Notes

2.1 Acknowledgment of indebtedness

The Issuer acknowledges its indebtedness in respect of, and promises to pay all amounts due in relation to, each Convertible Note on the terms contained in the Convertible Note Deed Poll and these Convertible Note Conditions.

2.2 Covenant to perform obligations

The Issuer covenants in favour of each Convertible Noteholder from time to time that it will perform its obligations in full, and by the due dates, referred to in the Convertible Note Deed Poll and these Convertible Note Conditions.

2.3 Status and Rights of Convertible Notes

- (a) **(Direct, unsecured obligations):** Each Convertible Note constitutes direct and unsecured obligations of the Issuer and, subject to paragraph (b) below, will rank at all times *pari passu* and rateably without any preference among themselves and at least *pari passu* with all present and future direct, unsubordinated, unconditional and unsecured obligations of the Issuer, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.
- (b) **(Ranking):**
 - (i) All claims of a Convertible Noteholder in respect of its Convertible Notes are subordinated in right of payment to the claims of all Senior Creditors in respect of the Senior Financial Indebtedness in accordance with the provisions of the relevant Subordination Deed to which the relevant Convertible Noteholder is a party (or, if for any reason the Convertible Noteholder has not executed or acceded to a Subordination Deed, are subject to the provisions of the form of subordination deed set out in Schedule 4);
 - (ii) Claims in respect of the Convertible Notes will rank in priority to the rights and claims of holders of subordinated liabilities which by their terms rank or are expressed to rank in right of payment junior to the Convertible Notes and of all classes of equity securities of the Issuer, including holders of preference shares, if any; and
 - (iii) Claims in respect of any Convertible Notes may not be set-off, or be the subject of a counterclaim, by the holder against or in respect of any obligations of the holder to the Issuer or to any other persons and the holder of any Convertible Note shall by virtue of being the holder of any

Convertible Note, be deemed to have waived all such rights of set-off and counterclaim to the fullest extent permitted by applicable law.

- (c) **(Conditions subject to the relevant Subordination Deed):** The rights and obligations of the Issuer and any Convertible Noteholder under the Convertible Note Deed Poll and these Convertible Conditions are subject to the provisions of the relevant Subordination Deed to which the Convertible Noteholder is a party (or, if for any reason the Convertible Noteholder has not executed or acceded to a Subordination Deed, are subject to the provisions of the form of subordination deed set out in Schedule 4).
- (d) **(Issue of Securities):**
 - (i) except as provided in Condition 2.7, the Convertible Notes carry no right to participate in any offering of securities by the Issuer; and
 - (ii) subject to the restrictions contained in clause 5.2(b)(ii) of the Note Subscription Agreement, the Issuer reserves the right at all times to issue securities to any person in any manner.
- (e) **(Voting Rights):** Except as required by the Corporations Act, Convertible Noteholders will not have any right to vote at general meetings of the Issuer.
- (f) **(Rights upon Event of Default):** The sole and exclusive remedy of each Convertible Noteholder against the Issuer following the occurrence of an Event of Default is to require a conversion of its Convertible Notes pursuant to Condition 11.3.

2.4 Non-disclosable sales of the Convertible Notes

- (a) **(Australian law restrictions):** Every offer for issue or sale, or invitation to apply for the issue or sale, of the Convertible Notes to any person where the offer or invitation is received by that person in Australia may not be made, unless:
 - (i) the aggregate consideration payable for such Convertible Notes on acceptance of the offer is at least A\$500,000 or its equivalent in any other currency (calculated in accordance with both section 708(9) of the Corporations Act and regulation 7.1.18 of the *Corporations Regulations 2001* (Cth)) or the offer or invitation does not otherwise require disclosure to that person under Parts 6D.2 or 7.9 of the Corporations Act; and
 - (ii) the offer or invitation is not made to a person who is a "retail client" within the meaning of section 761G of the Corporations Act; and
 - (iii) the offer or invitation complies with all other applicable laws, regulations and directives.
- (b) **(Other jurisdiction restrictions):** Every offer for issue or sale, or invitation to apply for the issue or sale, of the Convertible Notes to any person where the offer or invitation is received in a jurisdiction outside of Australia may not be made, unless the offer or invitation is made in compliance with all applicable laws, regulations and directives of all relevant jurisdictions.

2.5 Convertible Notes not invalid if improperly issued

No Convertible Note is invalid or unenforceable on the ground that it was issued in breach of these Convertible Note Conditions.

2.6 Location of the Convertible Notes

The property in a Convertible Note for all purposes is situated in the location of the Register (including any branch register) in which that Convertible Note is registered.

2.7 Participation Rights

- (a) **(Application):** Any agreement to issue, or any issuance of, securities under this Condition 2.7 will be subject to and conditional on the restrictions contained in clause 5.2(b)(ii) of the Note Subscription Agreement, all necessary regulatory and shareholder approvals and compliance by the Issuer and the Convertible Noteholders with these Convertible Note Conditions, all Listing Rules and other regulatory requirements in relation to the Capital Raising and the granting of the participation rights hereunder.
- (b) **(Security Issue):** Each Convertible Noteholder shall have a right to participate in any Capital Raising in accordance with this Condition 2.7.
- (c) **(Exercise):** A Convertible Noteholder must exercise its right under this Condition 2.7 by written notice (the **Security Notice**) to the Issuer within 5 Business Days of the Issuer providing the Convertible Noteholder with details of the Capital Raising. The Security Notice by the Convertible Noteholder is irrevocable, except that it will lapse if the issue of securities from the Issuer to the Convertible Noteholder is not completed for any reason other than as a result of default by the Issuer.
- (d) **(Security Issue):** Following receipt of a Security Notice, the Issuer will issue, and the relevant Convertible Noteholder will subscribe for, to the maximum extent permitted by applicable law and the Listing Rules, such number of securities the subject of the Capital Raising that would allow the Convertible Noteholder to maintain its pre-issuance ownership of the Issuer (on an as-converted basis) following such issuance, at the same price per security offered to other subscribers to the Capital Raising and at the same time as other subscribers to the Capital Raising (or if the Issuer permits, within 2 Business Days after the issue of securities to other subscribers to the Capital Raising).
- (e) **(Adjustment):** If under applicable law or the Listing Rules, a Convertible Noteholder is unable to subscribe for, or the Issuer is unable to issue, any securities the subject of the Capital Raising in accordance with this Condition 2.7, then, to the maximum extent permitted by applicable law and the Listing Rules, the Conversion Price relating to the Convertible Notes held by that Convertible Noteholder will be adjusted to ensure that the Convertible Noteholder is in an economic position in relation to its Convertible Notes that is as similar as reasonably practicable to the economic position if the Convertible Noteholder were able to fully subscribe for the securities that are the subject of the Capital Raising in accordance with this Condition 2.7 provided that the Convertible Noteholder pays an amount equivalent to the subscription price to the Issuer. Condition 8 applies in respect of an adjustment pursuant to this Condition 2.7(e).

2.8 Limitation on Obligations

Nothing in the Convertible Note Deed Poll or these Convertible Note Conditions shall require a Director or an officer, trustee, responsible entity, custodian of, or investor in the Issuer or a

fund or trust managed by the Issuer to breach any fiduciary duty applicable to the Issuer or any such Director, officer, trustee, responsible entity, custodian or investor, as the case may be. Accordingly, each Convertible Noteholder acknowledges and agrees that:

- (a) **(Restriction):** the Issuer may be prevented from performing or complying with any of its duties or obligations under the Convertible Note Deed Poll, these Convertible Note Conditions as a result of such restriction; and
- (b) **(No obligation to comply):** the Issuer shall not be required to perform or comply with any such duties or obligations so long as any such restriction applies.

3. Terms of Convertible Notes

3.1 Convertible Note Terms

Each Convertible Note:

- (a) **(Face value):** will have a face value of US\$1,000,000; and
- (b) **(Fully paid):** must be fully paid for on application.

3.2 No Prepayment

The Issuer may not, without the prior written consent of Convertible Noteholders holding 51% or more of the aggregate Principal Amount Outstanding of Convertible Notes, prepay any Convertible Note, in full or in part, prior to the Maturity Date.

4. Interest on the Convertible Notes

- (a) **(Notes Accrue Interest):** Each Convertible Note accrues interest from (and including) the Issue Date and ceases to accrue interest from (but excluding) the Conversion Date for that Convertible Note. Any interest that accrues on the Convertible Notes during the Interest Period in accordance with this Condition 4 shall only become due and payable on the due date of payment for that interest (which, for the avoidance of further doubt, shall not include an Accrual Date).
- (b) **(Calculation of Interest):** Interest on each Convertible Note for an Interest Period is calculated by applying the Interest Rate to the Principal Amount of the Convertible Note on the first day of the Interest Period (after taking into account any reductions in the Principal Amount on that day), by then multiplying such product by the actual number of days in the Interest Period divided by 365 and rounding the resultant figure to the nearest cent (half a cent being rounded upward).
- (c) **(Payment of Interest during the Protection Period):** On each Accrual Date occurring during the Protection Period, interest accrued on each Convertible Note during the related Interest Period (other than any Additional Interest in respect of that Convertible Note) will be capitalised (by increasing the Principal Amount of that Convertible Note by the amount of such accrued interest in respect of that Convertible Note reduced by any withholding or deduction in respect of Taxes that the Issuer is obliged to make under applicable law in respect of such capitalised interest) and such capitalised Principal Amount will in turn bear interest under Condition 4(a) from and including that Accrual Date; provided that if any amount is required to be withheld or deducted in respect of capitalised interest in relation to any Convertible Note (i) the Issuer shall notify the Convertible Noteholder in accordance with Condition 12.6(a) of the amount of such withholding or deduction (**Withholding Amount**) and (ii) upon receipt of such notice the Convertible

Noteholder may elect to pay the Issuer the Withholding Amount by giving notice to the Issuer of its intention to do so and transferring to the Issuer in cleared funds an amount equal to the Withholding Amount by no later than 3 clear Business Days prior to the date on which such withholding or deduction is required to be made by the Issuer. Upon having received the funds referred to in the previous sentence from the Convertible Noteholder, the Issuer shall, after satisfying its obligation to make a payment of withholding or deduction in respect of a Convertible Note, increase the Principal Amount of that Convertible Note by an amount equal to the amounts received from the Convertible Noteholder in respect of such Convertible Note.

- (d) **(Payment of Interest after the Protection Period):** After the Protection Period, interest accrued on each Convertible Note during each Interest Period (other than any Additional Interest in respect of that Convertible Note) may, at the sole discretion of the Issuer, either be (i) capitalised (by increasing the Principal Amount of that Convertible Note by the amount of such accrued interest in respect of that Convertible Note reduced by any withholding or deduction in respect of Taxes that the Issuer is obliged to make under applicable law in respect of such capitalised interest) on the Accrual Date falling immediately after such Interest Period or (ii) paid to the relevant Convertible Noteholder in accordance with Condition 12 on the Interest Payment Date falling immediately after such Interest Period provided however that if the Issuer elects to pay interest on a Convertible Note pursuant to this Condition 4(d), it must notify the relevant Convertible Noteholder before the relevant Interest Payment Date; provided further that if any amount is required to be withheld or deducted in respect of capitalised interest in relation to any Convertible Note (i) the Issuer shall notify the Convertible Noteholder in accordance with Condition 12.6(a) of the amount of such withholding or deduction (**Withholding Amount**) and (ii) upon receipt of such notice the Convertible Noteholder may elect to pay the Issuer the Withholding Amount by giving notice to the Issuer of its intention to do so and transferring to the Issuer in cleared funds an amount equal to the Withholding Amount by no later than 3 clear Business Days prior to the date on which such withholding or deduction is required to be made by the Issuer. Upon having received the funds referred to in the previous sentence from the Convertible Noteholder, the Issuer shall, after satisfying its obligation to make a payment of withholding or deduction in respect of a Convertible Note, increase the Principal Amount of that Convertible Note by an amount equal to the amounts received from the Convertible Noteholder in respect of such Convertible Note.
- (e) **(Additional Interest):** On each Additional Interest Payment Date, the Issuer shall, in accordance with Condition 12, pay additional interest on each Convertible Note that remains Outstanding on such date in an amount equal to the Extraordinary Dividend Distribution Amount for that Additional Interest Payment Date.

5. Redemption of Convertible Notes on Maturity

On the Maturity Date, the Issuer must redeem in full, by conversion in accordance with Condition 6.4, all of the Convertible Notes which:

- (a) **(Remain Outstanding):** have not previously been redeemed, or deemed to be redeemed, in full under Condition 6.1, 6.2 or 6.3; or
- (b) **(Not called or converted):** which are not the subject of a valid Conversion Notice or Issuer Conversion Notice.

6. Conversion of Convertible Notes

6.1 Noteholder Conversion rights

- (a) **(Conversion):** A Convertible Noteholder may, at any time, require the conversion of all or some of its Outstanding Convertible Notes by giving to the Issuer, in respect of such Convertible Notes, a duly completed Conversion Notice setting out, amongst other things, the applicable Conversion Date.
- (b) **(Notice to Issuer):** Each Conversion Notice must be received by the Issuer:
 - (i) subject to paragraph (ii) below, at least 5 Business Days prior to the Conversion Date; or
 - (ii) in respect of a Conversion Notice issued following an Event of Default, at least 1 Business Day prior to the Conversion Date.
- (c) **(Notice is irrevocable):** A Conversion Notice, once received or deemed to be received by the Issuer, is irrevocable.

6.2 Issuer Conversion rights

- (a) **(Conversion):** To the extent not earlier converted by the Convertible Noteholders, the Issuer may, by giving an Issuer Conversion Notice to the Convertible Noteholders, convert all or some only of the Outstanding Convertible Notes on the Business Day immediately following the end of the Protection Period and on each date that occurs every 6 months thereafter, provided that the VWAP for the 30 trading day period prior to the Business Day immediately preceding such date is in excess of 20% greater than the Conversion Price based on the average A\$/US\$ foreign exchange rate over that 30 day trading period as determined by an independent investment bank of international repute (acting as an expert), selected by the Issuer.
- (b) **(Notice to Convertible Noteholders):** Each Issuer Conversion Notice must be issued by the Issuer at least 1 Business Day prior to the Conversion Date.
- (c) **(Notice is irrevocable):** An Issuer Conversion Notice, once issued by the Issuer, is irrevocable.
- (d) **(Pro Rata Basis):** If the Issuer proposes to convert only some of the Convertible Notes under this Condition 6.2, any such conversion shall be made on a *pro rata* basis (based on the total number of Convertible Notes held by each Convertible Noteholder on the related Conversion Date).

6.3 Conversion following an Issuer Change in Control Event or an Apollo Change in Control Event

- (a) **(Issuer Change in Control Event):** If an Issuer Change in Control Event occurs, the Issuer must, in accordance with Condition 6.4, convert all (but not some only) of the Outstanding Convertible Notes on a date nominated by the Issuer (the **Issuer Change in Control Conversion Date**) and that would, to the extent practicable, enable the Convertible Noteholders to participate in the related offer or scheme of arrangement, as the case by be, for purchase of Ordinary Shares by the relevant acquirer.

- (b) **(Apollo Change in Control Event):** If an Apollo Change in Control Event occurs, the Issuer may (in its absolute discretion), in accordance with Condition 6.4, convert all (but not some only) of the Outstanding Convertible Notes on a date nominated by the Issuer (the **Apollo Change in Control Conversion Date**).

6.4 Entitlement to Ordinary Shares on conversion

On the Conversion Date of any Convertible Notes held by a Convertible Noteholder:

- (a) **(Redemption):** each such Convertible Note that remains Outstanding on the Maturity Date or the Change in Control Conversion Date or which is the subject of a Conversion Notice or an Issuer Conversion Notice (and, where the relevant Issuer Conversion Notice has been issued solely as a result of a Tax Event, that Tax Event is subsisting on the relevant Conversion Date) will be redeemed, or deemed to be redeemed, in full by the Issuer for an amount equal to its Principal Amount and any other amount owing under that Convertible Note in accordance with these Convertible Note Conditions. The Issuer shall apply the whole of such amount in respect to the redemption of such Convertible Note in accordance with the direction in Condition 6.4(b)(ii);
- (b) **(Convertible Noteholder consent):** the relevant Convertible Noteholder irrevocably and unconditionally:
- (i) consents to be a member of the Issuer and agrees to be bound by the constitution of the Issuer; and
 - (ii) directs the Issuer to apply the whole of the Principal Amount and any other amount owing under that Convertible Note in accordance with these Convertible Note Conditions payable to that Convertible Noteholder on redemption in subscribing on behalf of the Convertible Noteholder for the number of Ordinary Shares calculated in accordance with Condition 6.5;
- (c) **(Issue of Ordinary Shares):** the Issuer will:
- (i) issue to that Convertible Noteholder the number of Ordinary Shares calculated in accordance with Condition 6.5, and, except following the occurrence of an Issuer Change of Control Event where all of the Ordinary Shares of the Issuer are no longer quoted on ASX, all of which are quoted on ASX and which are, on the Conversion Date, freely tradeable in the ordinary course on ASX (and must apply to ASX for quotation of those Ordinary Shares); and
 - (ii) deliver to that Convertible Noteholder a certificate from the Issuer stating that:
 - A. there has been issued to the Convertible Noteholder (or to such person as the Convertible Noteholder may direct) the number of Ordinary Shares calculated in accordance with Condition 6.5;
 - B. except following the occurrence of an Issuer Change in Control Event where all of the Ordinary Shares of the Issuer are no longer quoted on ASX, those Ordinary Shares are all quoted on ASX; and

- C. and any such issue or delivery will have effect on and from, and be deemed to have been made on, the Conversion Date;

6.5 Conversion number

Subject to Condition 7, the number of Ordinary Shares to which a Convertible Noteholder is entitled upon conversion of any of its Convertible Notes is equal to the Principal Amount of those Convertible Notes divided by the Conversion Price, rounded to the nearest whole number (or, in the case of a fraction of an Ordinary Share that is exactly one half, down), provided that in relation to a conversion in respect of an Issuer Change in Control Event pursuant to Condition 6.3 or following the delivery of a Conversion Notice pursuant to Condition 6.1(a) whilst a Tax Event is outstanding, the Principal Amount for each such Convertible Note shall be increased by the aggregate amount, if any, of interest that would have accrued and been capitalised on that Convertible Note from (and including) the Conversion Date to (but excluding) the last day of the Protection Period in accordance with Condition 4(c) but for conversion pursuant to Condition 6.1(a) or Condition 6.3, as the case may be.

6.6 Ordinary Shares issued on conversion

- (a) **(Date of issue):** The Ordinary Shares to which a Convertible Noteholder is entitled on conversion of any of its Convertible Notes must be issued on the relevant Conversion Date and that issue will have effect on and from, and be deemed to have been made on, that Conversion Date.
- (b) **(Ranking of issued Ordinary Shares):** Each Ordinary Share issued on conversion of any Convertible Notes ranks equally in all respects and forms one class with the Ordinary Shares on issue at the relevant Conversion Date, provided that where the Conversion Date occurs after the record date for a dividend declared by the Board to be payable to holders of Ordinary Shares, that Ordinary Share will not participate in the relevant dividend.
- (c) **(Procurement of Quotation):** The Issuer must use all reasonable endeavours to, and must furnish all such documents, information and undertakings as may be reasonably necessary in order to, procure official quotation of the Ordinary Shares issued on conversion of any Convertible Notes on the financial market conducted by ASX on the Conversion Date, and to procure that such quotation is maintained.
- (d) **(U.S. Transfer Restrictions):** The offer and sale of the Ordinary Shares issuable upon conversion of the Convertible Notes have not been, and will not be, registered under the Securities Act, and such Ordinary Shares can only be offered, sold, pledged, transferred or otherwise disposed of if such Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii)(A) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on

Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. Offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Ordinary Shares has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer. Notwithstanding anything to the contrary in the foregoing, the Ordinary Shares may not be deposited into any unrestricted American Depositary Receipt facility. Each transferor of the Ordinary Shares shall provide notice of the transfer restrictions set out herein to the transferee.

6.7 Cancellation of Convertible Notes

All Convertible Notes redeemed or deemed to be redeemed by the Issuer pursuant to Condition 5 or this Condition 6 will, upon such redemption, be automatically cancelled and may not be reissued.

7. Conversion Adjustments

7.1 Adjustments for bonus, rights and other issues

- (a) **(Bonus issue):** Subject to Conditions 2.7(e), 7.1(b) and (c), if the Issuer makes a pro rata bonus issue or a rights issue of Ordinary Shares to holders of Ordinary Shares generally or otherwise issues Ordinary Shares or Other Securities, the Conversion Price will be adjusted immediately in accordance with the following formula:

$$CP = CP_0 \times \left[\frac{P \times RD + A \times RN}{P \times (RD + RN)} \right]$$

where:

CP: means the Conversion Price applying immediately after the application of this formula (rounded to the nearest four decimal places);

CP₀: means the Conversion Price applying immediately before the application of this formula;

P: means in the case of a bonus or rights issue, the VWAP calculated in respect of the period from (and including) the first Business Day after the announcement of the bonus or rights issue to ASX to (and including) the last Business Day of trading cum rights or bonus issue and otherwise the VWAP calculated in respect of the period of 15 Business Days immediately prior to the announcement of the issue to ASX;

A: means:

- A. in the case of an issue of Ordinary Shares, the cash subscription price per new Ordinary Share (including the amount payable on subscription and the amount of any uncalled amount in respect of the Ordinary Shares);

B. in the case of an issue of Other Securities, the effective cash subscription price per new Ordinary Share issuable on exercise or conversion of the Other Securities (taking into account the amount payable on subscription and the amount of any uncalled amount in respect of the Other Security) plus the cash amount per Ordinary Share payable to the Issuer on exercise or conversion of the Other Security (ignoring the terms of any adjustments in the terms of issue of the Other Security);

C. in the case of a bonus issue, zero;

RN: means:

A. in the case of an issue of Ordinary Shares, the number of Ordinary Shares issued pursuant to the issue of Ordinary Shares; and

B. in the case of an issue of Other Securities, the number of Ordinary Shares issuable on exercise or conversion of the Other Securities (ignoring the terms of any adjustments in the terms of issue of the Other Security);

RD: means the number of Ordinary Shares on issue immediately prior to the issue of new Ordinary Shares pursuant to the issue.

(b) **(No adjustment):** No adjustment to a Conversion Price will occur if, in the formula in Condition 7.1(a), A exceeds P.

(c) **(No application):** Condition 7.1(a) does not apply to:

- (i) Ordinary Shares issued as part of a bonus share plan in lieu of dividends, share top up plan or dividend reinvestment plan;
- (ii) grants of Ordinary Shares or Other Securities pursuant to employee or executive plans of the Issuer, or any substitute, replacement or additional plan, or any grants of Ordinary Shares or Other Securities to a Subscriber or Affiliate, or those issued on exercise or conversion of the Other Securities under any such plans;
- (iii) issues of Ordinary Shares or Other Securities pursuant to a Capital Raising in respect of which Convertible Noteholders have a right to participate under Condition 2.7 or in respect of which an adjustment is made under Condition 2.7(e);
- (iv) issues of Ordinary Shares pursuant to a conversion of any Convertible Note or the exercise of any Option;
- (v) issues of Ordinary Shares pursuant to the exercise or conversion of Other Securities on issue at the date of the Convertible Note Deed Poll; or
- (vi) issues of Ordinary Shares pursuant to the exercise or conversion of Other Securities to which this Condition 7.1(c) applied or in respect of which an adjustment was made under this Condition 7.1.

7.2 Adjustments for off-market buy-backs

- (a) **(Buy-Back):** Subject to Condition 7.2(b), if the Issuer undertakes a buy-back of Ordinary Shares that is not an on-market buy-back, the Conversion Price will be adjusted immediately in accordance with the following formula:

$$CP = CP_0 \times \left[\frac{P \times BD - A \times BN}{P \times (BD - BN)} \right]$$

where:

- CP: means the Conversion Price applying immediately after the application of this formula (rounded to the nearest four decimal places);
- CP₀: means the Conversion Price applying immediately before the application of this formula;
- P: means the VWAP calculated in respect of the period of 15 Business Days immediately prior to the announcement of the buy-back to ASX;
- A: means the buy-back price per Ordinary Share;
- BN: means the number of Ordinary Shares bought back pursuant to the buy-back; and
- BD: means the number of Ordinary Shares on issue immediately prior to the buy-back.
- (b) **(No adjustment):** No adjustment to a Conversion Price will occur if, in the formula in Condition 7.2(a), P exceeds A.

7.3 Adjustments for return of capital

If the Issuer makes a return of capital to holders of Ordinary Shares (other than by way of a buy-back of Ordinary Shares), the Conversion Price will be adjusted immediately in accordance with the following formula:

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

where:

- CP: means the Conversion Price applying immediately after the application of this formula (rounded to the nearest four decimal places);
- CP₀: means the Conversion Price applying immediately before the application of this formula;
- P: means the VWAP calculated in respect of the period from (and including) the first Business Day after the announcement of the return of capital to ASX to (and including) the last Business Day of trading cum the return of capital; and
- C: means, in the case of a return of capital, the amount of the cash and/or the value (as reasonably determined by the Board) of any other property distributed to holders of Ordinary Shares per Ordinary Share (or such lesser amount as ensures that the difference between P and C is greater than zero).

7.4 Adjustments for capital reconstructions

If at any time there is a reconstruction of the Ordinary Shares (including but not limited to any consolidation, subdivision, reduction, reclassification, return or on-market buy-back) which is not dealt with under Conditions 7.1 to 7.3 (inclusive), then:

- (a) **(Adjustment):** the Conversion Price shall be adjusted by the Issuer accordingly; or
- (b) **(Reconstruction):** the Convertible Notes will be reconstructed on the same basis and the Principal Amount (for the purpose of calculating interest on the Convertible Notes) shall be adjusted by the Issuer accordingly,

to ensure that the Convertible Noteholders are in an economic position in relation to their Convertible Notes that is as similar as reasonably practicable to the economic position prior to the occurrence of the event that gave rise to the need for the adjustment. Any adjustment made in accordance with this Condition 7.4 will constitute an alteration to these Convertible Note Conditions and will be binding on all Convertible Noteholders. Condition 8 applies in respect of an adjustment pursuant to this Condition 7.4.

7.5 Fractions

Where the number of Ordinary Shares to which a Convertible Noteholder is entitled under these Convertible Note Conditions is a number which includes a fraction of an Ordinary Share, that fraction must be rounded to the nearest whole number (or, in the case of a fraction that is exactly one half, down) and the Convertible Noteholder has no further claim or right to that fraction of an Ordinary Share

7.6 Listing Rules not to be contravened

Notwithstanding any provision of Conditions 7.1 to 7.5 (inclusive):

- (a) **(No contravention):** no adjustment under those Conditions may contravene any Listing Rule; and
- (b) **(Similar economic position):** if an adjustment under those Conditions would contravene paragraph (a), the Convertible Notes are to be adjusted so far as possible without contravention of the Listing Rules to ensure that the Convertible Noteholders are in an economic position in relation to their Convertible Notes that is as similar as reasonably practicable to the economic position prior to the occurrence of the event that gave rise to the need for the adjustment, except to the extent required by the Listing Rules. Any adjustment made in accordance with this Condition 7.6 will constitute an alteration to these Convertible Note Conditions and will be binding on all Convertible Noteholders. Condition 8 applies in respect of an adjustment pursuant to this Condition 7.6.

8. Adjustment notification and dispute resolution

8.1 Application

This Condition 8 applies if any adjustment is required pursuant to Condition 2.7(e), Condition 7.5 or Condition 7.7.

8.2 Notification

Within 2 Business Days of:

- (a) **(Capital Raising)**: in the case of an adjustment pursuant to Condition 2.7(e), the issue of equity securities under the Capital Raising;
- (b) **(Reconstruction)**: in the case of an adjustment pursuant to Condition 7.4, the reconstruction occurring; or
- (c) **(Listing Rules)**: in the case of an adjustment pursuant to Condition 7.6, the event that would give rise to an adjustment that offends the Listing Rules occurring,

the Issuer shall give notice to the Convertible Noteholders setting out its calculation of the relevant adjustments (**Adjustment Notice**).

8.3 Dispute

Within 10 Business Days of an Adjustment Notice, the Representative must give notice to the Issuer:

- (a) **(Agreement)**: that it agrees that the adjustments proposed in the Adjustment Notice are those required by Condition 2.7(e), Condition 7.4 or Condition 7.6 (as the case may be); or
- (b) **(Dispute Notice)**: that it does not agree that the adjustments proposed in the Adjustment Notice are those required by Condition 2.7(e), Condition 7.4 or Condition 7.6 (as the case may be), and setting out its calculation of the adjustment required by the relevant Condition (**Dispute Notice**).

8.4 Adjustment binding in absence of Dispute Notice

Unless the Representative gives a Dispute Notice, the adjustments set out in the Adjustment Notice shall be final and binding on the Issuer and each Convertible Noteholder, with effect from the date the adjustment is required pursuant to Condition 2.7(e), Condition 7.4 or Condition 7.6.

8.5 Dispute Notice procedure

- (a) **(Binding)**: If at any time after the Representative gives a Dispute Notice the Issuer and the Representative agree the appropriate adjustments in writing those adjustments shall be final and binding on the Issuer and each Convertible Noteholder, with effect from the date the adjustment is required pursuant to Condition 2.7(e), Condition 7.4 or Condition 7.6.
- (b) **(Independent Accountant)**: If the Representative gives a Dispute Notice and the Representative and the Issuer have not agreed in writing the appropriate adjustments within 10 Business Days of that Dispute Notice the Issuer must submit the Adjustment Notice and the Dispute Notice to the Independent Accountant within 2 Business Days (and if it does not then the Representative may).
- (c) **(Procedure)**: The Issuer must:
 - (i) instruct the Independent Accountant to determine the adjustments required by Condition 2.7(e), Condition 7.4 or Condition 7.6 (as the case may be);
 - (ii) supply the Independent Accountant with any information, assistance and cooperation reasonably requested by it;

- (iii) procure that the Independent Accountant gives each of the Issuer and the Representative opportunities to make written submissions, and provides copies of the submissions of and all correspondence to or from each to the other; and
 - (iv) use reasonable endeavours to ensure that the Independent Accountant determines the adjustments required by Condition 2.7(e), Condition 7.4 or Condition 7.6 (as the case may be) within 10 Business Days of being engaged.
- (d) **(Expert):** The Independent Accountant will act as an expert, not an arbitrator.
- (e) **(Binding determination):** In the absence of manifest error, the Independent Accountant's determination of the adjustments required by Condition 2.7(e), Condition 7.4 or Condition 7.6 shall be final and binding on the Issuer and each Convertible Noteholder, with effect from the date the adjustment is required pursuant to Condition 2.7(e), Condition 7.4 or Condition 7.6.
- (f) **(Costs of Independent Accountant):** If the Issuer submits the Adjustment Notice and the Dispute Notice to the Independent Accountant and the Independent Accountant determines that:
- (i) no adjustment to the terms of the Convertible Notes is required, the costs of the Independent Accountant shall be at the cost of the Representative; or
 - (ii) an adjustment to the terms of the Convertible Notes is required, the appointment of the Independent Accountant shall be at the cost of the Issuer.

9. The Register

9.1 Establishment of Register

The Issuer will establish and maintain the Register at its principal office in Sydney, New South Wales (and shall establish and maintain a branch register at such other place outside Australia as notified by the Issuer to the Convertible Noteholders from time to time).

9.2 Details on the Register

The Issuer must promptly enter in the Register:

- (a) **(Name and address of Convertible Noteholder):** the name and address of:
 - (i) each initial Convertible Noteholder and of such Convertible Noteholder's nominee as notified to the Issuer by such Convertible Noteholder; and
 - (ii) of each transferee to whom the Convertible Noteholder are subsequently transferred in accordance with these Convertible Note Conditions as stated in the relevant Transfer and Acceptance;
- (b) **(Account details):** the account to which payments to each Convertible Noteholder are to be credited as notified to the Issuer by such Convertible Noteholder;
- (c) **(Number of Convertible Notes and Conversion Price):** the number of Convertible Notes held by each Convertible Noteholder and the Conversion Price in

respect of each such Convertible Notes on the Issue Date and following any adjustment to that Conversion Price in accordance with Conditions 2.7(e), 7 or 8;

- (d) **(Date entered on Register):** the date on which each Convertible Noteholder was first registered in the Register as a Convertible Noteholder in respect of the Convertible Notes held by it;
- (e) **(Date ceases to be a Convertible Noteholder):** the date on which any person ceases to be a Convertible Noteholder;
- (f) **(Facsimile number):** the facsimile number of each Convertible Noteholder; and
- (g) **(Other particulars):** such other particulars that the Issuer considers to be desirable.

The Issuer must not alter the number of Convertible Notes registered in the name of a Convertible Noteholder except to reflect a transfer of Convertible Notes by that Convertible Noteholder.

9.3 Title

Title to Convertible Notes passes when details of the transfer are entered in the Register.

9.4 Effect of entries in Register

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

- (a) **(Undertaking by Issuer):** an unconditional and irrevocable undertaking by the Issuer to the Convertible Noteholder to pay principal, (if applicable) interest and any other amount in accordance with these Convertible Note Conditions; and
- (b) **(Other benefits):** an entitlement to the other benefits given to Convertible Noteholders under these Convertible Note Conditions in respect of the Convertible Notes.

9.5 Register conclusive as to ownership

Entries in the Register in relation to a Convertible Note constitute conclusive evidence that the person so entered is absolute owner of the Convertible Note subject to correction for fraud or error. Convertible Notes shall not be lodged or held in any clearing system and title to the Convertible Notes will only pass upon registration of transfers in the Register in accordance with the procedure set out in Condition 10.

9.6 Non-recognition of interests

Except as required by law, the Issuer must treat the person whose name is entered in the Register as the holder of a Convertible Note as the absolute owner of that Convertible Note. This Condition 9.6 applies whether or not a Convertible Note is overdue and despite of any notice of ownership, trust or interest in the Convertible Note.

9.7 Joint holders

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

9.8 Notification of change by Convertible Noteholders

Any change of name or address on the part of any Convertible Noteholder must promptly be notified by that Convertible Noteholder to the address of the Issuer who must alter the Register within 5 Business Days of receipt of that notice.

9.9 Inspection of the Register

Upon written request, each Convertible Noteholder is entitled to inspect, but not copy, the Register in respect of a Convertible Note at such time as the Issuer's principal office is accessible to the public. A Convertible Noteholder is entitled to inspect the Register only in respect of information relating to that Convertible Noteholder.

9.10 Closure of the Register

The Issuer may from time to time subject to at least 5 Business Days prior notice to the Convertible Noteholders close the Register but no part of the Register may be closed for more than 5 consecutive Business Days or 20 Business Days in aggregate in any calendar year.

9.11 Non-recognition of Equitable Interests

Except as otherwise provided in the Transaction Documents, and except as required by statute or as ordered by a court of competent jurisdiction, no notice of any trust, whether express, implied or constructive, is to be entered in the Register and except as required by statute or as ordered by a court of competent jurisdiction, the Issuer is not to be affected by or compelled to recognise (even when having notice of it) any right or interest in any Convertible Notes other than the registered Convertible Noteholder's absolute right to the entirety of them and the receipt of a registered Convertible Noteholder is a good discharge to the Issuer.

9.12 Rectification of Register

Following a request in writing from a Convertible Noteholder, the Issuer must promptly rectify the Register to the extent that:

- (a) **(Entry omitted):** an entry is omitted from the Register;
- (b) **(Entry made otherwise than in accordance with these Convertible Note Conditions):** an entry is made in the Register otherwise than in accordance with these Convertible Note Conditions;
- (c) **(Wrong entry exists):** an entry wrongly exists in the Register;
- (d) **(Error or defect exists in Register):** there is an error or defect in any entry in the Register; or
- (e) **(Default made):** default is made or unnecessary delay takes place in entering in the Register that any person ceased to be the holder of Convertible Notes.

9.13 Non-resident Convertible Noteholders

Where Convertible Notes are held by or on behalf of a person resident outside Australia, then, despite anything to the contrary contained in or implied by these Convertible Note Conditions, it is a condition precedent to any right of the Convertible Noteholder:

- (a) **(Principal Amount):** to receive payment of the Principal Amount represented by those Convertible Notes; or

- (b) **(Interest):** to receive payment of any interest on those Convertible Notes, that all necessary authorisations (if any) and any other statutory requirements which may then be in existence are obtained and satisfied at the cost of the Convertible Noteholder.

10. Transfer of Convertible Notes

10.1 Restrictions on Transfer of Convertible Notes

- (a) **(Restriction on Transfers during Protection Period):** No Convertible Notes may be transferred by a Convertible Noteholder during the Protection Period except for:
- (i) transfers to an Affiliate of that Convertible Noteholder;
 - (ii) if such transfer is required by law or pursuant to a direction from a Governmental Authority; or
 - (iii) any transfer that the Issuer has consented to in writing.
- (b) **(Transfers after the Protection Period):** Convertible Notes are transferable after the Protection Period:
- (i) without the prior written consent of the Issuer, provided that the Convertible Notes are transferred by the relevant Convertible Noteholder to an unrelated party and would not entitle the transferee in aggregate with its associates to hold, directly or indirectly (after taking into account the right to convert those Convertible Notes into Ordinary Shares and any Ordinary Shares or other securities in which the transferee and its associates have relevant economic or derivative interests) or have relevant economic or derivative interests in, 20% or more of the total Ordinary Shares then on issue;
 - (ii) in all other circumstances subject to the prior written consent of the Issuer (such consent may be given or withheld at the absolute discretion of the Issuer).
- (c) **(U.S. Transfer Restrictions):** The offer and sale of the Convertible Notes have not been, and will not be, registered under the Securities Act, and the Convertible Notes can only be offered, sold, pledged, transferred or otherwise disposed of if such Convertible Notes are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii) to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Convertible Notes in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. The Transfer and Acceptance shall include such representations and certifications as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions. In addition,

offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Convertible Notes has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer. Each transferor of the Convertible Notes shall provide notice of the transfer restrictions set out herein to the transferee.

10.2 Transfer of Convertible Notes

Subject to these Convertible Note Conditions, any proposed transfer of Convertible Notes must be effected by a Transfer and Acceptance. The Issuer will promptly on the request of a Convertible Noteholder make available to that Convertible Noteholder a Transfer and Acceptance form. On or prior to the date of the proposed transfer of a Convertible Note under these Convertible Note Conditions, the transferee shall:

- (a) **(Subordination Accession Deed):** accede to an existing Subordination Deed as a "Subordinated Creditor" pursuant to a Subordination Accession Deed; or
- (b) **(Subordination Deed):** execute another Subordination Deed with the relevant parties.

The Transfer and Acceptance must be completed and stamped (if applicable), executed by the transferor and the transferee and lodged for registration with the Issuer along with a duly executed Subordination Accession Deed or Subordination Deed (as applicable).

10.3 Registration of transfer

- (a) **(Normal course):** Subject to these Convertible Note Conditions, on receipt of a Transfer and Acceptance the Issuer will register the transferee in the Register as the holder of the Convertible Notes referred to in it.
- (b) **(Non-Business Day):** If the Issuer receives a Transfer and Acceptance for registration on a day which is not a Business Day or on which the Register is closed, it must register the Transfer and Acceptance on the first Business Day thereafter on which the Register is open.
- (c) **(No Effect until registered):** A Transfer and Acceptance does not take effect until registered and, until the transferee is inscribed in the Register as the holder of the relevant Convertible Notes, the transferor remains the holder of those Convertible Notes.

10.4 Refusal to register Transfer and Acceptance

- (a) **(Issuer may refuse to register):** The Issuer may refuse to register any Transfer and Acceptance which would result in:
 - (i) a breach of these Convertible Note Conditions or any applicable law; or
 - (ii) the Issuer being required to take any action on or following registration to avoid any such breach.
- (b) **(Issuer must refuse to register):** The Issuer shall refuse to register any Transfer and Acceptance if it is not accompanied by a duly executed Subordination Deed or Subordination Accession Deed (as applicable).

10.5 Notice of refusal to Register

If the Issuer refuses to register a Transfer and Acceptance, it must as soon as practicable (and in any event not later than 7 days after the date the Transfer and Acceptance was lodged with it) send to the transferor and the transferee notice of its refusal to register the Transfer and Acceptance.

10.6 Payments to transferee

A transferee will be treated as the Convertible Noteholder from the date of the entry of the name of the transferee in the Register and, in particular but without limitation, the transferee will be entitled to receive any payments then due or to become due to the Convertible Noteholder (including payments of principal) and the Issuer will fully discharge its obligations under the Convertible Note Deed Poll and these Convertible Note Conditions by making those payments to the transferee even if the payments may have wholly or partly accrued before the date on which the transferee is entered on the Register.

10.7 Warranty on transfer

On the transfer of a Convertible Note under these Convertible Note Conditions, the transferor and transferee are deemed to have warranted to the Issuer that neither as a result of the transfer, or the surrounding circumstances, will the Convertible Notes or the Convertible Note Deed Poll require registration with, or the approval of, any Government Authority nor is there any requirement in connection with the transfer for shareholder approval of the Issuer, the preparation of a disclosure document or other regulated offer document or the registration of any offer or transfer document with any Government Authority.

10.8 Specimen signatures

The Issuer may (but need not) require each Convertible Noteholder to submit specimen signatures, authenticated, in the case of a body corporate Convertible Noteholder, by a secretary or director of that Convertible Noteholder, of persons authorised to execute transfers on behalf of that Convertible Noteholder and will be entitled to assume (until notified to the contrary) that the authority has not been revoked.

10.9 No fee for registration of a Transfer and Acceptance

No fee will be charged for the registration of any Transfer and Acceptance.

10.10 Marking of transfers

- (a) **(Convertible Noteholder may request marking):** The Issuer must, on the request of a Convertible Noteholder, mark a Transfer and Acceptance with a certificate to the effect that the Convertible Notes referred to in that Transfer and Acceptance are registered in the name of that Convertible Noteholder, and that no transfer of those Convertible Notes will be registered other than by the marked Transfer and Acceptance for the period specified in the certificate.
- (b) **(Limits on transfer):** Where any Transfer and Acceptance is marked under Condition 10.10(a), the Issuer must not, during the specified period, register any transfer of the Convertible Notes referred to in that Transfer and Acceptance except as effected by the marked Transfer and Acceptance.
- (c) **(Statement by Issuer):** The marking of a Transfer and Acceptance under Condition 10.10(a) represents a statement only by the Issuer as to the status of the Register as at the time of the marking.

- (d) **(Not a certificate):** A Transfer and Acceptance (whether marked or not) is not a certificate or other document of title to any Convertible Notes.

10.11 Certificates

No certificate or other evidence of title will be issued by or on behalf of the Issuer to evidence title to a Convertible Note unless the Issuer determines that certificates should be made available or it is required to do so under any applicable law or regulation. Any such certificate will, for so long as the Convertible Notes are "restricted securities" (as defined in Rule 144(a)(3) under the Securities Act), bear the legend set forth in Annex A to this Schedule 1; provided, that if the requirement for such legend is no longer applicable because the Convertible Notes are freely transferable under the Securities Act, the Issuer shall remove such legend upon request from a holder thereof, if counsel for such holder reasonably opines that the transfer of such Convertible Notes is no longer restricted by the Securities Act and counsel for the Issuer reasonably concurs with such opinion.

10.12 Transmission of Convertible Notes

Subject to these Convertible Note Conditions, any person becoming entitled to a Convertible Note as a result of the insolvency of a Convertible Noteholder may, on producing such evidence as the Issuer requires of that entitlement, elect to be either registered as the Convertible Noteholder or transfer the Convertible Note in the manner specified in these Convertible Note Conditions.

10.13 Partial transfers

If a transferor executes a transfer of less than all Convertible Notes registered in its name, and the specific Convertible Notes to be transferred are not identified, the Issuer may register the transfer in respect of such of the Convertible Notes registered in the name of the transferor as the Issuer thinks fit, provided that the aggregate Principal Amount of the Convertible Notes registered as having been transferred equals the aggregate Principal Amount of the Convertible Notes expressed to have been transferred in the transfer and the transfer is otherwise in accordance with those Convertible Note Conditions.

10.14 Taxes

- (a) **(On issue):** The Issuer must bear any stamp duty and any loan, transaction, registration or similar Taxes payable in Australia on the issue, subscription and conversion of any Convertible Note.
- (b) **(On transfer):** A Convertible Noteholder is responsible for any stamp duties and any loan, transaction, registration or similar Taxes payable in any jurisdiction in connection with any transfer, assignment or other dealing (other than conversion) with its Convertible Notes.
- (c) **(Tax Classification):** It is the intention of the parties hereto that the Convertible Notes be treated as equity for all tax purposes. As a result, the Issuer, the Convertible Noteholders and their respective Affiliates shall treat the Convertible Notes as equity for all tax purposes, except as otherwise required pursuant to a final determination of a court of competent jurisdiction.

11. Events of default

11.1 Events of Default

Each of the following events constitutes an Event of Default:

- (a) **(Failure to pay):** any failure by the Issuer to pay any amount due under any Transaction Document within 5 Business Days of when due;
- (b) **(Material breach):** the Issuer fails to comply in a material respect with any
 - (i) obligation owed by the Issuer to a Convertible Noteholder under the Convertible Note Deed Poll or these Convertible Note Conditions (other than a provision requiring the payment of money as contemplated by Condition 11.1(a)); or
 - (ii) covenant of the Issuer under clause 5 of the Note Subscription Agreement,and it continues unremedied for 10 Business Days after the earlier of:
 - (iii) the Issuer becoming aware of the failure to comply; and
 - (iv) the Convertible Noteholder giving notice to the Issuer of the failure to comply;
- (c) **(Insolvency Event):** an Insolvency Event occurs;
- (d) **(Convertible Note Conditions unenforceable):** if all or any material provision of these Convertible Note Conditions or a Transaction Document is or becomes void, voidable, illegal or unenforceable or of limited force (other than because of equitable principles or laws affecting creditors' rights generally), or the Issuer claims this to be the case;
- (e) **(Default under Westpac Facility):** either:
 - (i) an event of default under the Westpac Facility (however so defined) (other than an event of default relating to a change in control (however so defined) of the Issuer or any Related Entity) has occurred (and not been waived) and has been subsisting for more than 180 days without any enforcement action having been commenced by Westpac; or
 - (ii) Westpac has declared that all moneys owing under the Westpac Facility are immediately due and payable prior to its stated maturity as a result of the occurrence of an event of default under the Westpac Facility (however so defined) (other than an event of default relating to a change in control (however so defined) of the Issuer or any Related Entity);
- (f) **(Failure to convert):** the Issuer fails to convert any Convertible Note in accordance with these Convertible Note Conditions; and
- (g) **(Misrepresentation):** any representation, warranty or statement made, repeated or deemed to be made or repeated by the Issuer in any Transaction Document is proved to be untrue in any material respect when made or repeated or deemed to be made or repeated (as the case may be).

11.2 Notification of Events of Default

The Issuer must promptly notify each Convertible Noteholder in writing of the occurrence of an Event of Default, and in any event within five Business Days after the Issuer becomes aware of any Event of Default, describing the underlying events in sufficient detail to enable the Convertible Noteholders to assess the situation and to take steps to protect their interests.

11.3 Consequences of an Event of Default

On the occurrence of an Event of Default, the sole and exclusive remedy of each Convertible Noteholder against the Issuer is to require conversion of all or some of the Outstanding Convertible Notes held by the relevant Convertible Noteholder by giving to the Issuer a duly completed Conversion Notice in respect of such Convertible Notes in accordance with Condition 6.1.

12. Payments

12.1 In accordance with these Convertible Note Conditions

Any moneys payable to a Convertible Noteholder will be paid in the manner set out in these Convertible Note Conditions.

12.2 How payments are to be made

All payments to a Convertible Noteholder under a Convertible Note will be made on the due date for payment in accordance with these Convertible Note Conditions and:

- (a) **(Currency):** in US dollars except that payments of Additional Interest may also be made in Australian dollars if the Issuer determines (acting reasonably) that making such payment in US dollars would not be practicable;
- (b) **(No set-off):** without set-off or counterclaim; and
- (c) **(Payment):** to an account or an address designated by the Convertible Noteholder to the Issuer not later than the Record Date in relation to the relevant Conversion Date and that Convertible Note.

12.3 Default interest

If any payment under a Convertible Note is not paid on the date when due and payable in accordance with these Convertible Note Conditions such unpaid amount will bear interest at the Interest Rate from time to time until (but excluding) the date on which such unpaid amount, and default interest on it, is paid in accordance with this Condition 12. Payments in respect of default interest and the relevant unpaid amount will be rounded to the nearest one cent (half a cent or less being rounded downward).

12.4 Registered Convertible Noteholders

A person whose name (or in the case of joint holders the first person whose name) appears on the Register as the Convertible Noteholder of a Convertible Note at 4.00 pm on the Record Date is the only person entitled to receive payment of moneys in respect of that Convertible Note on the corresponding Conversion Date.

12.5 Payment constitutes release

Any payment made by or on behalf of the Issuer in accordance with this Condition 12 will for all purposes constitute an absolute and unconditional release and discharge of the Issuer to the extent of that payment.

12.6 Deductions and Withholdings

If at any time an applicable law or a Tax Event obliges the Issuer to make a deduction or withholding in respect of Taxes from a payment under a Convertible Note to any Convertible Noteholder, the Issuer:

- (a) **(Notice):** must notify the Convertible Noteholder of the obligation promptly after becoming aware of it (and set forth in reasonable detail the nature of the Tax Event, if applicable) and endeavour to give notice at least 10 days prior to making such deduction or withholding;
- (b) **(Not Exceed Minimum):** must ensure that the deduction or withholding does not exceed the minimum amount required by law;
- (c) **(Obligation to Minimise):** will, subject to Condition 2.8, use its reasonable efforts to minimise the amount of any such deduction or withholding to the extent that doing so is lawful and reasonably commercially practicable;
- (d) **(Pay Government Agency):** must pay to the relevant Government Agency on time the full amount of the deduction or withholding and promptly deliver to the Convertible Noteholder a copy of any receipt, certificate or other proof of payment; and
- (e) **(No Gross-up):** will not be obliged to make any additional payments to the Convertible Noteholders in relation to that withholding or deduction.

provided, however, that Conditions 12.6(b) and (c) shall not apply (i) if no Tax Event exists at that time or (ii) following the conversion of such Convertible Notes.

12.7 Receipt in other than agreed Currency

If a Convertible Noteholder receives an amount in a currency other than that in which it is due:

- (a) **(Convert to agreed Currency):** it may convert the amount received into the due currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including a spot rate, a same day value rate or a value tomorrow rate) as it reasonably considers appropriate and after taking into account any costs of conversion including taxes, duties, fees, levies or similar charges imposed by a Governmental Authority on such conversion (the **Net Amount**); and
- (b) **(Issuer's obligations satisfied):** the Issuer satisfies its obligation to pay in the due currency only to the extent of the Net Amount of the due currency obtained from the conversion in accordance with Condition 12.7(a).

12.8 Tax Event Cure

At any time following the occurrence of a Tax Event, the Convertible Noteholder may cure such Tax Event by transferring the Convertible Notes to its Affiliate if such Affiliate's ownership of the Convertible Notes would not result in a Tax Event or otherwise by taking such steps as will prevent or reduce the deduction or withholding or the applicable tax.

13. Amendments

13.1 Permitted amendments

Subject to these Convertible Note Conditions and each Subordination Deed, the terms of the Convertible Note Deed Poll and these Convertible Note Conditions may only be amended, waived or supplemented with the consent in writing of both the Issuer and the Representative at the time the amendment, waiver or supplement takes effect. Any such amendment, waiver or supplement will only be valid if effected by deed.

13.2 Copies of amendments

The Issuer must provide to each Convertible Noteholder, upon the request of that Convertible Noteholder, copies of each deed effecting any amendment to the Convertible Note Deed Poll or these Convertible Note Conditions under Condition 13.1.

14. Representative of the Convertible Noteholders

14.1 Appointment of Representative

Pursuant to this Condition 14.1, the Representative under these Convertible Note Conditions is:

- (a) **(Majority Convertible Noteholder):** where, from time to time, a Convertible Noteholder holds 51% or more of the aggregate Principal Amount Outstanding of Convertible Notes, that Convertible Noteholder; or
- (b) **(Elected Convertible Noteholder):** where, from time to time, no Convertible Noteholder holds 51% or more of the aggregate Principal Amount Outstanding of Convertible Notes, such person as Convertible Noteholders that in aggregate hold 51% or more of the aggregate Principal Amount Outstanding of Convertible Notes agree between themselves from time to time as notified to the Issuer advising the name and address of the Convertible Noteholder which will be the Representative and that Convertible Noteholder's consent to occupy that role.

14.2 Issuer may rely on notice of Representative

Where a Representative (or a Convertible Noteholder if there is no Representative) gives notice as contemplated by Condition 14.1(b) the Issuer is entitled to rely on that notice and such notice will be binding on all Convertible Noteholders;

14.3 Action of Representative is binding

The appointment of the Representative and its acts and omissions under these Convertible Note Conditions are valid and binding as between:

- (a) **(Issuer):** the relevant Convertible Noteholder and the Issuer;
- (b) **(Liquidator):** the relevant Convertible Noteholder and any liquidator of the Issuer; and
- (c) **(Other Convertible Noteholders):** the relevant Convertible Noteholder and all other Convertible Noteholders.

14.4 Representative has no obligation

Except as may otherwise be agreed in writing in respect of a Convertible Noteholder between the Representative and that Convertible Noteholders, the Representative has no obligation to the other Convertible Noteholders and is not obliged to consult with or obtain the consent or approval of the other Convertible Noteholders before giving or not giving any consent, approval or waiver to the Issuer.

15. Obligations of Convertible Noteholders

The Convertible Notes are issued on the condition that each Convertible Noteholder, is bound by and complies with the terms and conditions of the Convertible Note Deed Poll and these Convertible Note Conditions.

16. Listing and Quotation

For so long as any Ordinary Shares of the Issuer are quoted on ASX, the Issuer must furnish all documents, information and undertakings as may be reasonably necessary in order to maintain its listing on, and quotation of its Ordinary Shares on, ASX.

17. Discharge and release

The Issuer is immediately discharged and released from its liabilities, obligations and covenants under the Convertible Note Deed Poll and these Convertible Note Conditions in respect of any Convertible Note on the first to occur of the date on which that:

- (a) **(Redemption):** Convertible Note and interest on that Convertible Note is redeemed or deemed to be redeemed and paid in full in accordance with these Convertible Note Conditions; or
 - (b) **(Conversion):** Convertible Note is converted in accordance with these Convertible Note Conditions.
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18. General

18.1 Time limit for claims

Any claim against the Issuer for a payment in respect of a Convertible Note is void unless made within five years of the due date for that payment.

18.2 Governing Laws

These Convertible Note Conditions are governed by and shall be construed in accordance with the law in force in New South Wales. The Issuer hereby irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and any court that may hear appeals from the courts of New South Wales.

18.3 Severability of Provisions

Any provision of these Convertible Note Conditions which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these Convertible Note Conditions nor the validity or enforceability of that provision in any other jurisdiction.

19. Notices

19.1 Method of delivery to Convertible Noteholders

Any notice, request, certificate, approval, demand, consent or other communication to be given to a Convertible Noteholder (including without limitation any Convertible Noteholder acting as the Representative) under these Convertible Note Conditions or the Convertible Note Deed Poll:

- (a) **(Authorised Officer):** must be in writing and, except in the case of communication by email, signed by an Authorised Officer of the party making the communication; and
- (b) **(Delivery):** must be:
 - (i) posted by prepaid registered post, or delivered, to the address of that Convertible Noteholder or sent by fax to the fax number of that Convertible Noteholder, in each case as set out in the Register; or
 - (ii) subject to Condition 19.4, sent by email to that Convertible Noteholder's email address, as notified by that Convertible Noteholder in accordance with Condition 19.4.

19.2 Method of delivery to the Issuer

Any notice, request, certificate, approval, demand, consent or other communication to be given to the Issuer under these Convertible Note Conditions or the Convertible Note Deed Poll:

- (a) **(Authorised Officer):** must be in writing and, except in the case of communication by email, signed by an Authorised Officer of the Issuer;
- (b) **(Delivery):** must be:
 - (i) posted by prepaid registered post, or delivered, to the address of the Issuer or sent by fax to the fax number of the Issuer, as set out below;

Name: HFA Holdings Limited

Address: GPO Box 1616
Brisbane Q 4001

Facsimile: +61 7 3229 7580

For the attention of: Chief Executive Officer/Chief Financial Officer; or
 - (ii) subject to Condition 19.4, sent by email to the Issuer's email address, as notified by the Issuer in accordance with Condition 19.4;

The Issuer may amend its address or fax number for the purposes of this Condition 19.2 by notice to each Convertible Noteholder.

19.3 Deemed receipt

A notice, request, certificate, demand, consent or other communication under these Convertible Note Conditions or the Convertible Note Deed Poll is deemed to have been received:

- (a) **(Delivery):** where delivered in person, upon receipt;
- (b) **(Post):** where sent by post, on the 3rd (or 7th if posted internationally) day after posting;
- (c) **(Fax):** where sent by facsimile, on production by the dispatching facsimile machine of a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (d) **(Email):** where sent by email, on the date that the email is received.

However, if the time of deemed receipt of any notice is not before 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.

19.4 Email

A notice, request, certificate, approval, demand, consent or other communication to be given under these Convertible Note Conditions may only be given by email where the recipient has separately agreed that that communication, or communications of that type, may be given by email. For the avoidance of doubt, any such agreement must be in writing and refer specifically to this Condition, and no such agreement may be implied, inferred or deemed to arise as a result of any other conduct or dealing, including the use by employees or representatives of email as a means of communication with other parties for the purposes of the administration of these Convertible Note Conditions.

Annex A to Schedule 1 – Convertible Note Legend

THIS CONVERTIBLE NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED BY THIS LEGEND. THE HOLDER HEREOF, BY ITS ACCEPTANCE OF THIS CERTIFICATE, REPRESENTS, ACKNOWLEDGES AND AGREES THAT IT WILL ONLY OFFER, SELL, PLEDGE, TRANSFER OR OTHERWISE DISPOSE OF THE CONVERTIBLE NOTES IF THE CONVERTIBLE NOTES ARE OFFERED, SOLD, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF (I) TO THE ISSUER OR A SUBSIDIARY OF THE ISSUER; (II) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (III) TO A PERSON LOCATED OUTSIDE THE UNITED STATES THAT IS NEITHER A U.S. PERSON NOR A PERSON ACTING FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON, THAT IS ACQUIRING THE CONVERTIBLE NOTES IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S) MEETING THE REQUIREMENTS OF REGULATION S; (IV) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (V) IN A TRANSACTION OTHERWISE EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE, SUCH OFFER, SALE, PLEDGE OR TRANSFER MUST BE MADE IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. OFFERS, SALES, PLEDGES OR TRANSFERS PURSUANT TO (V) ABOVE MUST BE MADE ONLY AFTER THE PURCHASER OF THE CONVERTIBLE NOTES HAS DELIVERED TO THE ISSUER SUCH INFORMATION, CERTIFICATES AND OPINIONS AS THE ISSUER MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS, WHICH MAY INCLUDE AN OPINION OF COUNSEL AS TO THE AVAILABILITY OF THE RELEVANT EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A FORM REASONABLY SATISFACTORY TO THE ISSUER. THE HOLDER HEREOF ACKNOWLEDGES THAT THE CONVERTIBLE NOTES ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. THE HOLDER HEREOF AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET OUT HEREIN TO THE TRANSFEREE. THE HOLDER HEREOF ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ISSUER RESERVES THE RIGHT TO REFUSE TO RECORD ANY TRANSFER OF CONVERTIBLE NOTES THAT ARE SOLD OR OTHERWISE TRANSFERRED IN A MANNER OTHER THAN THAT SPECIFIED IN THIS LEGEND.

Schedule 2 – Conversion Notice

To: The Directors
HFA Holdings Limited ABN 47 101 585 737
[]
Sydney, NSW []
(Issuer)

[NOTICE is given of the exercise by [Convertible Noteholder] of its rights to convert [*number to be converted*] of its Convertible Notes into Ordinary Shares in the Issuer in accordance with Condition 6.1(a) of the Convertible Note Conditions (the **Convertible Note Conditions**) which appear in Schedule 1 of the Convertible Note Deed Poll dated 3 December 2010 and executed by the Issuer. The Conversion Date nominated for the purposes of such conversion is [].]

[OR]

[NOTICE is given of the exercise by [Convertible Noteholder] of its rights to convert [*number to be converted*] of its Convertible Notes into Ordinary Shares in the Issuer in accordance with Condition 11.3(b) of the Convertible Note Conditions (the **Convertible Note Conditions**) which appear in Schedule 1 of the Convertible Note Deed Poll dated 3 December 2010 and executed by the Issuer (the **Convertible Note Deed Poll**). The Conversion Date nominated for the purposes of such conversion is [].]

Terms defined in the Convertible Note Conditions shall have the same meaning when used in this Conversion Notice.

The undersigned, [Convertible Noteholder] makes the following certifications, representations and warranties with respect to [insert number of Notes] Convertible Notes of the Issuer, which are being exercised by the Convertible Noteholder:

(a) the Convertible Noteholder either:

- (i) is an institutional "accredited investor" (an **Institutional Accredited Investor**), that satisfies one of the criteria of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act, that is acquiring the Ordinary Shares for its own account or for the account or benefit of one or more persons each of whom is an Institutional Accredited Investor over which the Holder exercises sole investment direction, for investment purposes and not with a view to the resale or distribution thereof, in each case in accordance with any applicable securities laws of any state of the United States or any other jurisdiction, or
- (ii) is a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction meeting the requirements of Regulation S;

(b) the Convertible Noteholder is aware and acknowledges that, in connection with the Ordinary Shares issued to it on conversion of the Convertible Notes, the Issuer is relying on an exemption from registration under the Securities Act. The Convertible Noteholder understands that the Issuer has no obligation to register the Ordinary Shares under the Securities Act or to comply with the requirements for any exemption from the registration requirements of the Securities Act;

(c) the Convertible Noteholder acknowledges that the Ordinary Shares may not be offered, sold, pledged, transferred or otherwise disposed of, except pursuant to an exemption from, or in transactions not subject to, the registration requirements of the Securities Act and any other applicable securities laws. The Convertible

Noteholder agrees that, in the future, if it or any other person for whose account or benefit it is acquiring the Ordinary Shares, decides to offer, sell, pledge, transfer or otherwise dispose of the Ordinary Shares it will only do so and it will inform such other person that it may only do so, if the Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii)(A) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. The Convertible Noteholder agrees that offers, sales, pledges or transfers pursuant to (v) above must be made only after the purchaser of the Ordinary Shares has delivered to the Issuer such information, certificates and opinions as the Issuer may reasonably require to confirm that the transfer complies with the foregoing restrictions, which may include an opinion of counsel as to the availability of the relevant exemption from the registration requirements of the Securities Act in a form reasonably satisfactory to the Issuer. The Convertible Noteholder acknowledges that, notwithstanding anything to the contrary in the foregoing, the Ordinary Shares may not be deposited into any unrestricted American Depositary Receipt facility. The Convertible Noteholder acknowledges that the Ordinary Shares are not transferable except in accordance with the restrictions described herein. The Convertible Noteholder agrees to provide notice of the transfer restrictions set out herein to the transferee. The Convertible Noteholder acknowledges that, to the maximum extent permitted by law, the Issuer reserves the right to refuse to record any transfer of Ordinary Shares that are sold or otherwise transferred in a manner other than that specified in this paragraph (c); and

- (d) the Convertible Noteholder acknowledges that in the event the Ordinary Shares issued upon conversion of the Convertible Notes are held in certificated form, such certificated Ordinary Shares will bear a legend substantially to the following effect, for so long as they are "restricted securities" as defined in Rule 144(a)(3) under the Securities Act:

THE ORDINARY SHARES EVIDENCED HEREBY (THE "ORDINARY SHARES") HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED BY THIS LEGEND. THE HOLDER HEREOF, BY ITS ACCEPTANCE OF THIS CERTIFICATE, REPRESENTS, ACKNOWLEDGES AND AGREES THAT IT WILL ONLY OFFER, SELL, PLEDGE, TRANSFER OR OTHERWISE DISPOSE OF THE ORDINARY SHARES IF THE ORDINARY SHARES ARE OFFERED, SOLD,

PLEGGED, TRANSFERRED OR OTHERWISE DISPOSED OF (I) TO THE ISSUER OR A SUBSIDIARY OF THE ISSUER; (II) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (III)(A) IN STANDARD (REGULAR WAY) TRANSACTIONS ON THE AUSTRALIAN SECURITIES EXCHANGE WHERE NEITHER THE SELLER NOR ANY PERSON ACTING ON ITS BEHALF KNOWS, OR HAS REASON TO KNOW, THAT THE SALE HAS BEEN PREARRANGED WITH, OR THAT THE PURCHASER IS, A PERSON IN THE UNITED STATES OR IS A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT ("REGULATION S")) (A "U.S. PERSON") OR IS ACTING FOR THE ACCOUNT OR BENEFIT OF, A PERSON IN THE UNITED STATES OR A U.S. PERSON OR (B) OTHERWISE TO A PERSON LOCATED OUTSIDE THE UNITED STATES THAT IS NEITHER A U.S. PERSON NOR A PERSON ACTING FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON, THAT IS ACQUIRING THE ORDINARY SHARES IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S) MEETING THE REQUIREMENTS OF REGULATION S; (IV) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (V) IN A TRANSACTION OTHERWISE EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE, SUCH OFFER, SALE, PLEDGE OR TRANSFER MUST BE MADE IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. OFFERS, SALES, PLEDGES OR TRANSFERS PURSUANT TO (V) ABOVE MUST BE MADE ONLY AFTER THE PURCHASER OF THE ORDINARY SHARES HAS DELIVERED TO THE ISSUER SUCH INFORMATION, CERTIFICATES AND OPINIONS AS THE ISSUER MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS, WHICH MAY INCLUDE AN OPINION OF COUNSEL AS TO THE AVAILABILITY OF THE RELEVANT EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN A FORM REASONABLY SATISFACTORY TO THE ISSUER. THE HOLDER HEREOF ACKNOWLEDGES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE ORDINARY SHARES MAY NOT BE DEPOSITED INTO ANY UNRESTRICTED AMERICAN DEPOSITARY RECEIPT FACILITY. THE HOLDER HEREOF ACKNOWLEDGES THAT THE ORDINARY SHARES ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. THE HOLDER HEREOF AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET OUT HEREIN TO THE TRANSFEREE. THE HOLDER HEREOF ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ISSUER RESERVES THE RIGHT TO REFUSE TO RECORD ANY TRANSFER OF ORDINARY SHARES THAT ARE SOLD OR OTHERWISE TRANSFERRED IN A MANNER OTHER THAN THAT SPECIFIED IN THIS LEGEND.

The representation, warranties and statements contained in this Certificate are made for the benefit of the Issuer.

DATED:

SIGNED for and on behalf of [Convertible Noteholder]

Director/Secretary

Schedule 3 – Issuer Conversion Notice

To: [Name of Convertible Noteholder]
[]

NOTICE is given of the exercise by HFA Holdings Limited (ABN 47 101 585 737) (the **Issuer**) of its rights to convert [number to be converted] of your Convertible Notes into Ordinary Shares in the Issuer in accordance with Condition 6.2(a) of the Convertible Note Conditions (the **Convertible Note Conditions**) which appear in Schedule 1 of the Convertible Note Deed Poll dated 3 December 2010 and executed by the Issuer (the **Convertible Note Deed Poll**). The Conversion Date nominated for the purposes of such conversion is [].

Terms defined in the Convertible Note Conditions shall have the same meaning when used in this Issuer Conversion Notice.

DATED:

SIGNED for and on behalf of HFA Holdings Limited

Director/Secretary

Schedule 4 - Subordination Deed

Allens Arthur Robinson



Subordination Deed

[insert names of subscribers]

HFA Lighthouse Holdings Corp

HFA Holdings Limited

Westpac Banking Corporation

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000
Australia
Tel 61 2 9230 4000
Fax 61 2 9230 5333
www.aar.com.au

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Date**Parties**

1. *[insert name of subscriber] ([Organisation Number][*])* a company incorporated in *[insert place of incorporation]* of *[insert address]*; and
2. *[insert details of other subscribers if applicable]*
(each, a *Subordinated Creditor*);
3. **HFA Lighthouse Holdings Corp** (Organisation Identification Number 4405814), a company incorporated in Delaware, United States of America of level 5, 151 Macquarie Street, Sydney, NSW 2000 (the *Borrower*);
4. **HFA Holdings Limited** (ABN 47 101 585 737) a company incorporated in Australia and registered in Queensland of level 5, 151 Macquarie Street, Sydney, NSW 2000 (the *Issuer*); and
5. Westpac Banking Corporation (ABN 33 007 457 141) of Level 3, Westpac Place, 275 Kent Street, Sydney, NSW 2000 (the *Senior Creditor*).

Recitals

- A The Borrower, the Issuer and the Senior Creditor are parties to a cash advance facilities agreement dated 1 November 2007, as amended and restated on 20 March 2009 and on or about the date of this Deed (the *Facility Agreement*).
- B Each Subordinated Creditor may hold convertible notes issued by the Issuer or provide other financial accommodation to the Issuer under the Convertible Note Documents.
- C Each Subordinated Creditor enters into this Deed for valuable consideration which includes the Senior Creditor entering into the Amendment and Restatement Deed at its request.
- D It is a condition precedent to the obligation of the Senior Creditor to enter into the Amendment and Restatement Deed that each Subordinated Creditor, the Borrower and the Issuer enter into this Deed.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

GST means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

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

Liquidator of the Issuer means any person who may be charged with the Liquidation of the Issuer (whether by contract, statute or otherwise). It includes a liquidator, administrator, receiver and receiver and manager.

Satisfaction Date means the date stated in a notice served by the Senior Creditor as the date on which it is satisfied that the Senior Debt has been fully and finally paid and the Commitments have been cancelled.

Senior Debt means all money which the Borrower or the Issuer (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of the Senior Creditor (whether alone or not) for any reason whatever under or in connection with a Finance Document, whether or not currently contemplated.

It includes money by way of principal, interest, fees, costs, indemnity, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with a Finance Document, or as a result of a breach of or default under or in connection with a Finance Document.

It also includes money that the Borrower or the Issuer would have been liable to pay but for its Liquidation, or some other reason.

Subordinated Debt means all present or future Finance Debt of the Issuer to a Subordinated Creditor in respect of the Convertible Note Documents, including all amounts payable in respect of interest, costs, fees, losses, damages, indemnity, charges and expenses which the Issuer is or at any time may become liable to pay to a Subordinated Creditor in respect of or in connection with such Finance Debt, whether or not currently contemplated, provided that the Subordinated Debt shall not include issued shares in the Issuer, to the extent the Subordinated Debt shall have been converted into shares in the Issuer.

Subordinated Finance Document means each Convertible Note Document and any other document or agreement between the Issuer and a Subordinated Creditor (whether or not with another person) for the purposes of or in relation to providing financial accommodation to the Issuer, or for its account, in respect of Subordinated Debt.

1.2 Facility Agreement definitions

Definitions in the Facility Agreement apply in this Deed unless the context requires otherwise.

1.3 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this Deed.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted substitutes or assigns.
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to *writing* includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (i) The meaning of terms is not limited by specific examples introduced by *including*, or *for example*, or similar expressions.
- (j) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to *receipt* or recovery includes receipt or recovery in money or other assets.
- (l) A reference to an *asset* includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (m) An Event of Default or Potential Event of Default *subsists* until it has been waived in writing by the Senior Creditor, or cured or remedied to the satisfaction of the Senior Creditor.

- (n) A reference to an amount for which a person is *contingently liable* includes an amount which that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability will actually arise.
- (o) A reference to *reduced* includes reduced to nil.

1.4 Document or agreement

A reference to:

- (a) an *agreement* includes a Security Interest, Guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
- (b) a *document* includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

1.5 Inconsistency

- (a) This Deed prevails if there is an inconsistency between it and any other document. This includes where a person cannot comply with both or where what is prohibited by one is permitted by the other.
- (b) This Deed amends and is incorporated in all Subordinated Finance Documents. Any financial accommodation provided by a Subordinated Creditor to the Issuer after the date of this Deed will be taken to have been provided on the terms in this Deed.

1.6 Consents and Opinion

Except where expressly stated the Senior Creditor may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, may form opinions, and may exercise its rights, powers and remedies, at its absolute discretion.

2. Subordination

2.1 General

The Subordinated Debt is subordinated to the Senior Debt in the manner set out in this Deed.

2.2 Subordinated Debt

- (a) Subject to clauses 3 and 4, except for the purpose of allowing interest or other amounts to accrue or be capitalised, or the discharge of Subordinated Debt by the

issue of shares in the Issuer in accordance with the Convertible Note Documents, no Subordinated Debt will be due and payable or recoverable until the Satisfaction Date.

- (b) Subject to clauses 3 and 4, the Issuer shall not make, whether directly or indirectly, any payment of or in reduction of the Subordinated Debt until the Satisfaction Date.

2.3 Competing proof

Except to the extent stated in a notice under clause 4, until the Satisfaction Date a Subordinated Creditor may only lodge a conditional or contingent proof or claim in connection with the Subordinated Debt in the Liquidation of the Issuer.

2.4 Distribution

Subject to clause 4, on any distribution of assets of the Issuer, as a direct or indirect result of a Liquidation or any other total reorganisation of the Issuer, all Senior Debt shall first be paid in full before any payment is made on account of any Subordinated Debt. The Liquidator of the Issuer will distribute the assets of the Issuer accordingly.

2.5 No Security Interest

Nothing in this Deed creates a Security Interest.

3. Overall Limit on Enforcement Action and Payment

3.1 Subordinated Creditor

Subject to clause 3.3, without the prior consent of the Senior Creditor, a Subordinated Creditor shall not:

- (a) **(accept payment)** require or accept payment or otherwise allow satisfaction or discharge of any Subordinated Debt;
- (b) **(exercise of rights or powers)** take any step to enforce any Guarantee or Security Interest held by it in relation to any Subordinated Debt;
- (c) **(Liquidation)** take any step for the purpose of or towards:
 - (i) levying any execution or obtaining any judgment against the Issuer; or
 - (ii) the appointment of a Liquidator of the Issuer;
- (d) **(vote)** vote in any meeting or other decision making body in relation to, or in any way seek to control or influence, the Liquidation of the Issuer;
- (e) **(proof)** prove or lodge any proof of debt in the Liquidation of the Issuer except as permitted under clause 2.3;

- (f) **(set-off)** exercise any right of set-off, deduction or combination of accounts or similar right or procedure in relation to any Subordinated Debt; or
- (g) **(deposit)** accept any deposit from or otherwise incur any monetary obligation to the Issuer which may be the subject of any set-off, deduction or combination of accounts or similar right or procedure (whether or not compulsory),

until after the Satisfaction Date.

3.2 Issuer

Subject to clause 3.3, without the prior consent of the Senior Creditor, the Issuer shall not and shall ensure that each Obligor will not:

- (a) **(payment)** pay any Subordinated Debt;
- (b) **(set-off)** exercise any right of set-off, deduction or combination of accounts or similar right or procedure in relation to any Subordinated Debt; or
- (c) **(deposit)** make any deposit with or allow a Subordinated Creditor to incur any monetary obligation to it which may be the subject of any set-off, deduction or combination of accounts or similar right or procedure (whether or not compulsory),

until after the Satisfaction Date.

3.3 Permitted payments

- (a) **(Interest)** As long as no Event of Default subsists:
 - (i) the Issuer may pay; and
 - (ii) a Subordinated Creditor may require and accept payment of, or exercise any right of set-off or combination of accounts or similar right or procedure (whether or not compulsory) in respect of,

any interest, costs, fees, charges or expenses forming part of the Subordinated Debt.

- (b) **(Payment out of proceeds of share issue)** The Issuer may pay Subordinated Debt out of subscription money received by it in respect of the issue of non-redeemable shares in its capital to a Subordinated Creditor.

3.4 Acknowledgement

Nothing in this Deed affects or prohibits:

- (a) the accrual or capitalisation of interest under the Convertible Note Documents;
- (b) the issue of shares by the Issuer, including the conversion of Subordinated Debt into issued shares in the Issuer, in accordance with the Convertible Note Documents; or

- (c) the Subordinator Creditor in:
 - (i) obtaining an injunction or other order to restrain any breach of any Convertible Note Document; or
 - (ii) obtaining declaratory relief.

4. Express Permission

If the Senior Creditor notifies the Issuer and a Subordinated Creditor in writing that all or part of the Subordinated Debt is payable:

- (a) to the extent stated in that notice, the Subordinated Debt of that Subordinated Creditor will be due and payable by and recoverable from the Issuer;
- (b) to the extent stated in that notice, that Subordinated Creditor shall prove or vote or both in the Liquidation of the Issuer in relation to the Subordinated Debt and shall promptly send to the Senior Creditor a copy of any notice of proof it has given;
- (c) on any payment or distribution of assets of the Issuer as a direct or indirect result of a Liquidation of the Issuer, the Liquidator of the Issuer shall pay any dividend in respect of the Subordinated Debt directly to the Senior Creditor for application to the payment of the Senior Debt until the Senior Debt has been paid in full; and
- (d) clause 5 applies to any amount a Subordinated Creditor receives or recovers in respect of the Subordinated Debt in that Liquidation.

5. Trust and Account

5.1 Trust

If, before the Satisfaction Date, a Subordinated Creditor receives or recovers an amount in respect of any Subordinated Debt in breach of clause 3 or under clause 4, that Subordinated Creditor shall hold the amount on trust for the Senior Creditor except to the extent it exceeds the Senior Debt. That Subordinated Creditor, as trustee, shall immediately account for it and pay it to the Senior Creditor (regardless of whether a demand has been made).

5.2 Account

If, before the Satisfaction Date, the amount of the Subordinated Debt is reduced by any set-off, deduction or combination of accounts or similar right or procedure in breach of clause 3 or under clause 4, the relevant Subordinated Creditor shall promptly pay to the Senior Creditor an amount equal to the amount by which the Subordinated Debt of that Subordinated Creditor was so reduced up to an amount equal to the Senior Debt.

6. No Prejudice

The right of the Senior Creditor to enforce any provision of this Deed is not affected by:

- (a) any conduct of the Borrower or the Issuer;
- (b) any failure of the Borrower or the Issuer to comply with any term of this Deed, any Finance Document or any Subordinated Finance Document;
- (c) any knowledge in relation to the Subordinated Debt that the Senior Creditor may have or be charged with;
- (d) any conduct in relation to the enforcement or failure to enforce any Finance Document; or
- (e) the giving of any discharge, amendment, variation, consent or waiver.

This clause does not apply to any waiver or consent granted directly to a Subordinated Creditor by the Senior Creditor.

7. Amendment

7.1 Amendment of Finance Documents

Any Finance Document may be amended, extended, renewed, novated, replaced or otherwise varied in any manner as the parties to that document agree.

7.2 Amendment of Subordinated Finance Documents

No Subordinated Finance Document may be amended, replaced or otherwise varied other than in accordance with the Facility Agreement.

8. Assignments, Guarantees and Security Interests

8.1 Assignments of or Security Interests over Subordinated Debt

A Subordinated Creditor shall not:

- (a) assign or transfer; or
- (b) create or allow to exist a Security Interest over,

any of its interest or rights in or to the Subordinated Debt, except where the assignee or transferee (as the case may be) has executed a subordination deed in favour of the Senior Creditor in the form set out in Annexure A to the Convertible Note Deed Poll or has acceded to this Deed to the satisfaction of the Senior Creditor.

8.2 Guarantees and Security Interests in respect of Subordinated Debt

- (a) The Issuer shall not create or allow to exist; and
- (b) a Subordinated Creditor shall not require the provision of, and if held or provided shall immediately discharge or release,

any Guarantee or Security Interest in respect of any Subordinated Debt.

9. Representations and Warranties

9.1 Representations and warranties

Each Subordinated Creditor makes the following representations and warranties.

- (a) **(Status)** It is a corporation validly existing under the laws of:
 - (i) in respect of [*insert name of subscriber*], [*insert place of incorporation*]; and
 - (ii) [*insert for additional subscribers if applicable*] in respect of [*insert name of subscriber*], [*insert place of incorporation*].
- (b) **(Power)** It has the power to enter into and perform its obligations under this Deed, to carry out the transactions contemplated by this Deed and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Deed, and to carry out the transactions contemplated by this Deed.
- (d) **(Documents binding)** This Deed is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (e) **(Transactions permitted)** The execution and performance by it of this Deed and each transaction contemplated under this Deed did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgement, ruling, order or decree of a Government Agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement which is binding on it or its assets,and did not and will not:
 - (iv) create or impose a Security Interest on any of its assets; or
 - (v) allow a person to accelerate or cancel an obligation with respect to Finance Debt, or constitute an event of default, cancellation event, prepayment

event or similar event (whatever called) under an agreement relating to Finance Debt, whether immediately or after notice or lapse of time or both.

- (f) **(Authorisations)** Each Authorisation which is required in relation to:
- (i) the execution, delivery and performance by it of this Deed and the transactions contemplated by this Deed; and
 - (ii) the validity and enforceability of this Deed,
- has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them.
- (g) **(Title)** It is absolutely entitled to the Subordinated Debt free from any Security Interest.
- (h) **(Guarantee or Security Interest)** It does not hold any Guarantee or Security Interest in respect of the Subordinated Debt.

9.2 Reliance on representations and warranties

Each Subordinated Creditor acknowledges that the Senior Creditor has entered the Amendment and Restatement Deed in reliance on the representations and warranties in this clause.

10. Expenses, Indemnity

10.1 Expenses

The Borrower shall:

- (a) reimburse the Senior Creditor for its reasonable expenses in relation to the preparation, execution and completion of this Deed and any subsequent consent, agreement, approval, waiver or amendment; and
- (b) reimburse the Senior Creditor for its expenses in relation to:
 - (i) any actual or contemplated enforcement of this Deed or the actual or contemplated exercise, preservation or consideration of any rights, powers or remedies under this Deed; and
 - (ii) any enquiry by a Government Agency concerning a Subordinated Creditor, the Issuer or the Borrower or a transaction or activity the subject of this Deed.

This includes legal costs and expenses (including in-house lawyers charged at their usual rates) on a full indemnity basis, expenses incurred in any review or environmental audit or in retaining consultants to evaluate matters of material concern to the Senior Creditor, and

administrative costs including time of its executives (their time and costs are to be charged at reasonable rates).

10.2 Indemnity

Each Subordinated Creditor, the Issuer and the Borrower (each, an *Indemnifying Party*) shall severally indemnify the Senior Creditor against any loss, cost, charge, liability or expense (including legal costs on a full indemnity basis) the Senior Creditor (or any officer or employee of the Senior Creditor) may sustain or incur as a direct or indirect result of:

- (a) any contravention of this Deed by such Indemnifying Party; or
- (b) any exercise or attempted exercise of any right, power or remedy under this Deed or any failure to exercise any right, power or remedy.

10.3 Amounts in foreign currency

Where an amount to be reimbursed or indemnified against is denominated in another currency, if the Senior Creditor so requests, each Subordinated Creditor or the Borrower (as the case may be) shall reimburse or indemnify it against the amount of Australian dollars which the Senior Creditor certifies that it used to buy the relevant amount of the other currency in accordance with its normal procedures. If the Senior Creditor does not so request, each Subordinated Creditor or the Borrower (as the case may be) shall reimburse or indemnify it in the relevant currency.

11. Stamp Duties and GST

11.1 Stamp duties

- (a) The Borrower shall pay (and reimburse the Senior Creditor for) all stamp, transaction, registration and similar Taxes (including fines and penalties) in relation to the execution, delivery, performance or enforcement of this Deed or any payment or receipt or any other transaction contemplated by this Deed.
- (b) Those Taxes include Taxes payable by return and Taxes passed on to the Senior Creditor by a bank or financial institution.
- (c) The Borrower shall indemnify the Senior Creditor against any liability resulting from delay or omission to pay those Taxes except to the extent the liability results from failure by the Senior Creditor to pay any Tax after having been put in funds to do so by a Subordinated Creditor or the Borrower.

11.2 GST

All payments (including the provision of any non-monetary consideration) to be made by a Subordinated Creditor or the Borrower under or in connection with this Deed have been calculated without regard to GST.

- (a) If all or part of any such payment is the consideration for a taxable supply for GST purposes then, when a Subordinated Creditor or the Borrower makes the payment:
 - (i) it must pay to the Senior Creditor an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
 - (ii) the Senior Creditor will promptly provide to the Subordinated Creditor or the Borrower a tax invoice complying with the relevant GST legislation.
- (b) Where under this Deed a Subordinated Creditor or the Borrower is required to reimburse or indemnify for an amount, a Subordinated Creditor or the Borrower will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the Senior Creditor determines that it is entitled to claim in respect of that amount.

12. Waivers, Remedies Cumulative

- (a) No failure to exercise or delay in exercising any right, power or remedy under this Deed operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The rights, powers and remedies provided to the Senior Creditor in this Deed are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

13. Severability of Provisions

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

14. Survival of Obligations

- (a) **(Representations and warranties)** Each representation or warranty in a Finance Document survives the execution and delivery of the Finance Documents and the provision of financial accommodation.
- (b) **(Indemnity)** Each indemnity, reimbursement or similar obligation in a Finance Document:
- (i) is a continuing, separate and independent obligation;
 - (ii) is payable on demand; and
 - (iii) survives termination or discharge of the relevant Finance Document and repayment of financial accommodation.

Where a party is obliged to indemnify another party against a loss, cost, charge, liability, expense, deficiency or other amount, it shall pay on demand from time to time the amount stated by the other party to be the amount indemnified against.

15. Power of Attorney

- (a) For valuable consideration each Subordinated Creditor irrevocably appoints the Senior Creditor its attorney (the *Attorney*) to do anything which that Subordinated Creditor is obliged to do under or in relation to this Deed.
- (b) Without limitation, the Attorney may at any time delegate the Attorney's powers (including delegation).

16. Assignment

16.1 Assignment by Borrower, Issuer or a Subordinated Creditor

Subject to clause 8.1, none of the Borrower, Issuer or a Subordinated Creditor may assign or transfer any of its rights or obligations under this Deed without the prior consent of the Senior Creditor.

16.2 Assignment by Senior Creditor

Subject to the other Finance Documents, the Senior Creditor may assign all or any of its rights or transfer all or any of its obligations under this Deed.

17. Acknowledgement by Borrower, Issuer and Subordinated Creditor

Each of the Borrower, Issuer and each Subordinated Creditor confirms that:

- (a) it has not entered into this Deed in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of the Senior Creditor or any Related Body

Corporate of the Senior Creditor (including any advice, warranty, representation or undertaking); and

- (b) neither the Senior Creditor nor any Related Body Corporate of the Senior Creditor is obliged to do anything (including disclose anything or give advice),

except as expressly set out in the Finance Documents.

18. Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) must be in writing signed by an Authorised Officer of the sender; and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address or fax number of the recipient shown in the schedule or to any other address or fax number which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.

19. Governing Law and Jurisdiction

This Deed is governed by the laws of New South Wales. Each Subordinated Creditor, the Borrower and the Issuer submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

20. Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

21. Finance Document

The Borrower and the Senior Creditor agree that this Deed is a Finance Document for the purposes of the Facility Agreement.

Subordination Deed

Allens Arthur Robinson 

Schedule

Schedule 2 - Notice Details

Subordinated Creditors

[insert name of subscriber]

Address: [*]

Fax number: [*]

Attention: [*]

[insert details of other subscribers if applicable]

Borrower

HFA Lighthouse Holdings Corp

Address: c/- HFA Holdings Limited, Level 5, 151 Macquarie Street, Sydney, NSW 2000

Fax number: 61 2 9252 4580

Attention: Chief Financial Officer

Issuer

HFA Holdings Limited

Address: Level 5, 151 Macquarie Street, Sydney, NSW 2000

Fax number: 61 2 9252 4580

Attention: Chief Financial Officer

Senior Creditor

Westpac Banking Corporation

Address: Level 3, Westpac Place, 275 Kent Street, Sydney, NSW 2000

Fax number: 61 2 8254 6936

Attention: Michael O'Malley Jones