



Mothercare Australia Limited
ABN 26 060 199 082

Registered Office: Level 1, Building 220/2A, The Entertainment Quarter
122 Lang Road, Moore Park NSW 2021

27 November 2012

Market Announcement
Security Code: MLC

Mothercare Australia Limited ("MLC") announces that it will hold a Meeting of Noteholders on 17 December 2012. This meeting will seek the approval of Noteholders to resolutions relating to the proposed sale of MLC's business as outlined in the announcement of 14 November 2012.

The Notice of Noteholders Meeting, Proxy Form and Explanatory Memorandum are attached to this announcement and will be mailed to noteholders today.

For and on behalf of the Board



David James
Company Secretary

Mothercare Australia Limited
ABN 26 060 199 082

Meeting Documentation

Notice of Meeting of Noteholders
Information Memorandum

Date of Meeting
17 December 2012

Time of Meeting
11:30am

Place of Meeting
Level 10, 1 Margaret St
Sydney NSW 2000

Mothercare Australia Limited
ABN 26 060 199 082

Notice of Meeting of Noteholders

A meeting of Noteholders of Mothercare Australia Limited ABN 26 060 199 082 (the **Company**) will be held at Level 10, 1 Margaret St, Sydney NSW 2000 on 17 December 2012 at 11:30am.

The business to be considered at the Noteholders Meeting is set out below. This includes considering the release of guarantees and security held by Australian Executor Trustees Limited (**Trustee**) in favour of the Noteholders, and amendments proposed by the Company to the trust deed dated 31 August 2011 between the Company, its subsidiaries and the Trustee as amended by the amending deed dated 16 March 2012 between the Company, its subsidiaries and the Trustee (the **Trust Deed**).

The resolutions have been proposed by the Company to facilitate the sale by the Company to The Myer Family Company Holdings Pty Ltd (**Myer Family Company**) of all of its assets and undertaking and reported liabilities, and liabilities incurred in the ordinary course of business up to the date of completion of the proposed sale including, without limitation, the entire share capital in Skansen KCG Pty Ltd (a subsidiary of the Company) pursuant to the terms of the Implementation Agreement dated 14 November 2012 (the **Myer Family Company Proposal**).

The Myer Family Company Proposal is subject to the satisfaction or waiver of a number of conditions precedent by 31 December 2012 or such other date as agreed by the parties to the Myer Family Company Proposal including the Noteholders' approval of the Resolutions and the Mothercare Shareholder Approval (as defined below). Completion of the Myer Family Company Proposal will take place 5 Business Days following satisfaction or waiver of the last condition precedent (the **Completion Date**).

If the Myer Family Company Proposal is not approved by the Noteholders and the Mothercare Shareholder Approval (as defined below) is not obtained, the Directors of the Company intend to place the Company into voluntary administration.

If the Company is placed into voluntary administration, the Noteholders will be secured creditors of the Company. However, the Noteholders will be likely to receive little, if any, distribution because ANZ holds a first ranking charge over all the assets and undertaking of the Company and its subsidiaries.

Pursuant to the Myer Family Company Proposal, it is intended that:

- (a) the security held by the Trustee in favour of the Noteholders will be unconditionally and irrevocably released and discharged, in particular the second ranking fixed and floating charge granted by the Company in favour of the Trustee pursuant to the terms of the Group Deed of Charge and Mortgage between the Company and the Guarantors and the Trustee dated 31 August 2011 (**Security**);
- (b) any encumbrance over any assets of the Company and the Guarantors constituted under the Security will be unconditionally and irrevocably released and discharged;
- (c) the Guarantors will be unconditionally and irrevocably released and discharged from any and all current, contingent or future liability, default, breach, claim, demand or legal action arising under or in connection with the Trust Deed including the guarantee under clause 40 of the Trust Deed. This would mean that the Guarantors are unconditionally and irrevocably released and discharged from all obligations and liabilities which have arisen or may arise at any time prior to, on or after the Completion Date under the Trust Deed;

- (d) as a result of (a) to (c), the Company and the Guarantors will be released from the second ranking fixed and floating charge which currently secures the Notes so that the Notes will be unsecured and the Trustee will not be able to make a claim or demand against the Guarantors under the guarantee in clause 40 of the Trust Deed; and
- (e) the net balance of the cash component of the sale proceeds, after paying any remaining debts owing by the Company and an allowance for working capital, be utilised towards full and final settlement of the Notes held by the Noteholders. The remaining debts owing by the Company and required working capital is estimated to be a total of \$240,000

In this regard, the total amount of the net balance of the cash component that is estimated to be available for distribution to Noteholders is not likely to be more than \$250,000 or \$0.02 to be distributed per Mandatorily Converting Note. Any distribution for the Notes will be made immediately following completion of the Myer Family Company Proposal .

This Notice of Meeting should be read in its entirety in conjunction with the accompanying Information Memorandum, which contains information in relation to the following Resolutions and the Myer Family Company Proposal.

If you are in any doubt as to how you should vote on the proposal set out in this Notice of Meeting, you should consult your financial or other professional adviser.

The Trustee does not make any representations as to the truth or accuracy of the contents of this Notice of Meeting and the accompanying Information Memorandum. The Trustee is not obliged to consider the merits, or otherwise, of the proposed amendments and has not done so. Accordingly, the Trustee makes no recommendation as to whether or not Noteholders should vote on the Resolutions, or how they should vote.

Ordinary business

1. Resolution – Discharge of guarantees and security

To consider and if thought fit, to pass the following resolution proposed by the Company as a special resolution:

That the following actions are sanctioned and the Trustee is authorised to concur in and execute a supplemental deed (**Supplemental Deed**) embodying provisions to the following effect:

- (1) With effect on and from the Completion Date:
 - (i) Skansen Pty Limited, A.C.N. 000 950 649 Pty Limited, BK World Online Pty. Limited, Skansen KCG Pty Limited and Baby on a Budget Pty Ltd (the **Guarantors**) are unconditionally and irrevocably released and discharged from any and all current, contingent or future liability, default, breach, claim, demand or legal action arising under or in connection with the Trust Deed;
 - (ii) the security held by the Trustee in favour of the Noteholders is unconditionally and irrevocably released and discharged, in particular the second ranking fixed and floating charge granted by the Company and the Guarantors in favour of the Trustee pursuant to the terms of the Group Deed of Charge and Mortgage between the Company and the Guarantors and the Trustee dated 31 August 2011 (**Security**); and
 - (iii) any encumbrance over any assets of the Company and the Guarantors constituted under the Security is unconditionally and irrevocably released and discharged.

2. Resolution - Amendment to the terms of Mandatorily Converting Notes

To consider and if thought fit, to pass the following resolution proposed by the Company as a special resolution:

That subject to the shareholders of the Company also approving the Myer Family Company Proposal as summarised in section 3 of the Information Memorandum accompanying this Notice of Meeting (**Mothercare Shareholder Approval**) and for the purposes of clause 39 of the trust deed dated 31 August 2011 between the Company, the Guarantors and Australian Executor Trustees Limited (**Trustee**) as amended by the amending deed dated 16 March 2012 between the Company, the Guarantors and the Trustee (the **Trust Deed**), the following amendments to the terms of the Trust Deed are sanctioned and the Trustee is authorised to concur in and execute a supplemental deed (**Supplemental Deed**) embodying a provision to the following effect:

(1) With effect on and from the Completion Date:

- (i) deletion of the words "CONVERTIBLE NOTE" from the title of the Deed on the cover page and the first page;
- (ii) deletion of the following words from the cover page:

"EACH ENTITY LISTED IN THE SCHEDULE (each a **Guarantor** and together the Guarantors) and"
- (iii) deletion of clause 2 under the heading "PARTIES" on the first page;
- (iv) deletion of Recital A and Recital B;
- (v) deletion of the phrase "and each Guarantor" from the definition of "Group" in clause 1.1;
- (vi) deletion of the definition of "Group Charge" in clause 1.1;
- (vii) deletion of the phrase ", the Group Charge" from the definition of "Transaction Documents" in clause 1.1;
- (viii) deletion of the phrase "the Guarantors" from the definition of "Intercreditor Deed" in clause 1.1 and the insertion of the following in its place:
"certain other parties";
- (ix) deletion of the current definition of "Note" in clause 1.1 and the insertion of the following in its place:

"**Note** means an unsecured note issued by the Company pursuant to this Deed;"
- (x) deletion of subclause (b) in the definition of "Notifiable Event";
- (xi) deletion of subclauses 9(h)(iv), 9(m);
- (xii) deletion of the following phrase in clause 10.1(d):

", and each of the Notes will be convertible into Shares in accordance with the Conditions of Issue and this Deed";
- (xiii) deletion of the following phrase in clause 10.1(g):

"or conversion of the Notes";

- (xiv) deletion of clause 38.1(a) and the insertion of the following in its place:
"the face value of each Note has been repaid in full in accordance with the Conditions of Issue (as to which the Trustee may accept as conclusive an Authorised Officer's Certificate);
- (xv) insertion of "; and" at the end of subclause 38.1(c);
- (xvi) deletion of clause 40 in its entirety;
- (xvii) deletion of the phrase "and the **Guarantors**" in clause 42.2(b);
- (xviii) deletion of Schedules 1 and 2 in their entirety;
- (xix) deletion of the current Annexure to the Trust Deed and insertion of the following in its place:

ANNEXURE

CONDITIONS OF ISSUE

The following are the terms of the Notes issued by Mothercare Australia Limited (**Company**):

1. the face value of each Note being that Note's pro rata share of 100% of the amount equal to the net balance of the cash component of the Price after paying any remaining debts owing by the Company and an allowance for working capital will be repaid to the Noteholders in Australian dollars without deduction or counterclaim immediately, but in any event within 2 Business Days, following the Completion Date;
2. no interest will be payable in respect of the Notes;
3. the Notes will be unsecured;
4. the Notes shall have no voting rights;
5. if and to the extent any of the preceding terms and conditions are inconsistent with the Listing Rules, such rules will prevail in all respects to the extent of the inconsistency; and
6. the terms and conditions of each Note are governed by the laws of the State of New South Wales and each noteholder unconditionally submits to the jurisdiction of the courts of that State and courts of appeal from them.

In these Conditions of Issue:

- (i) **Completion Date** means the date on which completion of the sale from Skansen Pty Ltd and purchase by The Myer Family Company Holdings Pty Ltd ACN 004 116 296 (**Myer Family Company**) of the entire share capital in Skansen KCG Pty Ltd pursuant to the terms of the Implementation Agreement takes place, being 5 Business Days following satisfaction or waiver of the last condition precedent under the Implementation Agreement;

- (ii) **Implementation Agreement** means the implementation agreement dated 14 November 2012 between the Company, Skansen Pty Ltd and Myer Family Company; and
- (iii) **Price** means the aggregate of:
- a. \$490,000 cash (GST inclusive);
 - b. \$4,500,295.20, being the aggregate face value of mandatorily converting notes held by Myer Family Company to be forgiven by Myer Family Company on the Completion Date; and
 - c. \$1,270,000, being the aggregate amount of Myer Family Company's bridging loans to Skansen Pty Ltd to be forgiven by Myer Family Company on the Completion Date.

Other business

To deal with any other business that may be brought forward in accordance with the Trust Deed.

Proxies

A Noteholder entitled to attend and vote at the Noteholders Meeting may appoint a person to attend and vote at the Noteholders Meeting as the Noteholder's proxy.

A proxy need not be a Noteholder or Shareholder.

Proxies may only be appointed by returning the enclosed proxy form no later than 11:30am on 15 December 2012 by:

- post to Computershare Investor Services Pty Limited at GPO Box 242, Melbourne Vic 3001 or the Company at Locked bag 8000, Paddington NSW 2021;
- fax to 1800 783 447, or to 61 3 9473 2555 (outside Australia); or
- hand delivery to Level 4, Carrington Street, Sydney NSW 2000

The proxy form must be signed by the Noteholder. If it is a joint noteholding, all of the Noteholders must sign. If signed by the Noteholder's attorney, the power of attorney must have been a previously noted by the registry or a certified copy attached to the proxy form. If the Noteholder is a company, where the company has a sole director who is also the sole company secretary, the proxy form must be signed by that person. If the company does not have a company secretary, a sole director may also sign alone. Otherwise the proxy form must be signed by a director jointly with either another director or a company secretary.

By order of the Board



David James
Company Secretary

Dated: 26 November 2012

Mothercare Australia Limited
ABN 26 060 199 082

Information Memorandum

This Information Memorandum has been prepared for Noteholders of Mothercare Australia Limited ABN 26 060 199 082 (**Company**) in connection with the business to be transacted at the Noteholders Meeting of the Company to be held at 11:30am on 17 December 2012 at Level 10, 1 Margaret St, Sydney NSW 2000 and contains important explanatory and other information for Noteholders in relation to the Resolutions set out in the attached Notice of Meeting.

The Directors recommend Noteholders read this Information Memorandum carefully in full before making any decision in relation to the Resolutions.

The Directors encourage all Noteholders to attend the Noteholders Meeting and vote in person or by proxy to ensure that they have a say in protecting their investment in the Company.

Words or expressions used in the Notice of Meeting and in this Information Memorandum are defined in the Glossary.

The Resolutions in the Notice of Meeting concern significant changes to the existing rights of Noteholders. If you are in doubt about what to do in relation to the Resolutions, you should consult with your financial or other professional adviser.

1. Transaction summary

- The Company proposes to sell to The Myer Family Company Holdings Pty Ltd (**Myer Family Company**) of all of the assets and undertaking and reported liabilities of the Company.
- On 14 November 2012 the Company, Skansen and Myer Family Company entered into an Implementation Agreement. Under the Implementation Agreement, the sale is proposed to take place by selling the entire share capital of Skansen KCG (**Sale Shares**) being the Company's operating subsidiary to Myer Family Company for the total consideration of:
 - (a) \$490,000 cash (GST inclusive);
 - (b) Myer Family Company forgiving the face value of the Mandatorily Converting Notes held by it amounting to \$4,500,295.20; and
 - (c) Myer Family Company forgiving the face value of the bridging loans granted by it to Skansen Pty Ltd amounting to \$1,270,000.

The forgiveness by Myer Family Company of its Notes with the Company and of the bridging loans granted by it to Skansen Pty Ltd referred to in (b) and (c) above means that the Company will no longer be obliged to repay the Notes held by Myer Family Company and Skansen Pty Ltd will no longer be obliged to repay the bridging loans granted by Myer Family Company. A summary of the Myer Family Company Proposal is set out in sections 3 and 4 of this Information Memorandum.

Further, certain intercompany loans will be forgiven under the Implementation Agreement being (i) the loan from the Company to Skansen

KCG which, as at the date of this Information Memorandum, is in the amount of \$36,728,941; (ii) the loan from Skansen to Skansen KCG which, as at the date of this Information Memorandum, is in the amount of \$3,112,543; and (iii) the loan from Dodo Holdings Pty Limited to Skansen KCG which, as at the date of this Information Memorandum, is in the amount of \$578,223) (**Intercompany Loans**).

- Subject to Shareholder approval, Myer Family Company has also agreed to procure M F Custodians Ltd to offer to sell to the Company all of its Shares in the Company for a total amount of \$1.00 by way of a selective share buy back following completion of the Myer Family Company Proposal and any meeting to approve the backdoor listing of a business in the Company.
- Subject to Shareholder approval, Mothercare Finance Limited has also separately agreed with the Company to forgive the face value of the Mandatorily Converting Notes held by it and bridging loans granted by Mothercare Finance Limited to the Company on completion of the Myer Family Company Proposal and to sell to the Company its Shares in the Company for a total amount of \$1.00 by way of a selective share buy back following completion of the Myer Family Company Proposal and any meeting to approve the backdoor listing of a business in the Company. The forgiveness by Mothercare Finance Limited of its Notes with and bridging loans to the Company means that the Company will no longer be obliged to repay the Notes held by and bridging loans granted by Mothercare Finance Limited.
- The Company proposes to use the net balance of the \$490,000 cash component of the consideration referred to above, after paying any remaining debts owing by the Company and an allowance for working capital (such debts and working capital are estimated to be a total of \$240,000), in repayment of the face value of the Mandatorily Converting Notes in accordance with the amended Conditions of Issue and Trust Deed. For the avoidance of doubt, Myer Family Company and Mothercare Finance Limited will not receive any distribution as Noteholders from the net balance of this cash component. The current number of Notes on issue is 50,917,445, and the number of Notes on issue excluding those held by Myer Family Company and Mothercare Finance Limited is 12,348,999.

The total amount of the net balance of the cash component that is estimated to be available for distribution to Noteholders is not likely to be more than \$250,000 or \$0.02 to be distributed per Mandatorily Converting Note. The distribution is to be in full and final settlement of the Mandatorily Convertible Notes held by each Noteholder. The amendments to the Conditions of Issue and Trust Deed required to achieve this purpose are set out in the Resolutions and summarised in section 3 of this Information Memorandum.

2. Trust Deed and Meetings of Noteholders

Trust Deed and Mandatorily Converting Note terms

The Mandatorily Converting Notes are governed by a Trust Deed between the Company, the Guarantors and the Trustee dated 31 August 2011 as amended by an Amending Deed dated 16 March 2012 between the Company, the Guarantors and the Trustee (**Trust Deed**). A copy of the Trust Deed is available for inspection at the Company's registered office. The Conditions of Issue of the Mandatorily Converting Notes is governed by the Trust Deed.

Amendment to terms of Mandatorily Converting Notes

Clause 39.1(c) of the Trust Deed provides that the Trustee has the power to amend the Conditions of Issue of the Mandatorily Converting Notes if a special resolution is passed by the Noteholders in favour of the amendment.

Clause 39.2(c) of the Trust Deed provides that the Trustee, by agreement with the Company, has the power to amend the terms of the Trust Deed if a special resolution is passed by the Noteholders in favour of the amendment.

Meeting of Noteholders

Clause 35.3 of the Trust Deed allows the Company to, at any time, convene a meeting of Noteholders. Clause 35.6 requires that at least 10 Business Days' prior written notice must be given to Noteholders specifying the place, day and hour of the meeting and the general nature of the business to be considered.

Passing of Noteholders Special Resolutions

The Trust Deed provides that a resolution is duly passed as a special resolution at a meeting of Noteholders where more than 75% of the total number of votes of all Noteholders present and entitled to vote on the resolution vote in favour of the resolution, based on one vote per Mandatorily Converting Note.

Clause 36.3 of the Trust Deed provides that a resolution passed at a meeting of Noteholders duly convened and held is binding on all the Noteholders, whether or not a Noteholder attended or voted at the meeting.

Trustee

The Trustee is not obliged to consider the merits, or otherwise, of the proposed amendments to the Conditions of Issue and Trust Deed and has not done so. Accordingly, the Trustee makes no recommendation as to whether or not Noteholders should vote on the Resolutions, or how they should vote.

3. Background to the proposed Resolutions

Myer Family Company Proposal

As announced in the 2012 Annual Report the Company and its subsidiaries incurred a net comprehensive loss after tax of \$12.3 million for the full year. The Company has continued to incur losses since 30 June 2012.

In summary, the main factors impacting the result included:

- Australian retail market conditions remained difficult in terms of weak consumer demand and consequently price-based competition escalated.
- Restructuring costs including redundancies of \$0.8m.
- An unrealised foreign exchange loss of \$0.3m.
- Costs associated with the return of surplus stock of \$0.3m.
- A fixed asset write down of \$0.4m associated with store closures.
- Depreciation and amortisation of \$2.9m.

The Board has explored a number of possible strategic options available to the Company in light of the difficult Australian retail market conditions including raising additional capital, the sale of the business of the Company and voluntary administration.

As announced to the ASX on 10 October 2012, the Company signed a Term Sheet with Myer Family Company for Myer Family Company to acquire the business of the Company. This will involve the purchase by Myer Family Company of the Sale Shares as defined in item 1 above. It will not involve an acquisition by Myer Family Company of shares in the Company.

As stated under item 1 above, this sale to Myer Family Company is for the total consideration of:

- (a) \$490,000 cash (GST inclusive);
- (b) Myer Family Company forgiving the face value of the Mandatorily Converting Notes held by it amounting to \$4,500,295.20; and
- (c) Myer Family Company forgiving the face value of the bridging loans granted by it to Skansen Pty Ltd amounting to \$1,270,000.

Further, the Intercompany Loans (as defined under item 1 above) will be forgiven under the Implementation Agreement.

The sale is subject to the satisfaction or waiver of a number of conditions precedent by 31 December 2012 or such other date as agreed by the parties to the Implementation Agreement (**Condition Date**) including the Noteholders' approval of the Resolutions.

Myer Family Company has also agreed to procure M F Custodians Ltd to offer to sell to the Company all of its Shares in the Company for a total amount of \$1.00 following completion of the Myer Family Company Proposal and any meeting to approve the backdoor listing of a business in the Company. It is the opinion of each Director, other than David Shelmerdine, that the Company should accept the share buy-back offer from M F Custodians Ltd, if approved by the Shareholders, following any meeting to approve the backdoor listing of a business in the Company.

A summary of the terms of the Implementation Agreement is provided in section 3 below.

As stated under item 1 above, Mothercare Finance Limited, which currently holds 23.04% of the Shares on issue has also separately agreed with the Company to forgive the face value of the Mandatorily Converting Notes held by it and bridging loans granted by Mothercare Finance Limited to the Company on completion of the sale of the Sale Shares to Myer Family Company and to sell to the Company its Shares in the Company for a total amount of \$1.00 by way of a selective share buy back following any meeting to approve the backdoor listing of a business in the Company. It is the opinion of each Director that the Company should accept the share buy-back offer from Mothercare Finance Limited, if approved by the Shareholders, following any meeting to approve the backdoor listing of a business in the Company.

Effect of the Myer Family Company Proposal

The effect of the Myer Family Company Proposal will be the sale to Myer Family Company of all of the assets and undertaking and reported liabilities of the Company and liabilities incurred in the ordinary course of business up to Completion.

Directors' intentions following Completion

Following the Completion of the sale and purchase of the Sale Shares, it is the Directors' intention to consider opportunities for the Company to be used as a backdoor listing vehicle by another entity seeking to be listed on the ASX. In the event

that no such opportunities present themselves to the Directors, the Directors intend to place the Company into members' voluntary liquidation.

Summary of proposed Resolutions

The effect of the Resolutions set out in the Notice of Meeting is to provide approval by the Noteholders for the Company and the Trustee, by supplemental deed to the Trust Deed, to amend the Conditions of Issue of the Mandatorily Converting Notes and the terms of the Trust Deed in the following manner:

- amend the face value of each Mandatorily Converting Note (to that Mandatorily Converting Note's pro rata share of 100% of the amount equal to the net balance of the cash component of the proceeds of the sale of the Sale Shares to Myer Family Company after paying any remaining debts owing by the Company and an allowance for working capital (such debts and working capital are estimated to be a total of \$240,000), which would result in each Mandatorily Converting Note receiving approximately \$0.02);
- change the Mandatorily Converting Notes to not being secured, guaranteed or convertible and not having interest payable in respect of them,

and to make certain other consequential amendments to the Trust Deed.

A copy of a version of the Trust Deed with the proposed amendments to the Conditions of Issue and Trust Deed is included in the Annexure to this Information Memorandum.

The proposed amendments to the Conditions of Issue and the Trust Deed are a condition of the Myer Family Company Proposal.

As set out in 1 above, the total amount of the net balance of the cash component that is estimated to be available for distribution to Noteholders (excluding Myer Family Company and Mothercare Finance Limited) is not likely to be more than \$250,000 or \$0.02 to be distributed per Mandatorily Converting Note. The Mandatorily Converting Notes are currently mandatorily converting. Upon a winding up of the Company the Noteholders will only be repaid the face value of the Mandatorily Converting Notes together with all accumulated but unpaid interest. If the Company is wound up, the Noteholders will be unlikely to receive any distribution because ANZ holds a first ranking charge over all the assets and undertaking of the Company and its subsidiaries.

Amendment of the Trust Deed

Where the Resolutions are passed and subject to the Mothercare Shareholder Approval being obtained, the Trustee and the Company will enter into a supplemental deed to release the guarantees and Security and to amend the Trust Deed to incorporate the changes to the Trust Deed as outlined in the Resolutions (and any other ancillary changes necessary to reflect the Resolutions).

The Trust Deed will be taken to have been amended as from the date of Completion.

The Company will seek Mothercare Shareholder Approval at the Annual General Meeting of the Company as required under the Implementation Agreement on 17 December 2012 or such later date as agreed by the parties to the Implementation Agreement.

Supplemental Deed

In addition to the provisions outlined above, the supplemental deed to amend the Trust Deed will also include the following provisions:

- (1) On and from the Completion Date the Company irrevocably and unconditionally releases and discharges the Guarantors (as that term is defined in the Trust Deed) from any and all current, contingent or future liability, default, breach, claim, demand or legal action arising under or in connection with the Trust Deed.
- (2) On and from the Completion Date, the Trustee irrevocably and unconditionally:
 - (i) releases and discharges the Guarantors from any and all current, contingent or future liability, default, breach, claim, demand or legal action arising under or in connection with the Trust Deed;
 - (ii) releases and discharges the Company and the Guarantors from the second ranking fixed and floating charge granted by the Company and the Guarantors in favour of the Trustee pursuant to the terms of the Group Deed of Charge and Mortgage between the Company, the Guarantors and the Trustee dated 31 August 2011 (**Security**); and
 - (iii) releases and discharges any encumbrance over any assets of the Company and the Guarantors constituted under the Security.
- (3) If any security interests (which has the meaning given to it in section 12 of the Personal Property Securities Act 2009 (Cth) (**PPSA**)) in favour of the Trustee relating to the Security are registered on the Personal Property Securities Register established under section 147 of the PPSA, the Trustee will procure discharge of those registrations within 10 Business Days of being notified by the Company that the Completion Date has occurred.

The effect of these provisions is that, from the Completion Date, the Guarantors will be released from any liabilities and obligations which have arisen or may arise at any time prior to, on or after the Completion Date under the Trust Deed and the Company and the Guarantors will be released from the second ranking fixed and floating charge which currently secures the Notes.

Mothercare Shareholder Approval

As indicated above, the amendment of the Trust Deed under the Resolutions is subject to the Mothercare Shareholder Approval. As a result, should the Company not obtain Mothercare Shareholder Approval, then the Resolutions will not be effective and the Trust Deed and the Conditions of Issue of the Mandatorily Converting Notes will be unchanged, subject to existing security arrangements and the current financial status of the Company.

In such case, the Myer Family Company Proposal will not proceed, and the Directors intend to place the Company into voluntary administration. If the Company is placed into voluntary administration, the Noteholders will be secured creditors of the Company. However, the Noteholders will be unlikely to receive any distribution because ANZ holds a first ranking charge over all the assets and undertaking of the Company and its subsidiaries.

Resolutions advantages and disadvantages

The advantages of the proposed amendments to the Conditions of Issue and Trust Deed for Noteholders include that:

- the Noteholders will be able to receive some value for their Mandatorily Converting Notes; and

- the Company would otherwise be placed into voluntary administration if the Myer Family Company Proposal does not proceed.

The disadvantage of the proposed amendments to the Conditions of Issue and Trust Deed for Noteholders is that the Mandatorily Converting Notes will no longer be secured, guaranteed or convertible and will not have interest payable in respect of them.

Directors' Recommendations

The Resolutions must be approved by the Noteholders and Mothercare Shareholder Approval must be obtained for the sale of Skansen KCG to Myer Family Company to proceed.

Your Directors, other than David Shelmerdine, unanimously recommend that you vote in favour of the Resolutions because if the Resolutions are not approved by the Noteholders, the Company will be unable to complete the Myer Family Company Proposal and will have insufficient cash proceeds to pay its debts as and when they fall due and accordingly will be insolvent. If the Resolutions are not approved by the Noteholders, it is the intention of the Directors to immediately appoint a voluntary administrator to the Company and its subsidiaries.

David Shelmerdine, who is affiliated with Myer Family Company, is not participating in the Directors' deliberations in relation to the Myer Family Company Proposal and is therefore not making any recommendation in relation to how you should vote in relation to the Resolutions.

Voting

Your vote is important and if you cannot attend the Noteholders Meeting to be convened pursuant to the Notice of Meeting you are recommended to lodge a proxy form indicating your voting preference/s. A resolution passed at a meeting of Noteholders duly convened and held is binding on all the Noteholders, whether or not you have attended or voted at the meeting.

4. Summary of Implementation Agreement

As stated under item 1 above, on 14 November 2012 the Company, Skansen and Myer Family Company entered into an Implementation Agreement. Under the Implementation Agreement, the sale is proposed to take place by selling the Sale Shares as defined in item 1 above for the total consideration of:

- (a) \$490,000 cash (GST inclusive);
- (b) Myer Family Company forgiving the face value of the Mandatorily Converting Notes held by it amounting to \$4,500,295.20; and
- (c) Myer Family Company forgiving the face value of the bridging loans granted by it to Skansen Pty Ltd amounting to \$1,270,000.

Further, the Intercompany Loans (as defined under item 1 above) will be forgiven under the Implementation Agreement.

The sale of the Sale Shares to Myer Family Company is subject to the satisfaction or waiver of a number of conditions precedent by the Condition Date including:

- (a) for the purposes of Listing Rules 10.1 and 11.2 of the ASX Listing Rules, the Shareholders' approval of the transfer of the Sale Shares to Myer Family Company and the forgiveness of the Intercompany Loans;
- (b) the approval of the Resolutions by the Noteholders;
- (c) the approval of ANZ to the transfer of the Sale Shares to Myer Family Company and that on Completion, ANZ has agreed to extend funding arrangements so they remain available to Skansen KCG and its subsidiaries following Completion on their current terms and Skansen and the Company will be released from any and all liabilities relating to all financial accommodation provided by ANZ to the Company and Skansen;
- (d) that the Company has obtained releases and discharges of all encumbrances in relation to the Sale Shares, Skansen KCG and its subsidiaries that are acceptable to Myer Family Company and releases and discharges of all liabilities (actual and contingent) incurred in connection with Skansen and Skansen KCG (other than those in respect of the ANZ funding arrangements and encumbrances granted or liabilities incurred in the ordinary course of business of Skansen KCG and its subsidiaries); and
- (e) Mothercare Finance Limited and Myer Family Company agreeing certain commercial arrangements;
- (f) delivery of certified copies of each required board consent of Skansen relating to the Implementation Agreement;
- (g) delivery of certified copies of any governmental agency consent relating to the Implementation Agreement, the transfer of the Sale Shares to Myer Family Company and the ownership and possession of the Sale Shares by Myer Family Company, and the assets of the Group, subsequent to Completion, which Myer Family Company reasonably considers are necessary or desirable and each of which is unconditional or subject only to conditions reasonably acceptable to Myer Family Company;
- (h) no temporary restraining order, preliminary or permanent injunction or declaration or other order issued by any governmental authority, no preliminary or final decision, determination, or order issued by any governmental authority and no other legal restraint preventing, delaying or adversely affecting any of the transactions contemplated by the Implementation Agreement is in effect;
- (i) no insolvency event has occurred or is subsisting with respect to Skansen;
- (j) delivery of a statutory declaration from Skansen that the copy of the share register for each Group Company and current ASIC search of each Group Company annexed to the statutory declaration are true and correct in all particulars;
- (k) delivery of evidence that Skansen has caused each transfer of shares in each Group Company since its incorporation to be stamped in the appropriate jurisdiction (if required);
- (l) all indebtedness owed:
 - (i) from Skansen or any person associated with Skansen (not being a Group Company) to each Group Company (other than amounts owing in the normal course of trading on arm's length terms);

- (ii) from any Group Company to Skansen or any of its related companies (not being a Group Company and other than amounts owing in the normal course of trading on arm's length terms); and
- (iii) from Skansen or any Group Company to a third party (other than amounts owing in the normal course of trading on arm's length terms),

is discharged and extinguished in full (including, without limitation, the forgiveness of the Intercompany Loans), and reasonable evidence of such discharge to Myer Family Company's reasonable satisfaction is provided to Myer Family Company;

- (m) the Company resolving certain immaterial legal proceedings;
- (n) each Group Company is, with effect from Completion, released from any actual, contingent or accrued liabilities under each guarantee provided by any Group Company in relation to the obligations of Skansen and its related companies (other than each Group Company); and
- (o) the Company has lodged with the appropriate tax authority all returns required to be lodged in relation to the tax affairs of the Company and its consolidated subsidiaries.

Certain of the conditions may be waived by Myer Family Company. A number of conditions may not be waived by either party. However, should all of the conditions not be satisfied or waived by the Condition Date, the Implementation Agreement may be terminated, and the Myer Family Company Proposal will not proceed.

Completion will take place 5 Business Days following satisfaction or waiver of the last condition precedent.

It is anticipated that all conditions that are due to be satisfied by the date of the Noteholders Meeting will be satisfied. An announcement will be made to the ASX and before the consideration of the Resolutions at the Noteholders Meeting of the then state of satisfaction (or not) of the conditions.

Prior to Completion Skansen has agreed to maintain Skansen KCG in the manner it has been prior to the execution of the Implementation Agreement including not:

- creating any security interest over its assets, except in the ordinary course of business;
- performing or omitting any action which might create or cause a prejudicial effect on any asset or the business of Skansen KCG.

Additionally, prior to the later of Completion and the resolution by the Company of certain immaterial legal proceedings Skansen has agreed not to:

- transfer, acquire or dispose of any asset, except in the ordinary course of business;
- declare, determine or pay any dividend, approve or undertake any share buy-back or reduction of capital or redeem any redeemable preference share; or
- incur any significant cost, except in the ordinary course of business or as permitted in the Implementation Agreement.

Skansen has also provided certain warranties regarding the Sale Shares, its execution of the Implementation Agreement and the assets. The period during which Myer

Family Company may make a warranty claim under the Implementation Agreement will expire at Completion.

Subject to Completion occurring, Myer Family Company must also procure M F Custodians Ltd to offer to sell all of its Shares in the Company to the Company following any meeting to approve the backdoor listing of a business in the Company (if such sale has been approved by the shareholders of the Company in accordance with the Corporations Act).

A party may terminate the Implementation Agreement by notice in writing to the other party in the event that:

- any condition precedent has not been satisfied or waived by Myer Family Company on or prior to the Condition Date or any condition has become incapable of satisfaction and has not been waived;
- if Myer Family Company becomes aware of breaches of warranty which would give rise to a claim of \$100,000 in aggregate or more and the circumstances of the breach are not remedied by the earlier of 5 Business Days from notifying Skansen and the date of Completion; or
- a party fails to effect completion having been served a completion notice by the other party, except where the party serving the notice is itself in default.

Myer Family Company may also terminate the Implementation Agreement by notice in writing to the Company in the event of a material default by the Company under the Implementation Agreement.

5. Additional Information

Market price of Shares and Note Conversion

The lowest and highest market sale prices of Shares on the ASX during the 4 months immediately preceding the last date which the securities were listed prior to the date of this Information Memorandum, and the respective dates of those sales, were:

- Highest Price was \$0.08 cents on 22 June 2012
- Lowest Price was \$0.047 cents on 26 September 2012

The last sale price for Shares on the ASX on 28 September 2012, being the last date which the securities were listed prior to the date of this Information Memorandum was \$0.048.

None of the Mandatorily Converting Notes have been converted into ordinary shares.

Further information

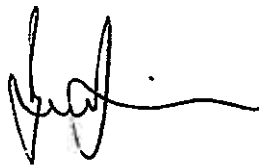
All Noteholders will be sent a copy of the Company shareholder notice of meeting which is currently being prepared for the Company Annual General Meeting to be convened on 17 December 2012 to consider approval of the Myer Family Company Proposal (and ancillary resolutions).

The following documents are available for inspection without charge during normal business hours at the registered office of the Company:

- Trust Deed;
- version of the Trust Deed marked up with the proposed amendments to the Conditions of Issue and Trust Deed;
- Constitution; and
- any ASX announcement made by the Company from 30 June 2012 up to the date of this Information Memorandum.

Please contact the Company on (02) 9332 9900 to arrange an inspection time.

Signed for and on behalf of the Directors of the Company on 26 November 2012.



Mr Brent Dennison
Director

6. Glossary

In the Notice of Meeting and this Information Memorandum the following expressions have the following meanings:

ANZ means Australia and New Zealand Banking Group Limited.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ABN 98 008 624 691 or the market conducted by that company.

Board means the board of Directors of the Company.

Business Day means a day that is not a Saturday or Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Company means Mothercare Australia Limited ABN 26 060 199 082.

Completion means completion of the sale and purchase of the Sale Shares under the Implementation Agreement.

Conditions of Issue means the terms and conditions of the Mandatorily Converting Notes as set out in the annexure to the Trust Deed and as amended from time to time in accordance with the Trust Deed.

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

Directors means each of the Directors of the Company.

Dollar or **\$** means the lawful currency of the Commonwealth of Australia.

Group means each Group Company separately and all Group Companies collectively.

Group Company means each of Skansen KCG and its subsidiaries.

Guarantors means Skansen Pty Limited, A.C.N. 000 950 649 Pty Limited, BK World Online Pty. Limited, Skansen KCG Pty Limited and Baby on a Budget Pty Ltd.

Implementation Agreement means the Implementation Agreement between the Company, Skansen and Myer Family Company dated 14 November 2012.

Information Memorandum means this Information Memorandum.

Intercompany Loans means certain intercompany loans being (i) the loan from the Company to Skansen KCG which, as at the date of this Information Memorandum, is in the amount of \$36,728,941; (ii) the loan from Skansen to Skansen KCG which, as at the date of this Information Memorandum, is in the amount of \$3,112,543; and (iii) the loan from Dodo Holdings Pty Limited to Skansen KCG which, as at the date of this Information Memorandum, is in the amount of \$578,223).

Listing Rules means the Listing Rules of the ASX.

Mandatorily Converting Notes means the mandatorily converting notes with the Conditions of Issue set out in the Schedule.

Mothercare Shareholder Approval has the meaning in the Resolutions set out in the Notice of Meeting.

Myer Family Company means The Myer Family Company Holdings Pty Ltd ACN 004 116 296.

Myer Family Company Proposal means proposal for Myer Family Company to acquire the Sale Shares from Skansen as summarised in section 2 and 3 of this Information Memorandum.

Noteholders means the holders of the Mandatorily Converting Notes.

Noteholders Meeting means the meeting of Noteholders convened by the Notice of Meeting.

Notice of Meeting means the notice of meeting that accompanies this Information Memorandum.

Resolutions means the special resolutions set out in the Notice of Meeting.

Sale Shares means the entire share capital in Skansen KCG.

Share means a fully paid ordinary share in the capital of the Company.

Skansen means Skansen Pty Limited ACN 128 276 175.

Skansen KCG means Skansen KCG Pty Ltd ACN 134 497 420.

Shareholder means a registered holder of Shares in the Company.

Trust Deed means the Convertible Note Trust Deed between the Company, the Guarantors and the Trustee dated 31 August 2011 as amended by the Amending Deed dated 16 March 2012 between the Company, the Guarantors and the Trustee.

Trustee means Australian Executor Trustees Limited ACN 007 869 794.

Schedule - Current Conditions of Issue of Mandatorily Converting Notes

1. each secured Mandatorily Converting Note may be converted into one ordinary share in the Company at the election of the holder at any time by written notice of conversion to the Company, and shall convert automatically on the third anniversary of the date of issue or earlier if the Company's share price exceeds \$0.35 for any consecutive 90 day period provided that the Company exercises this right within 30 days;
2. interest will be payable by the Company at the rate of 8% per annum (in respect of interest payments that carry a franking credit) or 11.45% per annum (in respect of interest payments that do not carry a franking credit) on the amount subscribed for each secured Mandatorily Converting Note during the period from the date of issue until the conversion of each secured Mandatorily Converting Note. Such interest will accumulate and be paid by the Company biannually (with the first interest period commencing on the date of issue of the secured Mandatorily Converting Notes) in arrears within 30 days of the due date. The first three interest payments will, at the Company's option, accumulate and be paid within 30 days of the second anniversary of the date of issue of the secured Mandatorily Converting Notes;
3. the secured Mandatorily Converting Notes shall have no voting rights;
4. the Mandatorily Converting Notes will be secured by a second ranking fixed and floating charge granted by the Company in favour of a Security Trustee representing the holders. The security granted by the Company in favour of the Security Trustee is subject to the terms of the Intercreditor Deed and the terms of the Convertible Note Trust Deed which acknowledge that the terms of the Intercreditor Deed take priority over the Convertible Note Trust Deed;
5. each holder may prove in any winding-up of the Company for the face value of each secured Mandatorily Converting Note held by that holder which had not been converted into ordinary shares in accordance with clause 1 by the date of commencement of such winding-up together with all accumulated but unpaid interest in respect of the secured Mandatorily Converting Notes as at the date of such winding up;
6. all shares issued pursuant to the conversion of each secured Mandatorily Converting Note will be allotted within 2 business days after the conversion of the relevant secured Mandatorily Converting Notes and will rank pari passu in all respects with the Company's then existing shares. The Company will apply for official quotation by ASX of all shares issued upon conversion of each secured Mandatorily Converting Note on or before the third business day on which ASX is open after the date of allotment of the shares. The Company will procure that a holding statement for the shares is given to the noteholder in accordance with the ASTC Settlement Rules;
7. there are no participating rights or entitlements inherent in the secured Mandatorily Converting Notes and the noteholder will not be entitled to participate in new issues of capital offered to the Company's shareholders during the currency of the secured Mandatorily Converting Notes;
8. the Company may only reorganise its capital if, the number of secured Mandatorily Converting Notes or the conversion price or both are reorganised so that the holder of the secured Mandatorily Converting Notes will not receive a benefit that holders of ordinary shares in the Company do not receive. This clause does not prevent a rounding up of the number of shares to be received on conversion if the rounding up is approved at a meeting of the members of the Company which approves the reorganisation;
9. if and to the extent any of the preceding terms and conditions are inconsistent with the Listing Rules, such rules will prevail in all respects to the extent of the inconsistency; and

10. the terms and conditions of each secured Mandatorily Converting Note are governed by the laws of the State of New South Wales and the each noteholder unconditionally submits to the jurisdiction of the courts of that State and courts of appeal from them.

Annexure – Trust Deed with proposed amendments shown in mark up

DATED

2011

MOTHECARE AUSTRALIA LIMITED
ACN 060 199 082
(Company)

~~EACH ENTITY LISTED IN THE SCHEDULE~~
(each a ~~Guarantor~~ and together the
~~Guarantors~~) and

AUSTRALIAN EXECUTOR TRUSTEES
LIMITED
ACN 007 869 794
(Trustee)

CONVERTIBLE NOTE TRUST
DEED

 **KEMP STRANG**
MEMBER OF THE KENNEDY STRANG LEGAL GROUP

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REF: 611950
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CONVERTIBLE NOTE TRUST DEED

DEED dated 2011

PARTIES

1. **MOTHECARE AUSTRALIA LIMITED ACN 060 199 082** of Level 1, Building 220/2A, The Entertainment Quarter, 122 Lang Road, Moore Park, NSW 2021 (**Company**);
- ~~2. Each entity listed in Schedule 1 (each a **Guarantor** and together the **Guarantors**); and~~
32. **AUSTRALIAN EXECUTOR TRUSTEES LIMITED ACN 007 869 794** of Level 22, 207 Kent Street, Sydney, NSW 2000 (**Trustee**)

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RECITALS

- ~~A. The Company wishes to raise funds through the issue of secured mandatorily converting notes.~~
- ~~B. The Guarantors have agreed to guarantee the obligations of the Company in respect of the Notes.~~
- CA. The Trustee has agreed to act as trustee for the holders of the Notes on the terms and conditions contained in this Deed.

THE PARTIES AGREE as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

Appointee has the meaning given in clause 23;

ASIC means Australian Securities and Investments Commission;

ASX means ASX Limited ABN 98 008 624 691;

ASX Listing Rules means the official listing rules of ASX;

Auditor means the auditor or auditors for the time being of the Company;

Board means the board of Directors of the Company;

Borrowings means borrowings, raisings and all other forms of financial accommodation (whether actual, prospective or contingent);

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

Charges means any charges, imposts, taxes or duties payable by the Company to any person by virtue of or by reason of the payment or receipt of any Principal Money or the Money Owning;

Conditions of Issue means the terms and conditions applicable to the Notes, as set out in the Annexure and as amended from time to time in accordance with this Deed;

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

Covenants means the covenants given by the Company in this Deed;

Deed means this trust deed, including any schedule or annexure to it, as amended from time to time;

Director means a director of the Company;

Disclosure Document means the Prospectus issued by the Company with respect to the application for and issue of Notes dated on or about the date of this Deed, as amended from time to time;

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power;

Event of Default occurs when an order is made, petition presented or an effective resolution is passed to wind up the Company;

Financial Half Year means each period of 6 months ending on 30 June and 31 December in each year;

Financial Year means the period of 12 months ending on 30 June in each year;

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

Group means the Company and each Guarantor;

~~**Group Charge** means the Group Deed of Charge and Mortgage dated on or about the date of this Deed between the Company, the Trustee and the Guarantors;~~

Income Tax means any tax which is assessed, levied, imposed or collected on income or capital gains by or on behalf of any Governmental Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in respect of the tax;

Intercreditor Deed means the Intercreditor Deed dated on or about the date of this Deed between the Company, the Trustee, ~~the Guarantors~~ certain other parties and Australia and New Zealand Banking Group Limited ABN 11 005 357 522;

Money Owning means:

- (a) the Principal Money; and
- (b) any other money payable to the Trustee or any Noteholder under this Deed;

Note means an unsecured mandatorily converting note issued by the Company pursuant to this Deed;

Noteholder means a person entered on the Register as the holder of a Note;

Notifiable Event means:

- (a) the Company fails to pay the Money Owing when due and such failure continues unremedied for a period of 7 days;
- ~~(b)~~ subject to the Noteholder's compliance with the Conditions of issue, the Company fails to give effect to a Noteholder's notice to convert a Note within 3 Business Days of receipt of the notice;
- ~~(c)~~ (b) the Company suffers any of the following insolvency events:
 - (i) the Company suspends payment to creditors generally;
 - (ii) the Company fails to comply with a statutory demand served on the Company under section 459E of the Corporations Act;
 - (iii) an order is made, petition presented or an effective resolution is passed to wind up the Company;
 - (iv) the Company becomes an externally-administered body corporate within the meaning of the Corporations Act;
 - (v) a receiver, manager, receiver and manager, controller (as defined in section 9 of the Corporations Act) or analogous person is appointed to all or any material part of the assets of the Company;
 - (vi) the Company becomes subject to administration under Part 5.3A of the Corporations Act, or an analogous event or circumstance occurs under or pursuant to any other law applying in Australia or steps are taken which could reasonably be expected to result in the Company being so subject; or
 - (vii) the Company is or states that it is, or is treated by applicable law as being, unable to pay its debts as they fall due;
- ~~(d)~~ (c) the holder of an encumbrance takes possession of all or any material part of the assets of the Company in the exercise of security over indebtedness exceeding A\$500,000;
- ~~(e)~~ (d) the process of any court or authority is invoked against the Company or a material part of its property to enforce any judgment or order for an amount equal to or in excess of, A\$500,000 and this is not stayed or discharged within 30 days;
- ~~(f)~~ (e) the Company is in breach of this Deed;
- ~~(g)~~ (f) if any representation, warranty or statement made or repeated in or in connection with this Deed is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;
- ~~(h)~~ (g) if the Company defaults in the due performance of any undertaking, condition or obligation on its part to be performed in accordance with the Conditions of Issue or this Deed; or
- ~~(i)~~ (h) if a distress or execution is levied or enforced upon or sued against all of any part of the assets of the Company, and is not stayed or discharged within 30 days after being levied or enforced;

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Power means any right, power, authority, discretion or remedy conferred on the Trustee or an Appointee by any Transaction Document or any applicable law;

Principal Money means the money payable by a Noteholder on subscription for Notes;

Quarterly Report means a report containing information prescribed by and prepared and authorised in accordance with section 283BF of the *Corporations Act*;

Register means the register of Noteholders to be established and maintained pursuant to this Deed;

Related Body Corporate has the meaning given in section 9 of the *Corporations Act*;

Share means a fully paid ordinary share in the capital of the Company;

Special Resolution means where more than 75% of the total number of votes of all Noteholders present and entitled to vote on the resolution vote in favour of the resolution, based on one vote per Note;

Transaction Document means the Conditions of Issue, ~~the Group Charge~~ and the Intercreditor Deed;

Trust means the trust constituted by this Deed; and

Trustee means the Trustee or any replacement trustee appointed under this Deed.

1.2 Interpretation

- (a) Reference to:
- (i) one gender includes the other genders;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (1) that Statutory Provision as amended or re-enacted;
 - (2) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (3) another regulation or other statutory instrument made or issued under that Statutory Provision;
 - (vi) money is to Australian dollars, unless otherwise stated; and
 - (vii) **month** means a calendar month.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a

corresponding meaning.

- (d) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (e) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.
- (f) If an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day.
- (g) Where a term is not defined in this Deed but is defined in the *Corporations Act*, that term has the meaning ascribed to it by the *Corporations Act* unless the context otherwise requires.

2. APPOINTMENT OF TRUSTEE AND DECLARATION OF TRUST

2.1 The Trustee is appointed as trustee for the Noteholders on the terms and conditions contained in this Deed. The Trustee accepts that appointment.

2.2 The Trustee holds the following rights on trust for Noteholders:

- (a) the right to enforce the Company's duty to repay the Money Owing under the Notes; and
- (b) the right to enforce any other duties that the Company has under this Deed, the Notes and the *Corporations Act*.

2.3 The Trustee declares that it holds all money received by it in accordance with this Deed on trust for itself and for the Noteholders to be distributed in accordance with the terms of this Deed.

2.4 Subject to the approval of a majority of the Noteholders, the Company may appoint a new trustee under this Deed to fill any vacancy arising from the retirement of the Trustee under 33.1 or the removal of the Trustee under clause 33.2.

2.5 This Deed and the Conditions of Issue are binding on the Company, the Trustee, the Noteholders and all persons claiming through them.

3. ISSUE OF NOTES

3.1 Applications for Notes may be in the form of attached to the Disclosure Document or such other form as the Board determines. The Company is not bound to accept any application.

3.2 The Company may issue Notes pro rata to the shareholders of the Company in accordance with the Disclosure Document and the Conditions of Issue.

3.3 Each Note:

- (a) ranks equally with all other Notes; and
- (b) is held subject to and with the benefit of this Deed and the Conditions of Issue.

3.4 The Company may pay a commission, procuration fee or brokerage to any person for subscribing for, underwriting the subscription of or obtaining subscriptions for Notes.

4. REGISTER

- 4.1 The Company must establish and maintain, or cause to be established and maintained, an up-to-date Register of Noteholders.
- 4.2 The Company must notify the Trustee of the appointment of a registrar and provide the Trustee with the registrar's name, address, email address and phone number.
- 4.3 The Register must record:
- (a) the names and addresses of all Noteholders;
 - (b) the number of Notes held by each Noteholder;
 - (c) the Principal Money subscribed for each Note; and the date of issue of each Note.
- 4.4 A Noteholder must as soon as practicable give the Company notice in writing of any change of name or address. Notice of change of name or address must be accompanied by such evidence as the Company reasonably requires. On receipt of the notice, the Company must alter the Register accordingly.
- 4.5 The Company must ensure that the Register is open on each Business Day during normal business hours for inspection free of charge by the Trustee, a Noteholder or any person authorised in writing by a Noteholder or the Trustee.
- 4.6 Upon request by the Trustee, the Company will provide, or will cause its Share Registry to provide, the Trustee with a copy of the Register within 2 Business Days of such request. The Trustee may rely on and treat as genuine the document provided by the Company in accordance with the request and purporting to be a copy.

5. TRANSFERS

- 5.1 A Noteholder may transfer any of its Notes by lodging with the Company an instrument of transfer (duly stamped if necessary) in a form acceptable to the Company generally or in a particular case.
- 5.2 The instrument of transfer must be executed by the Noteholder as transferor and by the transferee, except where execution by the transferee is rendered unnecessary by a Statutory Provision.
- 5.3 No fee may be charged for the registration of a transfer.
- 5.4 Subject to any applicable law, an executed instrument of transfer must be forwarded for registration to the registered address of the Company accompanied by:
- (a) the note certificate for the Notes to be transferred; or
 - (b) other evidence the Company may reasonably require to prove the title or right of the transferor to transfer the Notes.
- 5.5 If the Company is satisfied with the documents provided and subject to this Deed and the provisions of any law relating to stamp duty being complied with, the Company must register the transfer as soon as practicable by entering the name of the transferee in the Register as the Noteholder referred to in the transfer.
- 5.6 The transferor must be treated as the owner of the Notes until the name of the transferee is entered in the Register.
- 5.7 All instruments of transfer which are registered must be retained by the Company for the

lesser of 7 years or for such other minimum period as may be required by law. Any instrument of transfer which the Company declines to register must (except in the case of fraud or suspected fraud) be returned on demand to the person lodging it.

6. TITLE TO NOTES, NON-RECOGNITION OF EQUITIES

- 6.1 The Company must recognise only the Noteholder whose name appears in the Register as the absolute owner of the Note in respect of which it is entered in the Register.
- 6.2 The Company is not, except as ordered by a court of competent jurisdiction or as required by statute, bound to take notice of any trust or equity to which a Note may be subject or otherwise affecting the ownership of a Note or incidental rights.
- 6.3 No details of any equity or trust contemplated by clause 6.2 may be entered in the Register.

7. JOINT NOTEHOLDERS

- 7.1 Notes may be held jointly by a maximum of 4 persons.
- 7.2 If several persons are entered in the Register as joint Noteholders of a Note, the receipt by any 1 of them of any Money Owing pursuant to the Terms of Issue due to joint Noteholders is as effective as a discharge to the Company in respect of all the joint Noteholders as if the person signing the receipt was the sole Noteholder of that Note.
- 7.3 Subject to clause 8.1, in the case of death of any 1 of joint Noteholders, the survivor or survivors are the only persons recognised by the Company as having any title to or interest in the Note registered in their names jointly.

8. DEATH, BANKRUPTCY OR LIQUIDATION OF NOTEHOLDER

- 8.1 The legal personal representative of a deceased Noteholder (not being 1 of the joint Noteholders) is the only person recognised by the Company as having any title to that deceased Noteholders' Notes.
- 8.2 Any person becoming entitled to Notes as a consequence of the liquidation, death, insolvency or other demise of a Noteholder may:
- (a) on producing such evidence of that person's title as the Company considers sufficient; and
 - (b) subject to the provisions in this Deed as to transfer; be registered as the Noteholder or as a joint Noteholder.
- 8.3 The Company need not register any transfer or transmission under this clause unless the transferee provides an indemnity in favour of the Company in a form determined by or satisfactory to the Company in respect of any consequence arising from the transfer or transmission.

9. GENERAL UNDERTAKINGS BY THE COMPANY

The Company undertakes to the Trustee and each Noteholder that it will:

- (a) **(carry on business)** carry on and conduct its business in a proper and efficient manner;
- (b) **(keep accounts)** keep or cause to be kept proper books of account (in accordance with current accounting practice and standards) and enter into those books full particulars of all dealings and transactions in relation to its business;

- (c) **(provide accounts)** provide the following:
- (i) without charge, to the Trustee (at the time required by the *Corporations Act*) and to each Noteholder who requests it in accordance with section 318(2) of the *Corporations Act*, a copy of the Company's consolidated audited accounts in respect of each Financial Year and a copy of the Company's annual report for that Financial Year;
 - (ii) without charge, to the Trustee, a copy of the Company's consolidated accounts in respect of each Financial Half Year at the time required by the *Corporations Act*; and
 - (iii) whenever requested by the Trustee, to the Trustee or any person authorised by the Trustee to receive it, such information as the Trustee reasonably considers necessary in relation to all matters necessary for the purposes of the discharge of the duties, trusts and powers vested in the Trustee under this Deed or imposed upon it by law;
- (d) **(ensure true and fair accounts)** ensure that any accounts provided to the Trustee:
- (i) comply with current accounting practice except to the extent disclosed in them and with all applicable laws; and
 - (ii) give a true and fair view of the matters with which they deal;
- (e) **(provide quarterly report)** provide to the Trustee within one month after the end of each calendar quarter the report required by section 283BF of the *Corporations Act*, containing all information required by section 283BF of the *Corporations Act*, provided that the first quarter will be the period of 3 months ending on a day fixed by the Company, by written notice to the Trustee which is less than 6 months after the first issue of a Note under this Deed.
- (f) **(stamp duty)** where there exists any recurring obligation on the Company or the Trustee or both to furnish certain information on the basis of which stamp duty will be payable in any State or Territory or other place, provide such information as is required by the Trustee to properly complete any return required to be lodged under the provisions of any stamp duty legislation which are applicable to this document or any of the Notes or otherwise to enable the Trustee to comply with its obligations with respect to any undertaking given pursuant to any such legislation, such information to be furnished to the Trustee not less than 10 Business Days prior to the time when such return is required to be lodged;
- (g) **(make records available for inspection)** make all financial and other records of the Company and its subsidiaries available for inspection by:
- (i) the Trustee;
 - (ii) any registered company auditor appointed by the Trustee for that purpose;
 - (iii) any officer, employee or auditor of the Trustee authorised by the Trustee to carry out the inspection,
- and give them any information, explanations or other assistance that they reasonably require about matters relating to those records;

- (h) **(give notices)** notify the Trustee:
- (i) as soon as it becomes aware of any Event of Default;
 - (ii) promptly if any charge is created over the Company's assets and advise the Trustee of the nature of such charge and any other particulars required to be disclosed to the Trustee pursuant to section 283BE of the *Corporations Act*;
 - (iii) as soon as it becomes aware that any provision of this Deed or a Note is not being, or cannot be, complied with by the Company, together with details of that non-compliance;
 - ~~(iv)~~ as soon as reasonably practicable if the Company intends to convert any Note; and
 - ~~(v)~~(iv) promptly of any appointment, retirement, resignation or removal of an Auditor.
- (i) **(provide documents)** promptly give the Trustee copies of all material documents and notices received by it from any Noteholder or which it gives to a Noteholder, whether directly, through market release, public newspapers or otherwise;
- (j) **(provide copy of deed)** without charge, provide a copy of this Deed to the Trustee or a Noteholder if they request a copy;
- (k) **(make payments)** make all payments of principal and interest in respect of the Notes, as and when due, in accordance with the Conditions of Issue, to the persons who are entitled to receive such payments;
- (l) **(audit payments)** if required by the Trustee (acting reasonably), procure that its Auditors conduct an audit of, and certify to the Trustee, the calculation by the Company of the aggregate amount of all money payable under or in respect of this Deed or Note to each Noteholder entitled to such payment;
- ~~(m)~~**(confirm conversion)** promptly after converting any Notes, confirm details of that conversion to the Trustee, by certificate signed by any two directors of the Company;
- ~~(n)~~(m) **(other information)** whenever requested by the Trustee, promptly give to the Trustee or any person authorised by the Trustee to receive it, such other information as the Trustee reasonably considers necessary for the purposes of the discharge of the duties, trust and powers vested in the Trustee under this Deed or imposed upon it by law, including without limitation, information about the Company and its listing on the ASX;
- ~~(o)~~(n) **(Notifiable event)** subject to clause 19(b), the Company must notify the Trustee of the occurrence of a Notifiable Event as soon as practicable after the occurrence of any such event, and in any case no later than 2 Business Days after the occurrence of the Notifiable Event and provide the Trustee with full details of any steps which it is taking in order to remedy or mitigate its effect;
- ~~(p)~~(o) **(listing)** in the event that the Company seeks a listing or quotation of the Notes, use its best endeavours to ensure that the quotation of the Notes is maintained (including paying all necessary listing fees), and provide to the ASX such information as the ASX may require in accordance with the ASX Listing Rules and any other ASX requirements (including providing the ASX

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with a copy of this Deed);

(q)(p) _____ (provide documents released to the ASX) at any time when the Notes are quoted, provide to the Trustee, as soon as reasonably practicable following their issue, copies of all reports and releases made by the Company to the ASX which are released to the market;

(r)(q) _____ (compliance with law) comply with all laws binding on it with respect to the Notes, including the *Corporations Act* and the ASX Listing Rules and do anything reasonably requested by the Trustee to enable the Trustee to comply with the *Corporations Act* (or any other laws binding on the Trustee with respect to the Trustee or the Notes and the ASX Listing Rules);

(s)(r) _____ (compliance with Conditions of Issue) at all times fully comply with, observe and perform all its obligations under the Conditions of Issue; and

(t)(s) _____ (corporate existence) not transfer its jurisdiction or incorporation or enter into any insolvent merger or consolidation.

10. REPRESENTATIONS AND WARRANTIES

10.1 Each Group member warrants and represents that:

- (a) it is duly incorporated in Australia, is a company limited by shares and is validly existing under the laws of Australia;
- (b) this Deed and the Notes have been validly authorised by the appropriate corporate actions;
- (c) this Deed when executed and delivered, will constitute a legal, valid and binding obligation on it enforceable in accordance with its terms;
- (d) the Notes when issued and delivered to the Noteholders in accordance with this Deed will constitute valid and legally binding obligations of the Company, and each of the Notes will be convertible into Shares in accordance with the Conditions of Issue and this Deed;
- (e) all acts, conditions and things required to be done and performed and to have happened before the execution and delivery of this Deed and for the issue of the Notes, are legally valid and binding on it and enforceable in accordance with their respective terms and have been done and performed in due and strict compliance with the law and this Deed;
- (f) it has full power and authority to own its assets and carry on the business currently carried on by it, execute and perform this Deed and to issue the Notes and all other instruments, documents and agreements incidental to the Deed and the Notes;
- (g) it has not committed under any agreement to which it is a party or by which it is bound, a default which might have a material adverse effect on the issue or conversion of the Notes;
- (h) no legal proceeding has been commenced nor have any legal proceedings been initiated nor, to the best of its knowledge and belief, threatened for the dissolution, liquidation, winding up, termination or existence or reorganisation of, or for the appointment of a receiver, manager, trustee or similar officer to, the Group or any or all of its assets;
- (i) none of the execution, issuance and delivery of the Notes, this Deed, or the performance of any of their terms will:

- (i) contravene or constitute a default under any provisions contained in any agreement, instrument, law, judgment, order, licence, permit or consent by which it is bound or effected; or
 - (ii) except as set out in clauses 12.3 and 12.4, cause any limitation on it or the powers of its Directors whether imposed by or contained in its Constitution;
- (j) it has filed, and will continue to file, all tax returns which it is required by law to file and, except as disclosed to the Noteholders, has paid all taxes, assessments, fees and other governmental charges assessed against it or upon any of its assets. This clause applies only to tax returns or payment where the failure to file the tax returns or make the payments would, in the opinion of the Noteholders, have a material and adverse effect on its financial condition;
 - (k) there is no law binding on it and no provision in any existing mortgage, trust deed, contract, licence, concession or agreement binding on it which would be contravened by it by the execution, issuance, delivery, performance or observance of the Notes or this Deed;
 - (l) all consents required (unless consent is waived) or advisable to be obtained by it in connection with the execution, delivery, enforceability, admissibility, evidence or priority of the Notes, this Deed, and the performance of its obligations have been unconditionally obtained and are in full force and effect;
 - (m) all acts, conditions and things required to be done and performed and to have happened prior to the execution, issuance and delivery of the Notes and this Deed for each to create legal, valid and binding obligations enforceable in accordance with their respective terms, have been done and performed and have happened in due and strict compliance with all applicable laws;
 - (n) it has not raised, borrowed, taken, made, issued or given (as the case may be) any Borrowings from or to any persons, except in the ordinary course of its business and on arm's length commercial terms and it is not in default in the payment or performance of any of its obligations in relation to those Borrowings;
 - (o) to the best of its knowledge, there are no proceedings pending before any court, tribunal, Government Agency or administrative body which, if adversely determined, would materially and adversely affect its financial position, business or operations or impair its rights;
 - (p) to the best of its knowledge, it has complied with all applicable laws and with the requirements of all government authorities having jurisdiction which, if not complied with, would materially and adversely affect its financial position;
 - (q) it is not aware of any material adverse change in its operations or its financial condition or business since its last audited balance sheet date; and
 - (r) all representations, warranties and statements contained in this Deed or in any certificate or statement furnished pursuant to any provisions of this Deed are true and correct.

10.2

For the purposes of clauses 10.1(j) and 10.1(q), a material effect on or change in the financial position or condition of a Group member is one which whether singly or in aggregate has:

- (a) a balance sheet effect of at least A\$500,000; or
 - (b) an effect on the income of the Group member in excess of A\$500,000.
- 10.3 Each of the representations and warranties contained in clause 10.1 are made as at the date of this Deed and at all times until termination of this Trust.
- 10.4 This Deed and the Disclosure Document:
- (a) are the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed; and
 - (b) supersede any prior agreement or understanding on anything connected with that subject matter.
- 10.5 Except as set out in this Deed and the Disclosure Document each party has entered into this Deed without relying on any other representation by any other party or any person purporting to represent that party.
- 10.6 In the event of any inconsistency between the terms of this Deed and the Disclosure Document, the Disclosure Document will prevail to the extent of that inconsistency.
- 11. TRUSTEE'S POWERS**
- 11.1 Subject to this Deed, the Trustee has all the powers legally possible for a natural person or corporation to have in connection with the exercise of its powers under this Deed.
- 11.2 In exercising its rights and powers under this Deed, the Trustee may seek and obtain instructions by way of a majority resolution of the Noteholders. In the absence of Noteholders' instructions, Trustee may exercise any of the following powers:
- (a) waive any breach by the Company of this Deed on such terms as it thinks fit;
 - (b) delegate to any competent and qualified person any of the powers or discretions vested in the Trustee under this Deed on such terms (including the giving of power to subdelegate) as the Trustee thinks fit;
 - (c) act on the advice of any barrister, solicitor, stockbroker, valuer, investment adviser, accountant or other expert whether retained by the Trustee or by the Company or otherwise; and
 - (d) as between itself and the Noteholders, determine all questions and matters of doubt arising in relation to this Deed, and the determination, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binding.
- 11.3 Despite provisions to the contrary in this Deed, the Trustee retains a discretion to take any action required by this Deed, or not to take any action, depending on whether it believes the Company or the Noteholders will comply, with any of the indemnity provisions in clauses 13 and 17.
- 12. LIMITATION OF TRUSTEE'S LIABILITY**
- 12.1 The Trustee is not liable to the Company or any other person in any capacity other than as trustee of the Trust.
- 12.2 A liability to the Company arising under or in connection with this Deed is limited to and can be enforced by the Company against the Trustee only to the extent to which it can be satisfied out of any property held by the Trustee out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee applies despite any other

provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

12.3 The Company may not sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any other similar person to the Trustee or prove in any liquidation of or affecting the Trustee (except in relation to the property of the Trust).

12.4 The Company waives its rights and releases the Trustee from any personal liability in respect of any loss or damage which it may suffer as a consequence of a failure of the Trustee to perform its obligations under this Deed, which cannot be paid or satisfied out of any property held by the Trustee.

12.5 The provisions of this clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or wilful default.

12.6 The Company acknowledges that it is responsible under this Deed for performing a variety of obligations under this Deed. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed) will be considered fraud, negligence or wilful default of the Trustee for the purposes of clause 12.5 to the extent to which the act or omission was caused or contributed to by any failure of the Company or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Company or any other person.

12.7 No attorney, agent or delegate appointed in accordance with this Deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purpose of clause 12.5.

13. TRUSTEE'S INDEMNITY

13.1 Without prejudice to any right or indemnity given by the law to trustees, the Company indemnifies the Trustee and every attorney, manager, agent or other person appointed by the Trustee under this Deed in respect of:

- (a) all liabilities and expenses incurred by the Trustee or them in the execution or purported execution of the trusts of this Deed except liabilities and expenses incurred as a result of fraud, negligence or wilful default by the Trustee or any officer, employee, servant or agent of the Trustee; and
- (b) all claims arising in connection with any of the powers, authorities and discretions vested in it or them under this Deed except claims arising out of fraud, negligence or wilful default by the Trustee or any officer or employee of the Trustee.

13.2 The Trustee may retain and pay out of any money in its hands, in priority to any claim by any Noteholder, all sums necessary to effectuate the indemnity contemplated by this clause 13.

14. TRUSTEE ACTING ON INSTRUCTIONS

The Trustee is not responsible for acting on any resolution purporting to have been passed at any meeting of the Noteholders if:

- (a) minutes have been made and signed; and
- (b) the Trustee was unaware at the relevant time of the defect or invalidity of the resolution;

even though it may subsequently be found that for any reason the resolution was not valid or binding on the Noteholders.

15. DETERMINATION BY TRUSTEE

The Trustee may as between itself and the Noteholders determine all questions and matters of doubt arising in relation to any of the provisions of this Deed and every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustee shall be conclusive unless a court of competent jurisdiction otherwise orders.

16. DISCRETION OF TRUSTEE

The Trustee has, as regards all the powers and authorities and discretions vested in it by this Deed, an absolute and uncontrolled discretion as to the exercise of that discretion in all respects and, in the absence of its fraud, negligence or wilful default (or the fraud, negligence or wilful default of any attorney, employee, agent or person (including a Delegate) appointed by it under this Deed), the Trustee will not be in any way responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of that discretion.

17. PAYMENTS BY COMPANY OR TRUSTEE

Whenever any law for the time being of the Commonwealth of Australia or any State or Territory or any other country or place imposes or purports to impose any immediate or future or possible liability on the Company or the Trustee to make any payments to any government or taxation authority as a consequence of:

- (a) the Noteholder becoming subject to Part 5.3A of the *Corporations Act*;
- (b) the death of a Noteholder;
- (c) the non-payment of any Income Tax or other tax payable by a Noteholder;
- (d) the non-payment of any estate, probate, succession, death, stamp or other duty by the legal representative of the Noteholder by or out of the Noteholder's estate; or
- (e) any other act or thing;

then the Noteholder and the legal representative of the Noteholder must indemnify the Company or the Trustee (as the case may be) in respect of the liability, and the Company or the Trustee may:

- (f) recover by action from the Noteholder and the legal representative of the Noteholder any money paid by them as a debt due to the Company or the Trustee (as the case may be); and
- (g) set off the amount of the liability against any amount due to the Noteholder under this Deed or the Conditions of Issue.

18. TRUSTEE'S RELIANCE ON INFORMATION AND KNOWLEDGE

18.1 The Trustee is:

- (a) entitled to accept a certificate signed by any two directors of the Company as to any factual matter as conclusive evidence of the matter;
- (b) entitled to accept and act on any information, statement, certificate, report, balance sheet or account supplied by the Company or any duly authorised

officer of the Company;

- (c) entitled to accept and act upon the statements and opinions contained in any statement, certificate, report, balance sheet or account given pursuant to the provisions of this Deed as conclusive evidence of the contents of it;
- (d) entitled to assume, without investigation, that any other deed or information provided to it is genuine and accurate if it believes in good faith that this is the case; and
- (e) will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trust.

18.2 The Trustee is not required to call for further evidence or to enquire as to the accuracy of the certificate and is not responsible for any loss that may be occasioned by it relying on the certificate.

19. TRUSTEE NOT OBLIGED TO NOTIFY OR INVESTIGATE OR MONITOR

Subject to section 283DA of the *Corporations Act*, the Trustee need not:

- (a) notify any person of the execution of this Deed or the occurrence of any breach of this Deed or Event of Default;
- (b) notify any Noteholders of the occurrence of a Notifiable Event;
- (c) take any steps to ascertain whether there has occurred (and will not be deemed to have knowledge that such has occurred until it has received written notice from the Company or a Noteholder in relation to such) any Event of Default;
- (d) enquire as to whether the provisions of any Transaction Document have been complied with;
- (e) notify any Noteholder of any breach by the Company of any provision of this Deed or of any other Transaction Document;
- (f) request information or otherwise keep itself informed about the circumstances of the Company or consider or provide to any person (including a Noteholder) any information with respect to the Company (whenever coming into its possession);
- (g) investigate the adequacy, accuracy or completeness of any information provided by the Company; or
- (h) assess, investigate or keep under review the business, financial condition, status or affairs of the Company.

This clause 19 in no way limits the Trustee's obligations under clause 23.

20. TRUSTEE NOT BOUND TO GIVE NOTICE

The Trustee is not bound to give notice to any person or persons of the execution hereof and the Trustee is not bound to take any steps to ascertain whether any event has happened upon the happening of which the Notes hereby constituted become immediately payable.

21. NO OBLIGATION TO INFORM

Nothing contained in this Deed shall impose on the Trustee an obligation to inform any Noteholders of any breach by the Company of any provision of this Deed.

22. DEFAULT

22.1 If an Event of Default occurs, the Trustee must declare the Money Owning immediately due and payable.

22.2 Subject to the Trustee firstly being indemnified to its satisfaction from the property of the Trust, if the Trustee becoming actually aware of the occurrence of an Event of Default, the Trustee must promptly convene a meeting of Noteholders in accordance with clause 35 at which it must seek directions from the Noteholders as to the action it should take in relation to that Event of Default.

22.3 The Company must notify the Noteholders of the occurrence of an Event of Default and provide the Noteholders with full details of any steps which it is taking in order to remedy or mitigate its effect.

22.4 The Trustee will be taken not to have knowledge of the occurrence of an Event of Default unless the Trustee has received written notice from a Noteholder or the Company stating that an Event of Default has occurred and describing it.

23. NOTIFICATION OBLIGATIONS WHEN COMPANY WOUND UP

If an Event of Default occurs, then the liquidator appointed to the Company or its assets (as applicable) (**Appointee**) must:

- (a) if the Trustee has not already done so, notify the Noteholders of the Event of Default and of the Appointee's appointment; and
- (b) provide regular updates to the Trustee and the Noteholders as to the status of the liquidation and any other material developments affecting the Company or its assets.

24. ENFORCEMENT PROCEEDINGS

24.1 If the Money Owning becomes immediately repayable under clause 22.1 the Trustee:

- (a) may; and
- (b) must if the Noteholders pass an ordinary resolution in favour of the action;

(subject to clause 24.2) institute proceedings to enforce repayment of the Principal Money and all other Money Owning due and payable under this Deed.

24.2 The Trustee may seek an indemnity on a proportional basis from all of the Noteholders against:

- (a) all liabilities, proceedings, claims and demands to which the Trustee may become liable; and
- (b) all costs, charges and expenses which may be incurred by the Trustee;
- (c) its own fees

in connection with any action or proceedings it proposes to take.

24.3 The Trustee need not take any action contemplated by clause 24.1 or exercise any other power, right or discretion under this Deed (including the granting of any waiver or consent or the making of any determination) unless all the following conditions are satisfied:

- (a) the Trustee is directed to take the action by a Special Resolution; and
- (b) the Trustee is indemnified, to its satisfaction, against all costs, fees, charges, liabilities and expenses which may be incurred by it in connection with that action; and
- (c) the Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

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

24.4 The Trustee:

- (a) may suspend or discontinue any action or proceeding taken under or in connection with this Deed if there is a material breach of an indemnity described in clause 24.2 which is not remedied within 14 days of written notice from the Trustee to the indemnifier requiring remedy; and
- (b) must use all reasonable endeavours to reinstate any action or proceeding which has been suspended or discontinued in accordance with clause 24.4(a) if the breach referred to in clause 24.4(a) is subsequently rectified.

24.5 The Company must bear the costs of the Trustee in complying with this clause 24.

25. NOTEHOLDER NOT TO TAKE PROCEEDINGS

25.1 A Noteholder may not commence proceedings against any member of the Group, or against a Director or a director of any member of the Group, for enforcement of its rights under or in connection with a Note or this Deed unless the Trustee notifies Noteholders that it has declined to do so, in which case, subject to clause 25.2, a Noteholder may commence proceedings following 30 days of such notification.

25.2 A Noteholder may not commence proceedings against any member of the Group, or against a Director or a director of any member of the Group, for enforcement of their rights under or in connection with a Note or this Deed, where such actions would conflict with the terms of the Intercreditor Deed.

26. PROTECTION OF RIGHTS OF NOTEHOLDERS BY TRUSTEE

26.1 The Trustee holds on trust for the benefit of the Noteholders the right to enforce the Company's duty to repay and the right to enforce the other duties that the Company has under this Deed.

26.2 The Trustee may at any time convene a meeting or meetings of the Noteholders for any purpose which the Trustee considers desirable.

26.3 The Trustee may at any time or times, either pursuant to any directions or in accordance with any policy given and indicated by any meeting of the Noteholders, represent the Noteholders generally:

- (a) in the investigation, negotiation, action, transaction or proceeding touching the interests of the Noteholders generally in the affairs of the Company;
- (b) in the enforcement of the rights of the Noteholders or the Trustee;
- (c) in any investigation as to the liabilities of the Company; or
- (d) in enforcing the rights of Noteholders or the Trustee by any demand, action or proceeding.

26.4 The Company must bear the costs of the Trustee in complying with this clause 26.

27. APPLICATION OF MONEY RECEIVED

All moneys received by the Trustee in respect of amounts payable under this Deed will be applied for the following purposes and, subject to the Conditions of Issue, in the following order of priority:

- (a) first - in payment of all costs, charges, fees, expenses and liabilities incurred and payments made by the Trustee under or in connection with this Deed or any other Transaction Document (including all remuneration payable to the Trustee or its officers, directors, employees, attorneys and affiliates);
- (b) second — in payment of all costs, charges, fees, expenses and liabilities incurred by or other amounts owing to a liquidator under or in connection with this Deed (including all remuneration payable to that liquidator);
- (c) third — in payment of any amounts due and payable on each Note by the Company under this Deed *pari passu* and without preference or priority amongst Noteholders subject to any necessary rounding; and
- (d) fourth — in the payment of the balance (if any) to the Company without prejudice to the provisions of this clause 27.

28. EXECUTION OF DOCUMENTS BY TRUSTEE

Subject to obtaining the prior written instructions of a majority of Noteholders, the Trustee is empowered and authorised to sign and execute any document which may be required under this Deed.

29. TRUSTEE REMUNERATION

- (a) The Company must pay to the Trustee by way of remuneration for its services as trustee under this Deed a fee or such other remuneration as may be agreed between the parties, and in the manner notified by the Trustee to the Company, from time to time.
- (b) If the Trustee is required at any time to:
 - (i) undertake duties which relate to enforcement action in relation to any Transaction Document upon a default by any other party under the terms of that Transaction Document; or
 - (ii) undertake duties which are agreed by the Company to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee,

the Company agrees to pay to the Trustee on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of

taking such action, as shall from time to time be agreed between the Company and the Trustee.

- (c) In the absence of agreement in relation to the additional remuneration referred to in clause 29(b) above, the Trustee shall be entitled to charge the Company reasonable hourly rates for time spent by the Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall:
- (i) reflect the level of expertise required to perform the work; and
 - (ii) be commensurate with and referable to the hourly rates charged at the relevant time by members of the Insolvency Practitioners Association of Australia for work of the kind being performed by the Trustee's officers and employees.

30. REIMBURSEMENT OF COSTS

- (a) On demand, without limiting the generality of the other provisions of this Deed, and without prejudice to any other right of indemnity given by law to trustees but subject to any agreement to the contrary, the Company will reimburse or pay to the Trustee all costs, charges and expenses and other liabilities (including solicitor and client as well as party and party costs) and any stamp or other duty reasonably and properly incurred or payable by the Trustee in connection with the execution or purported execution of the Trust, including those arising in connection with:
- (i) the negotiation, preparation and execution of this Deed or any other Transaction Document;
 - (ii) the carrying out by the Trustee of any right, power, privilege, authority or discretion conferred expressly or impliedly on the Trustee or on any Noteholder by this Deed or any other Transaction Document;
 - (iii) any breach or default in the observance or performance by the Company of any of its obligations under this Deed or any other Transaction Document;
 - (iv) the convening and holding of any meeting of Noteholders or the carrying out of any directions or resolutions of any such meeting; or
 - (v) all actions take under this Deed in relation to complying with any notice, request or requirement of any Governmental Agency and any investigation by an Governmental Agency into the affairs of the Company.
- provided that such costs, charges, expenses and liabilities are reasonable and properly incurred.
- (b) If an Event of Default occurs, the Trustee is entitled to claim and receive from any Appointee amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as trustee of the Trust.

31. TRUSTEE TO HAVE PRIORITY OVER NOTEHOLDERS

- 31.1 All the remuneration and payments referred to in clauses 29 or 30 will be paid in priority

to any claim by any Noteholder and, subject to the other provisions of this clause 31, will continue to be payable until the Trust is terminated. This priority of the Trustee will subsist whether or not an Appointee is appointed to the Company or any of its assets or the Trust is in the course of administration by or under the order of any court.

31.2 The Trustee may retain and pay to itself in priority to any claim by any Noteholder all payments due to the Trustee out of any money for the time being in its hands under this Deed.

32. DEALINGS BY TRUSTEE

32.1 Subject to the *Corporations Act*, nothing in this Deed must be treated as prohibiting the Trustee or any Related Body Corporate of the Trustee from being:

- (a) a shareholder in the Company;
- (b) a Noteholder;
- (c) a representative of a Noteholder; or
- (d) a holder of any other securities in the Company;

and acting in that capacity must not be treated as a breach of any of the obligations arising out of the fiduciary relationship between the Trustee and the Company or the Trustee and the Noteholders established by this Deed or imposed by law.

32.2 The Trustee is not by reason of its fiduciary capacity in any way prejudiced from making any contracts or entering into any transactions with the Company or any Related Body Corporate in the ordinary course of business of the Trustee.

33. RESIGNATION AND REMOVAL OF TRUSTEE

33.1 Subject to clause 33.3, the Trustee may resign at any time without giving any reason on giving not less than 90 days' written notice to the Company.

33.2 Subject to clause 33.3, the Trustee is removed from office if:

- (a) the Noteholders, by resolution of not less than 75% by value of Noteholders voting on such resolution so resolve;
- (b) the Trustee ceases to carry on business; or
- (c) the Trustee suffers any of the following insolvency events:
 - (i) an order is made or an effective resolution is passed to place the Trustee in liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose);
 - (ii) the Trustee becomes an externally-administered body corporate within the meaning of the *Corporations Act*;
 - (iii) a receiver, manager, receiver and manager, controller (as defined in section 9 of the *Corporations Act*) or analogous person is appointed to all or any material part of the assets of the Trustee and is not removed within 20 Business Days of the appointment; or
 - (iv) the Trustee becomes subject to administration under Part 5.3A of the *Corporations Act*, or steps are taken which could reasonably be expected to result in the Trustee being so

subject.

33.3 The Trustee must continue to exercise its powers and perform its duties under this Deed until a new trustee is appointed under this Deed or by a court of relevant jurisdiction.

33.4 Upon retirement or removal, the Trustee is discharged and released from its obligations, covenants and liabilities under this document arising after the date of retirement or removal. This does not affect any of the Trustee's rights accrued before such retirement or removal. The Company must then, if required by the Trustee, execute a confirmation of release in favour of the Trustee in a form and substance reasonably acceptable to the Trustee.

34. APPOINTMENT AND REMOVAL OF TRUSTEE

34.1 Subject to clauses 34.2 and 34.3, the power of appointing a replacement trustee for the purposes of this Deed is vested in the Company.

34.2 If the Trustee resigns and the Company has not appointed a replacement trustee at the end of the notice period referred to in clause 33.1, the Trustee may appoint a replacement trustee for the Noteholders and that appointment will be effective without the approval of the Company or the Noteholders.

34.3 If the Trustee is removed from office under clause 33.2, the Noteholders may by ordinary resolution appoint a replacement trustee for the Noteholders.

34.4 Whether the Trustee resigns or is removed from office, it must continue to exercise its powers and perform its duties under this Deed until a new trustee is appointed under this Deed or an equivalent deed to this Deed, or by a court of relevant jurisdiction.

35. MEETINGS OF NOTEHOLDERS

35.1 As an alternative to holding any meeting required by this Deed, the Noteholders and Trustee may follow the procedure set out in this clause 35.

35.2 The Noteholders may pass a resolution or provide instructions to the Trustee without a meeting being held if a majority of the Noteholders entitled to vote on the resolution or provide the instructions sign a document containing:

(a) a statement that the Noteholder is in favour of the resolution set out in the document; or

(b) the instructions to be given to the Trustee.

Counterparts of a document may be used for signing by Noteholders if the wording of the resolution, instruction or statement is identical in each copy. Each counterpart is an original but the counterparts together are one and the same document.

35.3 The Trustee or the Company may at any time convene a meeting of the Noteholders. Whenever the Company or the Trustee gives notice of a meeting in accordance with this clause, it must at the same time give notice in writing to the other of the place, day and hour of the meeting and of the nature of the business to be transacted.

35.4 Subject to the Trustee being indemnified from the property of the Trust to its satisfaction, the Trustee must convene a meeting of Noteholders upon a written request of Noteholders holding at least 20% of the value of issued Notes at the date of lodgement with the Trustee of the requisition. A requisition must state the general nature of the business proposed to be dealt with at the meeting and must, subject to the Trustee's discretion, be distributed to the Noteholders prior to the meeting.

35.5 Meetings of Noteholders must be held at the place the Trustee determines or approves.

- 35.6 At least 10 Business Days' prior written notice must be given to the Noteholders specifying the place, day and hour of meeting and the general nature of the business.
- 35.7 A Noteholder is entitled to notice provided the Noteholder is named in the Register 5 Business Days before the notice is to be sent.
- 35.8 A meeting of Noteholders may be held at 2 or more venues using any technology that gives the Noteholders as a whole a reasonable opportunity to participate.
- 35.9 At any meeting of Noteholders, 1 or more Noteholders present in person or by proxy and holding not less than 10% of the value of the Notes issued will form a quorum for the transaction of business. No business may be transacted at any meeting unless the requisite quorum is present at the commencement of business.
- 35.10 A person nominated by the Trustee takes the chair at every meeting and if no person is nominated or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting the Noteholders present must choose 1 of their number to be chair.
- 35.11 The Trustee and its solicitors and advisors and the Directors, secretary, solicitor and Auditor of the Company may attend any Noteholders' meeting and be heard.
- 35.12 If within 30 minutes after the time appointed for any meeting of the Noteholders a quorum is not present, the meeting stands adjourned to a time and date to be determined by the Trustee acting reasonably.
- 35.13 Every question submitted to a meeting of Noteholders must be decided in the first instance by a show of hands and in case of an equality of votes the chair both on a show of hands and at a poll has a casting vote in addition to the vote or votes (if any) to which he or she may be entitled as a Noteholder.
- 35.14 At any general meeting of the Noteholders, unless a poll is directed to be taken by the chair or demanded by at least 1 or more Noteholders present in person or by proxy and representing at least 10% of the value of the Notes, a declaration by the chair that a resolution has been carried by a particular majority or lost or not carried by a particular majority is conclusive evidence of the fact.
- 35.15 If at any meeting a poll is demanded on any question by or on behalf of a Noteholder or Noteholders holding the number of Notes referred to in clause 35.14, the question must be decided by a poll and either at once or after an interval or adjournment as the chair directs. An adjournment for this purpose must not be for more than 30 days from the meeting. The result of the poll must be treated as the resolution of the meeting at which the poll was demanded. No notice need be given of a poll not to be taken immediately.
- 35.16 Any poll demanded at any meeting on the election of a chair or on any question of adjournment must be taken at the meeting without adjournment.
- 35.17 The registered Noteholder, or in the case of joint holders, the Noteholder whose name stands first on the Register as one of the holders of the Notes, is entitled to vote in respect of the Notes either in person or by proxy or attorney.
- 35.18 Every instrument appointing a proxy must be in writing, or in case of a corporation, under its common seal or otherwise legally executed.
- 35.19 A proxy may take the following or a like, form:
- Mothercare Australia Limited
ACN 060 199 082
- I, _____ of _____ a Noteholder of the

Company appoint _____ of _____ or failing him/her _____ to vote on my behalf at the meeting of the Noteholders of the Company which is to be held on _____ 20 _____ and at any adjournment of the meeting.

Signed on _____ 20 _____.

- 35.20 Any person may be appointed a proxy whether or not the person is a Noteholder.
- 35.21 To be valid, the instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed must be deposited at least 48 hours before the meeting at such place as the Trustee or the Company directs in the notice convening the meeting.
- 35.22 At any meeting of Noteholders, only persons registered as Noteholders in the Register or their proxies duly appointed and no other persons are entitled to vote (either in person or by proxy or attorney).
- 35.23 At any meeting of Noteholders, each voter on a show of hands and on a poll is entitled to 1 vote per Note in respect of the Notes held by the voter or by the person for whom the voter is the proxy or representative.
- 35.24 Any Notes held by the Company or any Related Body Corporate of the Company or by any person on behalf of the Company do not while so held confer any voting power.

36. POWERS OF GENERAL MEETINGS

- 36.1 Without limiting any of the powers conferred upon the Trustee under this Deed, a general meeting of the Noteholders, in addition to the power of release in favour of the Trustee referred to in section 283DB of the *Corporations Act*, has the following powers exercisable by ordinary resolution:
- (a) power to approve any release of the Company;
 - (b) power to approve any compromise or arrangement proposed to be made between the Company and the Noteholders;
 - (c) power to approve any alteration, modification or waiver (whether there has been a breach of the provisions of this Deed or not) of the rights of the Noteholders against the Company;
 - (d) subject to the provisions of this Deed, the power to assent to and to direct the Trustee to consent to any alteration or modification of the provisions of this Deed; and
 - (e) power to remove the Trustee and to appoint a new Trustee in its place.
- 36.2 A resolution is duly passed as an ordinary resolution if it is declared or stated to be an ordinary resolution, or if it is approved in any of the following ways:
- (a) by a resolution in writing:
 - (i) as provided for in clause 35.2; and
 - (ii) signed by a majority of the Noteholders entitled to vote within 3 months from the date stated in the copies of the resolution sent for that purpose by the Company to the Noteholders; or
 - (b) at a meeting of Noteholders by being carried by a simple majority of the votes cast by the Noteholders present in person or by proxy or attorney.

36.3 A resolution passed at a meeting of the Noteholders duly convened and held is binding on all the Noteholders.

37. MINUTES

37.1 Minutes of all resolutions and proceedings at every meeting of Noteholders must be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Company.

37.2 Any minutes purporting to be signed by the chair of the meeting is conclusive evidence of the matters contained in them.

37.3 Until the contrary is proved, every meeting in respect of which minutes have been made, must be treated as having been duly held and convened and all resolutions passed or proceedings taken must be treated as having been duly passed and taken.

38. RELEASE OF COMPANY'S LIABILITY AND TERMINATION OF TRUST

38.1 If the Trustee is reasonably satisfied that:

- (a) ~~all Notes have been converted or the principal of the Notes and interest on the Notes has been paid in full in accordance with the Conditions of Issue (as to which the Trustee may accept as conclusive an Authorised Officer's Certificate)~~ the face value of each Note has been repaid in full in accordance with the Conditions of Issue (as to which the Trustee may accept as conclusive an Authorised Officer's Certificate); and
- (b) the Company has furnished to the Trustee a statement in writing that it does not intend to, and will not, create any Notes in the future; and
- (c) the Company has paid costs, fees, charges and expenses properly incurred by the Trustee; and

the Company is discharged and released from its obligations under this Deed and the Trustee must, if required by the Company and at the cost of the Company, execute a release in favour of the Company.

38.2 The term of the Trust ends on the earlier of:

- (a) the day before the 80th anniversary of the commencement date of the Trust; or
- (b) the date on which the Trust is terminated under this Deed or by law.

39. AMENDMENT OF THIS DEED AND CONDITIONS OF ISSUE

39.1 The Trustee has the power to modify the Conditions of Issue:

- (a) if the Company and Trustees are of the opinion that such amendment is of a formal or technical nature or is made to correct a manifest error;
- (b) if the Company and Trustees are of the opinion that such amendment is:
 - (i) necessary to comply with the provisions of any law or regulation or any requirement of any Governmental Agency;
 - (ii) necessary to comply with the applicable ASX Listing Rules or the listing or quotation requirements of any securities exchange on which the Company may propose to seek or retain a listing or quotation of the Notes; or

- (iii) necessary or expedient for the purpose of enabling Notes to be offered for subscription or for sale under the laws for the time being in force in any place,

and the Company has provided to the Trustee an opinion addressed to the Trustee or otherwise able to be relied on by the Trustee from legal advisers of recognised standing in Sydney, Australia that such amendment (taken as a whole and in conjunction with all other modifications, if any, to be made contemporaneously with that modification) is otherwise not materially prejudicial to the interests of Noteholders as a whole;

- (c) except as otherwise provided in paragraph (a) or (b) above, if such amendment is approved by a Noteholder resolution or in the case of any provision of the Conditions of Issue or as required under clause 35, in either case, providing for Noteholders to give a direction to the Trustee by a Special Resolution, if a Special Resolution is passed in favour of such amendment;

39.2 The Trustee, by agreement with the Company from time to time, has the power to amend the terms of this Deed:

- (a) if the Company and the Trustee are each of the opinion that such amendment is of a formal or technical nature or is made to correct a manifest error;
- (b) if the Company and the Trustee are each of the opinion that such amendment is:
 - (i) necessary to comply with the provisions of any law or regulation or any requirement of any Governmental Agency;
 - (ii) necessary to comply with the applicable ASX Listing Rules or the listing or quotation requirements of any securities exchange on which the Company may propose to seek or retain a listing or quotation of the Notes;
 - (iii) necessary or expedient for the purpose of enabling the Notes to be offered for subscription or for sale under the laws for the time being in force in any place,

and the Company has provided to the Trustee an opinion addressed to the Trustee or otherwise able to be relied on by the Trustee from legal advisers of recognised standing in Sydney, Australia that such amendment (taken as a whole and in conjunction with all other modifications, if any, to be made contemporaneously with that modification) is otherwise not materially prejudicial to the interests of Noteholders as a whole; or

- (c) except as otherwise provided in paragraph (a) or (b) above, if such amendment is approved by a Noteholder resolution or in the case of any provision of this Deed or as required under clause 35 in either case, providing for Noteholders to give a direction to the Trustee by a Special Resolution, if a Special Resolution is passed in favour of such amendment.

39.3 No amendment may be made to this Deed or to the terms of issue of any Notes if its effect would be to:

- (a) bring forward the date for conversion of the Notes; or
- (b) amend this clause 39.3.

39.4 A meeting of Noteholders has the power, by ordinary resolution:

- (a) to sanction or assent to any amendments to this Deed proposed by the Company; and
- (b) to authorise the Trustee to concur in and execute any supplemental deed embodying that amendment;

but a meeting of Noteholders does not have the power to direct or instruct the Company or the Trustee to make any amendments to this Deed.

40. GUARANTEE AND INDEMNITY

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~~40.1 In consideration of, among other things, the Noteholders subscribing for Notes at the request of each Guarantor, the Guarantors jointly and severally and unconditionally and irrevocably guarantee to the Noteholders the payment of the Money Owing.~~

~~40.2 If the Money Owing are not paid when due, each Guarantor must immediately on demand from the Trustee pay to the Noteholders the Money Owing in the same manner and currency as the Money Owing is required to be paid. A demand under this clause 40.2 may be made at any time and from time to time.~~

~~40.3 This clause 40 applies to any amount which forms part of the Money Owing from time to time.~~

~~40.4 The obligations of each Guarantor under this clause 40 extend to any increase in the Money Owing as a result of any amendment, supplement, renewal or replacement of any Transaction Document to which the Company and the Noteholders are party or the occurrence of any other thing.~~

40.5 Clause 40.4:

(a) applies regardless of whether any Guarantor is aware of or consented to or is given notice of any amendment, supplement, renewal or replacement of any agreement to which the Company and the Noteholders are party or the occurrence of any other thing; and

(b) does not limit the obligations of any Guarantor under this clause 40.

~~40.6 In the event of the liquidation of any member of the Group, each Guarantor authorises the Trustee to prove for all money which any Guarantor has paid or is or may be obliged to pay under any Transaction Document, any other document or agreement or otherwise in respect of the Money Owing.~~

~~40.7 If any payment, conveyance or transfer to, or any discharge given by, the Trustee and/or the Noteholders or other transaction relating to or affecting the Money Owing is void, voidable or unenforceable in whole or in part or claimed to be void, voidable or unenforceable in whole or in part and that claim is upheld, conceded or compromised in whole or in part, the liability of each Guarantor under this clause 40 and any Power is the same as if:~~

(a) that payment, conveyance, transfer or transaction (or the void, voidable or unenforceable part of it); and

(b) any release, settlement or discharge made in reliance on any thing referred to in clause 40.7(a);

had not been made and each Guarantor:

(c) must immediately take all action and sign all documents necessary or required by the necessary or required by the Trustee to restore to the Noteholders the Noteholders the benefit of this clause 40 and any Security Interest held by Interest held by the Trustee immediately before the payment, conveyance, conveyance, transfer, discharge or transaction; and

(d) as an additional, separate and independent obligation, indemnifies the Trustee and the Noteholders against any loss the Trustee and/or the Noteholders suffer or incur in respect of that payment, conveyance, transfer, discharge or transaction being void, voidable or unenforceable in whole or in part or in respect of failure by a Guarantor to comply with clause 40.7(c).

(e) Clause 40.7 applies whether or not the Trustee or any Noteholder knew, or ought (with or without enquiry) to have known, of anything referred to in clause 40.7.

40.8 If any of the Money Owning (or money which would have been Money Owning if it had not been irrecoverable) are irrecoverable by the Trustee from any member of the Group on the footing of a guarantee, the Guarantors jointly and severally, unconditionally and irrevocably, and as a separate and principal obligation:

(a) indemnify the Trustee and the Noteholders against any loss suffered, paid or incurred by the Trustee and/or the Noteholders in relation to the non-payment of that money; and

(b) must pay the Trustee an amount equal to that money.

40.9 Clause 40.8 applies to the Money Owning (or money which would have been Money Owning if it had not been irrecoverable) which are or may be irrecoverable irrespective of whether:

(a) they are or may be irrecoverable because of any event described in clause 40.15;

(b) the transactions or any of them relating to that money are void or illegal or avoided or otherwise unenforceable;

(c) any matters relating to the Money Owning are or should have been within the knowledge of the Trustee or the Noteholders (with or without enquiry); and

(d) they are or may be irrecoverable because of any other fact or circumstance.

40.10 The Trustee is not required to marshal or to enforce or apply under or appropriate, recover or exercise under the Group Charge or any money or asset which the Trustee, at any time, holds or is entitled to receive.

40.11 Subject to clause 27, the Trustee may apply any amounts received by it or recovered under the Group Charge in the manner it determines in its absolute discretion.

40.12 A Guarantor must not exercise any rights it may have inconsistent with this clause 40.

40.13 This clause 40 is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation.

40.14 This clause 40 is enforceable against a Guarantor.

(a) whether or not the Trustee has made demand on any Group member (other than any demand specifically required to be given, or notice required to be issued, to a Guarantor under clause 40.2 or any other provision of a Transaction Document);

(b) whether or not the Trustee has given notice to any Group member or any other person in respect of any thing;

(c) whether or not the Trustee has taken any other steps against any Group member or any other person;

(d) despite the occurrence of any event described in clause 40.15.

40.15 This clause 40 and the obligations of each Guarantor under the Transaction Documents are absolute, binding and unconditional in all circumstances, and are not released or discharged or otherwise affected by anything which but for this provision might have that effect, including:

(a) the grant to any Group member or any other person of any time, waiver, covenant not to sue or other indulgence;

(b) the release (including a release as part of any novation) or discharge of any Group member or any other person;

(c) the cessation of the obligations, in whole or in part, of any Group member or any other person under any Transaction Document or any other document or agreement;

(d) the liquidation of any Group member or any other person;

(e) any arrangement, composition or compromise entered into by any Group member or any other person;

(f) any Transaction Document or any other document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;

(g) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compounding, composition or compromise, in whole or in part of any Transaction Document or any other document or agreement;

(h) any alteration, amendment, variation, supplement, renewal or replacement of any Transaction Document or any other document or agreement;

(i) any moratorium or other suspension of any Power;

(j) the Trustee or an Appointee exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any Power;

(k) the Trustee obtaining a judgment against any Group member or any other person for the payment of any of the Money Owed;

(l) any transaction, agreement or arrangement that may take place with the Trustee, any Group member or any other person;

(m) any payment to the Trustee or an Appointee, including any payment which at the

which at the payment date or at any time after the payment date is in whole or in part illegal, void, voidable, avoided or unenforceable;

unenforceable;

(n) any failure to give effective notice to Group member or any other person of any default under any Transaction Document or any other document or agreement;

(o) any legal limitation, disability or incapacity of Group member or of any other person;

(p) any breach of any Transaction Document or any other document or agreement;

(q) the acceptance of the repudiation of, or termination of, any Transaction Document or any other document or agreement;

(r) any Money Owing being irrecoverable for any reason;

(s) any disclaimer by Group member or any other person of any Transaction Document or any other document or agreement;

(t) any assignment, novation, assumption or transfer of, or other dealing with, any Powers or any other rights or obligations under any Transaction Document or any other document or agreement;

(u) any prejudice (including material prejudice) to any person as a result of any failure by the Trustee, an Appointee or any other person to disclose any information to any Group member or any other person;

(v) any prejudice (including material prejudice) to any person as a result of any thing done or omitted by the Trustee, any Group member or any other person;

(w) any prejudice (including material prejudice) to any person as a result of any failure or neglect by the Trustee, an Appointee or any other person to recover the Money Owing from Group member;

(x) any prejudice (including material prejudice) to any person as a result of any other thing;

(y) the receipt by the Trustee of any dividend, distribution or other payment in respect of any liquidation;

(z) the failure of any other Guarantor or any other person who is intended to become a co-surety or co-indemnifier of that Guarantor to execute this Deed or any other document; or

(aa) any other act, omission, matter or thing whether negligent or not.

40.16 Clause 40.15 applies irrespective of the consent or knowledge or lack of consent or knowledge, of the Trustee, any Group member or any other person of any event described in clause 40.15 or of any rule of law or equity to the contrary.

40.17 Until this clause 40 has been finally discharged, a Guarantor is not entitled to:

(a) be subrogated to the Trustee or any other person;

(b) claim or receive the benefit of any security interest, guarantee or other document or document or agreement of which the Trustee or any other person has the

person has the benefit;

(c) claim or receive the benefit of any moneys held by the Trustee or any other person;

(d) claim or receive the benefit of any Power;

(e) either directly or indirectly to prove in, claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the liquidation of any Group member liable to pay the Money Owing, except in accordance with clause 40.18;

(f) make a claim or exercise or enforce any right, Power or remedy (including under a security interest or guarantee or by way of contribution) against any Group member liable to pay the Money Owing;

(g) accept, procure the grant of or allow to exist any security interest in favour of a Guarantor from any Group Member liable to pay the Money Owing;

(h) exercise or attempt to exercise any right of set-off against, or realise any security interest taken from, any Group member liable to pay the Money Owing; or

(i) raise any defence or counterclaim in reduction or discharge of its obligations under this clause 40.

40.18 If required by the Trustee, a Guarantor must prove in any liquidation of any Group member liable to pay the Money Owing for all money owed to the Guarantor.

40.19 All money recovered by a Guarantor from any liquidation or under any security interest or guarantee from any Group member liable to pay the Money Owing must be received and held by the Guarantor for and paid to the Trustee to the extent of the unsatisfied liability of the Guarantor under this clause 40.

40.20 A Guarantor must not do or seek, attempt or purport to do anything referred to in clause 40.17.

40.21 This clause 40 is a continuing obligation of each Guarantor, despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until this clause 40 has been finally discharged by the Trustee.

40.22 This clause 40 extends to cover the Transaction Documents as amended, varied or replaced, whether with or without the consent of any one or more of the Guarantors.

40.23 A final judgment obtained against a relevant wholly owned Group member is conclusive as against each Guarantor.

40.24 The Trustee is not liable for any loss, including consequential loss, suffered or incurred by any Group member, directly or indirectly, as a result of any release of, or dealing with, any other Group member or any guarantee or security interest including as a result of any prejudice to, or loss of, any Group member's rights of indemnity, contribution or subrogation.

40.25 Each Group member must ensure that any corporation which becomes its wholly owned wholly owned subsidiary, within 10 Business Days after it becomes such a subsidiary of such a subsidiary of that Group member executes and delivers a guarantee assumption

~~assumption agreement and a security interest over all of its assets and undertaking to undertake to secure the Money Owing in the form and on terms acceptable to the trustee acceptable to the Trustee.~~

41.40. COSTS AND OUTLAYS

~~41.140.1~~ The Company must pay the costs and outlays of all parties connected with the negotiation, preparation and execution of this Deed.

~~41.240.2~~ The Company must pay all stamp duty and other government imposts payable in connection with this Deed and all other documents and matters referred to in this Deed when due or earlier if requested in writing by the Trustee.

42.41. NOTICES

~~42.141.1~~ A notice may be given by the Company or the Trustee to any Noteholder, or in the case of joint Noteholders to the Noteholder whose name appears first in the Register:

- (a) personally,
- (b) by leaving it at the Noteholder's address noted in the register or by sending it by prepaid post (airmail if posted to a place outside Australia) addressed to the Noteholder's address noted in the Register;
- (c) by facsimile transmission to the facsimile number nominated by the Noteholder;
- (d) by publishing such notice in a national newspaper;
- (e) by the Company posting, at the request of the Trustee, the notice on the Company's internet website;
- (f) by the Trustee posting such notice on its own internet website; or
- (g) by other electronic means, including by email, determined by the Company or the Trustee.

If the notice is signed, the signature may be original or printed.

~~42.241.2~~ A notice given by the Company, the Trustee or a Noteholder to the Company or the Trustee must:

- (a) be in writing and signed by a person duly authorised by the sender; and
- (b) be left at, or sent by prepaid post (airmail if posted from a place outside Australia) to the address below or the address last notified by the Company or Trustee, or sent by a facsimile transmission to the fax number below or the fax number last notified by the Company or Trustee:

The Company and the Guarantors

Mothercare Australia Limited
Level 1, Building 220/2A
The Entertainment Quarter
122 Lang Road
Moore Park, NSW 2021

Attention: Company Secretary
Fax No: 02 9358 5799

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The Trustee

Australian Executor Trustees Limited
Level 22, 207 Kent St
Sydney NSW 2000

Attention: Corporate Trust
Fax No: 02 9028 5942

42.341.3 Any notice is taken to be received:

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- (a) if served personally or left at the intended recipient's address, when delivered;
- (b) if sent by prepaid post, on the second Business Day (or, if posted to or from a place outside Australia, the seventh day) after the date of posting;
- (c) if sent by facsimile or other electronic transmission, on production of a report by the machine or other system by which the transmission is sent indicating that the transmission has been made in its entirety to the correct fax number or other transmission address and without error; and
- (d) if published in a national newspaper, on the date of such publication; and
- (e) if published on a website, on the day following the date on which such notice is posted by the Trustee or the Company (as applicable) on the website,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

43.42. COUNTERPARTS

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43.442.1 This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same deed.

43.242.2 This Deed is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile machine must be treated as an original counterpart.

44.43. MISCELLANEOUS

44.443.1 As soon as practicable after becoming aware of them, the Company must notify the Noteholders of any court orders issued or pending against the Group or any of its assets.

44.243.2 The Company must, at its own expense, execute and do all assurances and other things reasonably required or requested at any time or from time to time by the Noteholders to give them the full benefit of the covenants contained or implied in this Deed in their favour and to protect their rights, powers and remedies under this Deed.

45.44. INTERCREDITOR DEED

Despite any other provisions of this Deed, the parties acknowledge and agree that the terms and conditions of this Deed and the obligations of the Company under this Deed are subject to the terms of the Intercreditor Deed, including (without limitation), clause 22 (*Default*), clause 23 (*Notification obligations when Company wound up*), clause 24 (*Enforcement proceedings*), clause 25 (*Noteholder not to take proceedings*), clause 38 (*Release of Company's liability and termination of trust*) and clause 39 (*Amendment of this Deed and Conditions of Issue*) of this Deed, and where there is an inconsistency between the terms and conditions of this Deed and the terms and conditions of the

Intercreditor Deed, the terms of the Intercreditor Deed will prevail to the extent of such inconsistency.

46.45. GOVERNING LAW

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46.145.1 The law of the State of New South Wales governs this Deed.

46.245.2 The parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and of the Commonwealth of Australia.

47.46. ANTI-MONEY LAUNDERING

47.146.1 The Trustee appoints the Company as its agent to discharge the Trustee's obligations under the AML Laws.

47.246.2 The Company must:

- (a) take all action required by it to comply with AML Laws in connection with the performance of its obligations under this Deed,
- (b) promptly provide to the Trustee any information and documents that are:
 - (i) in its possession or otherwise readily available to it; and
 - (ii) reasonably required by the Trustee to facilitate the Trustee's compliance with AML Laws,

except to the extent that to do so is not permitted by law.

47.346.3 Notwithstanding any other provision of this Agreement, each party consents to any other party disclosing to any third party information or documents provided to it under this clause, to the extent that such disclosure is required to enable the other party to comply with AML Laws.

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47.446.4 For the purposes of this clause AML Laws means:

- (a) the *Anti-Money Laundering and Counter Terrorism Finance Act 2006* (Cth);
- (b) any other laws of any Australian jurisdiction dealing with countering money laundering or terrorism financing; and
- (c) any laws of any other place dealing with countering money laundering or terrorism financing applying to any party to this Agreement in respect of any matter required under this Agreement.

SCHEDULE 1

GUARANTORS

Name	ACN	Address and service details
Skansen Pty Limited	128 276 175	Address: Level 1 Building 220 2A The Entertainment Quarter 122 Laing Road Moore Park NSW 2021 Attention: Chief Financial Officer Facsimile: 02 9358 5799
A.C.N. 000 950 649 Pty Limited (dormant)	000 950 649	Address: Level 1 Building 220 2A The Entertainment Quarter 122 Laing Road Moore Park NSW 2021 Attention: Chief Financial Officer Facsimile: 02 9358 5799
BK World Online Pty. Ltd. (dormant)	136 571 429	Address: Level 1 Building 220 2A The Entertainment Quarter 122 Laing Road Moore Park NSW 2021 Attention: Chief Financial Officer Facsimile: 02 9358 5799
Skansen KCG Pty Limited	134 497 420	Address: Level 1 Building 220 2A The Entertainment Quarter 122 Laing Road Moore Park NSW 2021 Attention: Chief Financial Officer Facsimile: 02 9358 5799
Baby on a Budget Pty Ltd	075 656 515	Address: Level 1 Building 220 2A The Entertainment Quarter 122 Laing Road Moore Park NSW 2021 Attention: Chief Financial Officer Facsimile: 02 9358 5799

SCHEDULE 2

NOTICE OF ELECTION TO CONVERT NOTES

To: _____ The Directors
_____ Motherscare Australia Limited ACN 060 199 082
_____ (Company)

We whose full name(s) and address(es) appear below give notice of election to convert the Notes specified below:

Insert number of Notes to be converted into fully paid ordinary shares in the Company

We request that the Company convert the Notes specified above in accordance with the Trust Deed dated on or about [date] 2011 between, amongst other parties, the Company and Australian Executor Trustees Limited, incorporating the Conditions of Issue. We agree to accept the shares issued to us subject to the constitution of the Company.

• _____ Individual Noteholder(s)

Name (BLOCK LETTERS)

Address

Usual Signature

Dated _____ 20

• _____ Company Noteholder

Signature of director _____ Signature of director/secretary

Name of director (BLOCK LETTERS) _____ Name of director/secretary (BLOCK LETTERS)

Dated _____ 20

1. _____ This Notice of Election to Convert Notes must be lodged at the Company's Registry.
2. _____ In case of joint Noteholders, each Noteholder must sign.
3. _____ Where the Noteholder is an incorporated body the Notice must be signed by its authorised signatories.
4. _____ If this form has been signed by an Attorney and the relevant Power of Attorney has not already been produced to the Company, such Power of Attorney must be forwarded with his form for noting and return.

EXECUTED in Sydney as a deed.

COMPANY:

EXECUTED by **MOTHERCARE**)
AUSTRALIA LIMITED)
ACN 060 199 082 in accordance with)
Section 127 of the *Corporations Act 2001*)
(Cth):)

Director
Print Name:

Director/Secretary
Print Name:

GUARANTORS:

EXECUTED by **SKANSEN PTY LIMITED**)
ACN 128 276 175 in accordance with)
Section 127 of the *Corporations Act 2001*)
(Cth):)

Director
Print Name:

Director/Secretary
Print Name:

EXECUTED by **A.C.N. 000 950 649 PTY**)
LIMITED ACN 000 950 649 in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth):)

Director
Print Name:

Director/Secretary
Print Name:

EXECUTED by **BK WORLD ONLINE**)
PTY. LIMITED ACN 136 571 429 in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth):)

Director
Print Name:

Director/Secretary
Print Name:

EXECUTED by **SKANSEN KCG PTY**)
LIMITED ACN 134 497 420 in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth):)

Director
Print Name:

Director/Secretary
Print Name:

EXECUTED by BABY ON A BUDGET)
PTY LTD ACN 075 655 515 in)
accordance with Section 127 of the)
Corporations Act 2001 (Cth):)

Director
Print Name:

Director/Secretary
Print Name:

TRUSTEE:

The Common Seal of **AUSTRALIAN**)
EXECUTOR TRUSTEES LIMITED)
ACN 007 869 794 was hereunto affixed)
with the authority of:)

Authorised Officer
Print Name:

Authorised Officer
Print Name:

ANNEXURE

CONDITIONS OF ISSUE OF NOTES

The following are the terms of the Notes issued by Mothercare Australia Limited (Company):

1. the face value of each Note being that Note's pro rata share of 100% of the amount equal to the net balance of the cash component of the Price after paying any remaining debts owing by the Company and an allowance for working capital will be repaid to the Noteholders in Australian dollars without deduction or counterclaim immediately, but in any event within 2 Business Days, following the Completion Date;
2. no interest will be payable in respect of the Notes;
3. the Notes will be unsecured;
4. the Notes shall have no voting rights;
5. if and to the extent any of the preceding terms and conditions are inconsistent with the Listing Rules, such rules will prevail in all respects to the extent of the inconsistency; and
6. the terms and conditions of each Note are governed by the laws of the State of New South Wales and each noteholder unconditionally submits to the jurisdiction of the courts of that State and courts of appeal from them.

In these Conditions of Issue:

- (i) **Completion Date** means the date on which completion of the sale from Skansen Pty Ltd and purchase by The Myer Family Company Holdings Pty Ltd ACN 004 116 296 (Myer Family Company) of the entire share capital in Skansen KCG Pty Ltd pursuant to the terms of the Implementation Agreement takes place, being 5 Business Days following satisfaction or waiver of the last condition precedent under the Implementation Agreement;
- (ii) **Implementation Agreement** means the implementation agreement dated 14 November 2012 between the Company, Skansen Pty Ltd and Myer Family Company; and
- (iii) **Price** means the aggregate of:
 - a. \$490,000 cash (GST inclusive);
 - b. \$4,500,295.20 being the aggregate face value of mandatorily converting notes held by Myer Family Company to be forgiven by Myer Family Company on the Completion Date; and
 - c. \$1,270,000 being the aggregate amount of Myer Family Company's bridging loans to Skansen Pty Ltd to be forgiven by Myer Family Company on the Completion Date.

The following are the terms of the secured Mandatorily Converting Notes proposed to be issued by Mothercare Australia Limited (Company):

1. each secured Mandatorily Converting Note may be converted into one ordinary share in the Company at the election of the holder at any time by written notice of conversion to the Company, and shall convert automatically on the third anniversary of the date of issue or earlier if the Company's share price exceeds \$0.35 for any consecutive 90 day period provided that the Company exercises this right within 30 days;
2. interest will be payable by the Company at the rate of 8% per annum (in respect of interest payments that carry a franking credit) or 11.45% per annum (in respect of interest payments that do not carry a franking credit) on the amount subscribed for each secured Mandatorily Converting Note during the period from the date of issue until the conversion of each secured Mandatorily

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Converting Note. Such interest will accumulate and be paid by the Company biannually (with the first interest period commencing on the date of issue of the secured Mandatorily Converting Notes) in arrears within 30 days of the due date. The first three interest payments will, at the Company's option, accumulate and be paid within 30 days of the second anniversary of the date of issue of the secured Mandatorily Converting Notes;

3. the secured Mandatorily Converting Notes shall have no voting rights;

4. the Mandatorily Converting Notes will be secured by a second ranking fixed and floating charge granted by the Company in favour of a Security Trustee representing the holders. The security granted by the Company in favour of the Security Trustee is subject to the terms of the Intercreditor Deed and the terms of the Convertible Note Trust Deed which acknowledge that the terms of the Intercreditor Deed take priority over the Convertible Note Trust Deed;

5. each holder may prove in any winding up of the Company for the face value of each secured Mandatorily Converting Note held by that holder which had not been converted into ordinary shares in accordance with clause 1 by the date of commencement of such winding up together with all accumulated but unpaid interest in respect of the secured Mandatorily Converting Notes as at the date of such winding up;

6. all shares issued pursuant to the conversion of each secured Mandatorily Converting Note will be allotted within 2 business days after the conversion of the relevant secured Mandatorily Converting Notes and will rank pari passu in all respects with the Company's then existing shares. The Company will apply for official quotation by ASX of all shares issued upon conversion of each secured Mandatorily Converting Note on or before the third business day on which ASX is open after the date of allotment of the shares. The Company will procure that a holding statement for the shares is given to the noteholder in accordance with the ASX Settlement Rules;

7. there are no participating rights or entitlements inherent in the secured Mandatorily Converting Notes and the noteholder will not be entitled to participate in new issues of capital offered to the Company's shareholders during the currency of the secured Mandatorily Converting Notes;

8. the Company may only reorganise its capital if, the number of secured Mandatorily Converting Notes or the conversion price or both are reorganised so that the holder of the secured Mandatorily Converting Notes will not receive a benefit that holders of ordinary shares in the Company do not receive. This clause does not prevent a rounding up of the number of shares to be received on conversion if the rounding up is approved at a meeting of the members of the Company which approves the reorganisation;

9. if and to the extent any of the preceding terms and conditions are inconsistent with the Listing Rules, such rules will prevail in all respects to the extent of the inconsistency; and

10. the terms and conditions of each secured Mandatorily Converting Note are governed by the laws of the State of New South Wales and the each noteholder unconditionally submits to the jurisdiction of the courts of that State and courts of appeal from them.

Mothercare Australia Limited

ABN 26 060 199 082

Lodge your vote:



By Mail:

Computershare Investor Services Pty Limited
GPO Box 242 Melbourne
Victoria 3001 Australia

Alternatively you can fax your form to
(within Australia) 1800 783 447
(outside Australia) +61 3 9473 2555

For Intermediary Online subscribers only
(custodians) www.intermediaryonline.com

For all enquiries call:

(within Australia) 1300 850 505
(outside Australia) +61 3 9415 4000

┌ 000001 000 MLC
MR SAM SAMPLE
FLAT 123
123 SAMPLE STREET
THE SAMPLE HILL
SAMPLE ESTATE
SAMPLEVILLE VIC 3030

Proxy Form - Noteholder's Meeting

For your vote to be effective it must be received by 11.30am (Sydney Time) on Saturday, 15 December 2012.

How to Vote on Items of Business

All your notes will be voted in accordance with your directions.

Appointment of Proxy

Voting 100% of your holding: Direct your proxy how to vote by marking one of the boxes opposite each item of business. If you do not mark a box your proxy may vote as they choose. If you mark more than one box on an item your vote will be invalid on that item.

Voting a portion of your holding: Indicate a portion of your voting rights by inserting the percentage or number of notes you wish to vote in the For, Against or Abstain box or boxes. The sum of the votes cast must not exceed your voting entitlement or 100%.

A proxy need not be a noteholder or shareholder of the Company.

Signing Instructions

Individual: Where the holding is in one name, the noteholder must sign.

Joint Holding: Where the holding is in more than one name, all of the noteholders should sign.

Power of Attorney: If you have not already lodged the Power of Attorney with the registry, please attach a certified photocopy of the Power of Attorney to this form when you return it.

Companies: Where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the Corporations Act 2001) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please sign in the appropriate place to indicate the office held. Delete titles as applicable.

Attending the Meeting

Bring this form to assist registration. If a representative of a corporate noteholder or proxy is to attend the meeting you will need to provide the appropriate "Certificate of Appointment of Corporate Representative" prior to admission. A form of the certificate may be obtained from Computershare or online at www.investorcentre.com under the information tab, "Downloadable Forms".

Comments & Questions: If you have any comments or questions for the company, please write them on a separate sheet of paper and return with this form.

Turn over to complete the form →



View your securityholder information, 24 hours a day, 7 days a week:

www.investorcentre.com

- Review your securityholding
- Update your securityholding

Your secure access information is:

SRN/HIN: 19999999999



PLEASE NOTE: For security reasons it is important that you keep your SRN/HIN confidential.

MR SAM SAMPLE
FLAT 123
123 SAMPLE STREET
THE SAMPLE HILL
SAMPLE ESTATE
SAMPLEVILLE VIC 3030

Change of address. If incorrect,
mark this box and make the
correction in the space to the left.



I 9999999999 I ND

Proxy Form

Please mark to indicate your directions

STEP 1 Appoint a Proxy to Vote on Your Behalf

XX

I/We being a member/s of Mothercare Australia Limited hereby appoint

the Chairman
of the meeting OR

PLEASE NOTE: Leave this box blank if
you have selected the Chairman of the
Meeting. Do not insert your own name(s).

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chairman of the Meeting, as my/our proxy to act generally at the Meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, and to the extent permitted by law, as the proxy sees fit) at the Noteholder's Meeting of Mothercare Australia Limited to be held at Level 10, 1 Margaret St, Sydney on Monday, 17 December 2012 immediately following the closing of the Annual General Meeting but not before 11.30am (Sydney Time), and at any adjournment or postponement of that Meeting.

STEP 2 Items of Business

PLEASE NOTE: If you mark the **Abstain** box for an item, you are directing your proxy not to vote on your behalf on a show of hands or a poll and your votes will not be counted in computing the required majority.

Ordinary business

1 Discharge of guarantees and security

2 Amendment to the terms of Mandatorily Converting Notes

	For	Against	Abstain
1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Chairman of the Meeting intends to vote undirected proxies in favour of each item of business.

SIGN Signature of Noteholder(s)

This section must be completed.

Individual or Noteholder 1

Sole Director and Sole Company Secretary

Noteholder 2

Director

Noteholder 3

Director/Company Secretary

Contact
Name _____

Contact
Daytime
Telephone _____

Date ____ / ____ / ____

MLC

999999A

Computershare +