

# Appendix 3B

## New issue announcement, application for quotation of additional securities and agreement

*Information or documents not available now must be given to ASX as soon as available. Information and documents given to ASX become ASX's property and may be made public.*

Introduced 01/07/96 Origin: Appendix 5 Amended 01/07/98, 01/09/99, 01/07/00, 30/09/01, 11/03/02, 01/01/03, 24/10/05, 01/08/12, 04/03/13

Name of entity

Qube Holdings Limited (**Qube**)

ABN

14 149 723 053

We (the entity) give ASX the following information.

### Part 1 - All issues

*You must complete the relevant sections (attach sheets if there is not enough space).*

- 1 +Class of +securities issued or to be issued

#### Qube Subordinated Notes (**Notes**)

Notes are unsecured, subordinated notes with a maturity date seven years after their issue date (5 October 2023). Holders will be entitled to receive quarterly interest payments at a rate equal to the Bank Bill Rate plus the margin to be determined under the Bookbuild.

The Terms of the Notes (**Terms**) are summarised in the prospectus lodged with ASIC on 30 August 2016 (**Prospectus**) and attached, in full, as Appendix A to the Prospectus (**Terms**). The Terms are also set out in Schedule 1 of the Trust Deed attached as Attachment A to this Appendix 3B.

- 2 Number of +securities issued or to be issued (if known) or maximum number which may be issued

Approximately 2,000,000 with the ability to issue more or less.

3	Principal terms of the +securities (e.g. if options, exercise price and expiry date; if partly paid +securities, the amount outstanding and due dates for payment; if +convertible securities, the conversion price and dates for conversion)	The Terms are summarised in the Prospectus and attached, in full, as Appendix A to the Prospectus. The Terms are also set out in Schedule 1 of the Trust Deed attached as Attachment A to this Appendix 3B.
4	Do the +securities rank equally in all respects from the +issue date with an existing +class of quoted +securities?  If the additional +securities do not rank equally, please state: <ul style="list-style-type: none"> <li>the date from which they do</li> <li>the extent to which they participate for the next dividend, (in the case of a trust, distribution) or interest payment</li> <li>the extent to which they do not rank equally, other than in relation to the next dividend, distribution or interest payment</li> </ul>	No, the Notes do not rank equally with any other existing class of quoted securities.  Notes confer no rights on a holder to: <ul style="list-style-type: none"> <li>vote at any general meeting of Qube's ordinary shareholders;</li> <li>subscribe for new securities in Qube or to participate in any future issues of securities (whether equity, subordinated or senior debt or otherwise); or</li> <li>otherwise to participate in the profits or property of Qube, except as set out in the Terms.</li> </ul>
5	Issue price or consideration	\$100 per Note.
6	Purpose of the issue (If issued as consideration for the acquisition of assets, clearly identify those assets)	The issue of Notes forms part of Qube's ongoing funding strategy. The proceeds will be used for general corporate purposes including the development of the Moorebank project and for funding other growth opportunities for Qube.
6a	Is the entity an +eligible entity that has obtained security holder approval under rule 7.1A?  If Yes, complete sections 6b – 6h in relation to the +securities the subject of this Appendix 3B, and comply with section 6i	Not applicable.
6b	The date the security holder resolution under rule 7.1A was passed	Not applicable.

+ See chapter 19 for defined terms.

6c	Number of +securities issued without security holder approval under rule 7.1	Not applicable.
6d	Number of +securities issued with security holder approval under rule 7.1A	Not applicable.
6e	Number of +securities issued with security holder approval under rule 7.3, or another specific security holder approval (specify date of meeting)	Not applicable.
6f	Number of +securities issued under an exception in rule 7.2	Not applicable.
6g	If +securities issued under rule 7.1A, was issue price at least 75% of 15 day VWAP as calculated under rule 7.1A.3? Include the +issue date and both values. Include the source of the VWAP calculation.	Not applicable.
6h	If +securities were issued under rule 7.1A for non-cash consideration, state date on which valuation of consideration was released to ASX Market Announcements	Not applicable.
6i	Calculate the entity's remaining issue capacity under rule 7.1 and rule 7.1A – complete Annexure 1 and release to ASX Market Announcements	Not applicable.
7	<p>+Issue dates</p> <p>Note: The issue date may be prescribed by ASX (refer to the definition of issue date in rule 19.12). For example, the issue date for a pro rata entitlement issue must comply with the applicable timetable in Appendix 7A.</p> <p>Cross reference: item 33 of Appendix 3B.</p>	Issue is scheduled for 5 October 2016.

8	Number and <sup>+</sup> class of all <sup>+</sup> securities quoted on ASX (including the <sup>+</sup> securities in section 2 if applicable)	Number	<sup>+</sup> Class
		1,446,906,600	Ordinary shares
9	Number and <sup>+</sup> class of all <sup>+</sup> securities not quoted on ASX (including the <sup>+</sup> securities in section 2 if applicable)	Number	<sup>+</sup> Class
		23,851,816	Unlisted \$2.2442 Options under the Qube long term incentive plan, expiring 3 December 2020.
10	Dividend policy (in the case of a trust, distribution policy) on the increased capital (interests)	Unchanged	

## Part 2 - Pro rata issue

11	Is security holder approval required?	Not applicable.
12	Is the issue renounceable or non-renounceable?	Not applicable.
13	Ratio in which the <sup>+</sup> securities will be offered	Not applicable.
14	<sup>+</sup> Class of <sup>+</sup> securities to which the offer relates	Not applicable.
15	<sup>+</sup> Record date to determine entitlements	Not applicable.
16	Will holdings on different registers (or subregisters) be aggregated for calculating entitlements?	Not applicable.
17	Policy for deciding entitlements in relation to fractions	Not applicable.

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<sup>+</sup> See chapter 19 for defined terms.

18	Names of countries in which the entity has security holders who will not be sent new offer documents  Note: Security holders must be told how their entitlements are to be dealt with.  Cross reference: rule 7.7.	Not applicable.
19	Closing date for receipt of acceptances or renunciations	Not applicable.
20	Names of any underwriters	Not applicable.
21	Amount of any underwriting fee or commission	Not applicable.
22	Names of any brokers to the issue	Not applicable.
23	Fee or commission payable to the broker to the issue	Not applicable.
24	Amount of any handling fee payable to brokers who lodge acceptances or renunciations on behalf of security holders	Not applicable.
25	If the issue is contingent on security holders' approval, the date of the meeting	Not applicable.
26	Date entitlement and acceptance form and offer documents will be sent to persons entitled	Not applicable.
27	If the entity has issued options, and the terms entitle option holders to participate on exercise, the date on which notices will be sent to option holders	Not applicable.
28	Date rights trading will begin (if applicable)	Not applicable.
29	Date rights trading will end (if applicable)	Not applicable.
30	How do security holders sell	Not applicable.

their entitlements *in full* through a broker?

- 31 How do security holders sell *part* of their entitlements through a broker and accept for the balance?

Not applicable.

- 32 How do security holders dispose of their entitlements (except by sale through a broker)?

Not applicable.

- 33 <sup>+</sup>Issue date

Not applicable.

## Part 3 - Quotation of securities

*You need only complete this section if you are applying for quotation of securities*

- 34 Type of <sup>+</sup>securities  
(tick one)

- (a) ☒ <sup>+</sup>Securities described in Part 1

- (b) ☐ All other <sup>+</sup>securities

Example: restricted securities at the end of the escrowed period, partly paid securities that become fully paid, employee incentive share securities when restriction ends, securities issued on expiry or conversion of convertible securities

### Entities that have ticked box 34(a)

#### Additional securities forming a new class of securities

*Tick to indicate you are providing the information or documents*

- 35 ☐ If the <sup>+</sup>securities are <sup>+</sup>equity securities, the names of the 20 largest holders of the additional <sup>+</sup>securities, and the number and percentage of additional <sup>+</sup>securities held by those holders

- 36 ☐ If the <sup>+</sup>securities are <sup>+</sup>equity securities, a distribution schedule of the additional <sup>+</sup>securities setting out the number of holders in the categories

1 - 1,000

1,001 - 5,000

5,001 - 10,000

10,001 - 100,000

100,001 and over

- 37 ☒ A copy of any trust deed for the additional <sup>+</sup>securities

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<sup>+</sup> See chapter 19 for defined terms.

## Entities that have ticked box 34(b)

38	Number of +securities for which +quotation is sought	Not applicable.	
39	+Class of +securities for which quotation is sought	Not applicable.	
40	<p>Do the +securities rank equally in all respects from the +issue date with an existing +class of quoted +securities?</p> <p>If the additional +securities do not rank equally, please state:</p> <ul style="list-style-type: none"> <li>the date from which they do</li> <li>the extent to which they participate for the next dividend, (in the case of a trust, distribution) or interest payment</li> <li>the extent to which they do not rank equally, other than in relation to the next dividend, distribution or interest payment</li> </ul>	Not applicable.	
41	<p>Reason for request for quotation now</p> <p>Example: In the case of restricted securities, end of restriction period</p> <p>(if issued upon conversion of another +security, clearly identify that other +security)</p>	Not applicable.	
42	Number and +class of all +securities quoted on ASX (including the +securities in clause 38)	Number	+Class
		Not applicable.	Not applicable.

## Quotation agreement

1 +Quotation of our additional +securities is in ASX's absolute discretion. ASX may quote the +securities on any conditions it decides.

2 We warrant the following to ASX.

- The issue of the +securities to be quoted complies with the law and is not for an illegal purpose.
- There is no reason why those +securities should not be granted +quotation.
- An offer of the +securities for sale within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act.

Note: An entity may need to obtain appropriate warranties from subscribers for the securities in order to be able to give this warranty

- Section 724 or section 1016E of the Corporations Act does not apply to any applications received by us in relation to any +securities to be quoted and that no-one has any right to return any +securities to be quoted under sections 737, 738 or 1016F of the Corporations Act at the time that we request that the +securities be quoted.
- If we are a trust, we warrant that no person has the right to return the +securities to be quoted under section 1019B of the Corporations Act at the time that we request that the +securities be quoted.

3 We will indemnify ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from or connected with any breach of the warranties in this agreement.

4 We give ASX the information and documents required by this form. If any information or document is not available now, we will give it to ASX before +quotation of the +securities begins. We acknowledge that ASX is relying on the information and documents. We warrant that they are (will be) true and complete.

Sign here: William Hara (signed)  
(Company secretary)

Date: 30 August 2016

Print name: William Hara

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+ See chapter 19 for defined terms.



# **Appendix 3B – Attachment A**

**Trust Deed**

See attached.

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# **Retail Subordinated Notes Trust Deed**

Qube Holdings Limited ABN 14 149 723 053

29 August 2016

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Date: 29 August 2016

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## Parties

- 1 **Qube Holdings Limited ABN 14 149 723 053** of Level 27, 45 Clarence Street, Sydney NSW 2000 (**Company**)
- 2 **Australian Executor Trustees Limited ABN 84 007 869 794** of Level 22, 207 Kent Street, Sydney NSW 2000 (**Trustee**)

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## Background

- A The Company wishes to issue up to an initial maximum of \$200 million subordinated unsecured notes under this deed and such additional amount (if any) contemplated by the Prospectus by way of oversubscriptions.
- B The Trustee has agreed to act as trustee on behalf of the holders of Notes on the terms and conditions contained in this deed.

### The parties agree

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

In this deed any capitalised terms not defined in this deed have the meaning given in the Terms of Issue, and:

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) or the market operated by it, as the context requires.

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

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement.

**Authorisation** means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval (including any planning approval), authority or exemption from, by or with a Government Agency (including, without limitation, the Foreign Investment Review Board of Australia); or
- (b) in relation to anything which could be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period the expiry of that period without intervention or action.

**Business Day** has the meaning given in the Listing Rules.

**CHESS Approved Securities** means securities in respect of which approval has been given by ASX Settlement in accordance with the ASX Settlement Operating Rules.



**Confidential Information** means all information and other material (other than information or material in the public domain) provided to or obtained by the Trustee, or any officer, employee, delegate, adviser or other consultant of the Trustee under, in connection with or related to this deed or any obligation, duty or power of the Trustee under this deed.

**Controller** has the meaning given in the Corporations Act.

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

**Costs** means includes costs, charges, fees, expenses (including expenses of advisors), commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.

**Equal Ranking Obligations** has the meaning given to that term in the Terms of Issue.

**Event of Insolvency** has the meaning given to that term in the Terms of Issue.

**Face Value** means the face value of a Note, being \$100 per Note.

**Financial Statements** means, in respect of each financial year, the 'Statement of Comprehensive Income', 'Balance Sheet', 'Statement of Changes in Equity' and 'Statement of Cash Flows' prepared on a consolidated basis for the Group, together with any reports or notes intended to be read in conjunction with the accounts, including the auditor's report.

**Government Agency** means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Group** means the group comprising the Company and each Subsidiary which is consolidated in its most recent Financial Statements or Half Year Financial Statements.

**GST** means any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty.

**Half Year Financial Statements** means, in respect of each half year, the 'Statement of Comprehensive Income', 'Balance Sheet', 'Statement of Changes in Equity' and 'Statement of Cash Flows' prepared on a consolidated basis for the Group, together with any reports or notes intended to be read in conjunction with the accounts, including the auditor's review report.

**Holder** means a person who is entered into the Register as the holder of a Note.

**Holder Claims** means the rights and claims of the Trustee (in respect of Notes) and of the Holders in respect of Notes.

**Interest Payment** means the interest payable on a Note on the Interest Payment Date, as calculated in accordance with clause 3.3 of the Terms of Issue.

**Interest Payment Date** means, subject to clause 3.3 of the Terms of Issue, 5 April, 5 July, 5 October and 5 January in each year, commencing on the first such date following the Issue Date until Notes are redeemed.

**Interest Period** has the meaning given to that term in the Terms of Issue.

**Issue Date** means 5 October 2016, or such later date as the Company may determine.

**Law Firm** means a law firm with at least 25 partners and with offices in at least two Australian capital cities.

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

**Maturity Date** means 5 October 2023.

**Meeting** means a meeting of Holders convened in accordance with this deed.

**Notes** means the Company's subordinated notes to which the Terms of Issue apply, as described in clause 1.1 of the Terms of Issue.

**Notional Preference Share** means an actual or notional class of preference shares in the capital of the Company ranking junior to the claims of Senior Creditors and having an equal right to return of assets in the winding-up to, and so ranking pari passu with, the most junior class or classes of preference shares in the capital of the Company from time to time and which have a right to a return of assets in the winding-up over, and so rank junior to the holders of all other classes of issued shares for the time being in the capital of the Company other than, its ordinary shares.

**Official List** means the official list of the ASX.

**Proper ASTC Transfer** has the meaning given to that term in the Terms of Issue.

**Prospectus** means a prospectus issued by the Company in respect of a public offer of Notes.

**Quarter** has the meaning given in section 283BF of the Corporations Act.

**Register** means the register of Notes maintained by or on behalf of the Company.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Retained Amount** has the meaning given to that term in clause 5.4.

**Security Interest** means a charge, mortgage, pledge, bill of sale, hypothecation, lien, arrangement concerning the deposit of documents evidencing title, trust, power, title retention arrangement or any other covenant or arrangement of any nature made to secure the payment of money or the observance of an obligation or under which a creditor is entitled to claim that it has a right to receive payment, or to have an obligation owed to it satisfied, in priority to another creditor.

**Senior Creditors** has the meaning given to that term in the Terms of Issue.

**Special Resolution** means a resolution approved by not less than 75% of all votes cast by Holders present and entitled to vote on the resolution.

**Statutory Obligation** means any obligation of any kind imposed on the Trustee under applicable law, practice, regulation, ruling, confirmation, advice or action that represent the official requirements of any Government Agency, ASIC, ASX or the law in force in New South Wales, Australia in relation to the Trustee's role under this deed, the Notes or any documents contemplated by or related to any of them.

**Subsidiary** has the meaning given in the Corporations Act.

**Tax or Taxes** means any present or future taxes, duties, assessments or governmental charges of whatever nature.

**Tax Event** has the meaning given to that term in the Terms of Issue.

**Terms of Issue** means the terms of issue of Notes set out in Schedule 1.

**Trust** means the trust established by this deed.

**Trustee** means Australian Executor Trustees Limited (ABN 84 007 869 794) and includes a successor of it.

**Trustee Company** means a body corporate eligible under section 283AC of the Corporations Act to act as a trustee for the holders of unsecured notes offered to the public.

**Trustee Power** means a right, power, authority, discretion or remedy conferred on the Trustee by this deed or by law.

**Winding Up** means the appointment of a liquidator or provisional liquidator of the Company (and where the appointment is made by a court, by a court of competent jurisdiction in Australia), and **Wind Up** has a corresponding meaning.

## 1.2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an annexure, exhibit or schedule to this deed forms part of this deed;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (f) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) where the day on or by which any thing is to be done, or payment is to be made, is not a Business Day, that thing must be done, or payment must be made, on or by the next succeeding Business Day;
- (i) a reference to cash includes cheques and bank cheques;
- (j) a reference to a body including a commission or an exchange, whether statutory or not, which ceases to exist or whose functions or powers are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers and functions;

- (k) references to sums of money are to amounts in Australian dollars;
- (l) a reference to a thing or things after the words "include" or "including" or similar expressions is not limited to that thing or those things;
- (m) a calculation, determination, election or decision made under this deed, will (in the absence of manifest error, negligence, default or bad faith) be binding upon the Company, the Trustee and all Holders;
- (n) if a calculation is required under this deed, the calculation will be rounded to four decimal places, provided that any amount to be paid to a Holder will be rounded down to the nearest whole cent;
- (o) the word "amend" includes modify, cancel, amend or add to; and
- (o) a reference to 'wilful default' in relation to the Trustee means any wilful failure to comply with, or wilful breach by, the Trustee of any of its obligations under this deed or at law other than a failure or breach which:
  - (i) is in accordance with a lawful court order or direction or required by law; or
  - (ii) is in accordance with any proper instruction or direction of the Holders given at a Meeting of Holders convened pursuant to clause 12 of this deed.

### **1.3 General compliance provision**

- (a) A provision of this deed which is inconsistent with a Statutory Obligation (including a provision of the Corporations Act) does not operate to the extent of the inconsistency.
- (b) Clause 1.3(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this deed.
- (c) Without limiting the generality of clause 1.3(a) or clause 6, to the extent a provision of this deed breaches or contravenes, or if complied with would result in a breach or contravention of:
  - (i) a Statutory Obligation by the Trustee or any other party; or
  - (ii) a right, power, authority, discretion or remedy conferred on the Trustee by law,
 this deed is taken not to contain that provision.
- (d) This clause 1.3 prevails over all other provisions of this deed including any that are expressed to prevail over it.

### **1.4 Inconsistency with the ASX Listing Rules**

So long as the Notes are quoted on ASX, this deed and the Terms of Issue as they relate to those Notes are to be interpreted in a manner consistent with applicable Listing Rules.

### **1.5 Inconsistency with Terms of Issue**

- (a) A provision of any part of this deed other than the Terms of Issue which is inconsistent with a provision of the Terms of Issue does not operate to the extent of the inconsistency.

- (b) In the event of an inconsistency between a defined term in this deed and a defined term in the Terms of Issue, the defined term in the Terms of Issue shall prevail.

#### **1.6 Holders bound**

- (a) Each Holder (and any person claiming through or under a Holder) is bound by and Notes are issued on the condition that each Holder (and any person claiming through or under a Holder) is taken to have notice of and is bound by this deed and the Terms of Issue.
- (b) It is a condition of a Holder receiving any of the rights or benefits in connection with this deed or Notes that the Holder performs all of the obligations and complies with all restrictions and limitations applicable to it under this deed and the Terms of Issue.

#### **1.7 Binding nature of relationship**

Each Holder is taken to have agreed:

- (a) to be bound by anything properly done or properly not done by the Trustee in accordance with this deed, including the Terms of Issue, and Chapter 2L of the Corporations Act, whether or not the Trustee is acting on the instructions of the Holders given by a Special Resolution and whether or not the Holders gave an instruction by way of a Special Resolution or approved of the thing done or not done; and
- (b) at the Trustee's request, to ratify anything properly done or properly not done by the Trustee in accordance with this deed, including the Terms of Issue, and Chapter 2L of the Corporations Act.

#### **1.8 Effect of deed**

- (a) Subject to clauses 1.6 and 8, each Holder has the benefit of this deed, and is entitled to enforce this deed against the Company in accordance with its terms even though it is not a party to, or is not in existence at the time of execution and delivery of, this deed.
- (b) This deed operates as a deed as between the Company and the Trustee.

#### **1.9 Individual responsibility of Holders**

Each Holder is taken to have acknowledged for the benefit of the Trustee that the Holder has:

- (a) made and will continue to make its own independent investigation of the financial condition and affairs of the Company based on documents and information which it considers appropriate;
- (b) made its own appraisal of the creditworthiness of the Company; and
- (c) made its own assessment and approval of the rate of interest, risks associated with repayment of principal and other returns in relation to the Notes,

without relying on the Trustee (in that capacity) or any representation made by it.

### **1.10 Knowledge of the Trustee**

In relation to the Trust, the Trustee 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.

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## **2 Appointment of Trustee and declaration of trust**

### **2.1 Appointment**

The Trustee is hereby appointed by the Company and agrees to act as trustee for the Trust and the Holders with all the powers, obligations and rights of the Trustee subject to and in accordance with this deed.

### **2.2 Establishment of the Trust**

- (a) The Company has settled the sum of \$10 on the Trustee.
- (b) The Trustee declares that it holds the sum of \$10, and will hold the assets of the Trust, on trust for the holders from time to time on the terms and conditions of this document.

### **2.3 Declaration of trust**

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

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

in trust for the Holders subject to and in accordance with this deed and the Terms of Issue. The Trustee will hold its counterparts of this deed in safe custody for itself and the Holders.

### **2.4 Period**

The trust established under this deed commences on the date of this deed and, unless determined at an earlier date, ends on the earlier of:

- (a) the day before the eightieth anniversary of the date of this deed; and
- (b) the day on which this deed is terminated under clause 17.1.

### **2.5 Receipt of moneys**

All money received by the Trustee in respect of amounts payable under this deed must be held by the Trustee on trust to be applied in the following order:

- (a) firstly, in payment of all Costs incurred by or other amounts owing to the Trustee under or in connection with this deed (including all remuneration and other amounts payable to the Trustee under this deed);
  - (b) secondly, in or towards payment equally or rateably of:
    - (i) all arrears of interest remaining unpaid in respect of the Notes;
    - (ii) all principal due but unpaid in respect of the Notes; and
    - (iii) all other amounts due but unpaid to Holders in respect of the Notes or the Trust Deed; and
  - (c) thirdly, in payment of the balance (if any) to the Company.
- 

### **3 Issue of Notes**

#### **3.1 General**

- (a) Subject to the terms of this deed, the Company may issue Notes to any person in accordance with the Terms of Issue as set out in Schedule 1.
- (b) Notes are regarded as issued to a person if and when the person's name is recorded in the Register in accordance with this deed. No rights whatsoever attach to the Notes until issued.
- (c) Holders are to be regarded as the beneficial owners of Notes held by them.
- (d) The Trustee, the Company, Holders and any persons claiming through any of them are bound by this deed including the Terms of Issue.
- (e) The Company will use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure official quotation of the Notes on the Official List of the ASX and to procure such quotation is maintained.
- (f) If the Company issues Notes and:
  - (i) the Company has not received any moneys due on application for Notes in accordance with the Terms of Issue; or
  - (ii) any payment for Notes is not cleared,the Notes are void as from their date of issue or such other date as the Company determines.

#### **3.2 Borrowing limitations**

- (a) The aggregate principal amount of Notes on issue is limited to an initial maximum of \$200 million and such additional amount (if any) contemplated by the Prospectus by way of oversubscriptions.
- (b) Subject to clause 5.5, nothing in this deed prevents the Company from issuing or incurring further indebtedness, whether secured or unsecured or ranking in priority to Notes.

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## 4 Security and subordination

### 4.1 Terms of security and subordination

The Notes are unsecured debt obligations of the Company and are subordinated in accordance with the Terms of Issue, and rank equally without any preference among themselves.

### 4.2 Certificate

The Trustee shall be entitled and is hereby authorised by the Company to call for a certificate from the Senior Creditors or any agent acting on their behalf as to whether the claims of Senior Creditors have been satisfied in full. Any such certificate shall be conclusive and binding on the Trustee and the Holders and the Trustee is entitled to rely, without enquiry, on any notice, certificate or other communication it receives from the Senior Creditors or any agent acting on their behalf.

### 4.3 Trustee's costs, etc.

Nothing in clause 4.1 shall affect or prejudice the payment of the costs, charges, expenses, liabilities or remuneration of the Trustee payable under this deed or the Terms of Issue.

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## 5 Covenants

### 5.1 Covenants

Subject to this deed, the Company covenants for the benefit of the Trustee and Holders that for so long as any principal or interest due on Notes remains outstanding, it will:

- (a) pay to the Trustee for the account of Holders, all amounts due on or in respect of Notes as and when due in accordance with this deed including the Terms of Issue;
- (b) comply with the terms of this deed, including the Terms of Issue;
- (c) comply with its obligations under the Corporations Act (including Chapter 2L), the Listing Rules and the ASX Settlement Operating Rules, where a failure to comply with such obligations would have or would be likely to have a material adverse effect on the ability of the Company to meet its payment obligation under Notes, or the validity or enforceability of the rights and remedies (taken as a whole) of Holders under the terms of this deed;
- (d) comply with the Terms of Issue and any conditions or obligations imposed by ASX in connection with the Notes;
- (e) notify the Trustee promptly and in any event no later than 2 Business Days after it becomes aware of a breach by the Company of any obligation of this deed, Chapter 2L of the Corporations Act or the Terms of Issue;
- (f) do all things which are required to be done to enable the Trustee to comply with the Trustee's obligations under this deed, the Corporations Act (or any other laws binding on the Trustee with respect to the Trust or the Notes), the Listing Rules and the ASX Settlement Operating Rules;
- (g) make all of its financial and other records available for inspection by:



- (i) the Trustee;
- (ii) an officer or employee of the Trustee; or
- (iii) a registered company auditor appointed by the Trustee,

and provide them with any information, explanations or other assistance they may reasonably require about matters relating to the records;

- (h) where there exists any recurring obligation on the Trustee or the Company and the Trustee to furnish to any Government Agency any information, furnish to the Trustee such information as would be reasonably required by the Trustee to properly discharge its obligations (such information to be furnished to the Trustee no less than 10 Business Days prior to the time when such information is required to be furnished or if not available prior to that date, promptly after it is made available to the Company);
- (i) notify the Trustee promptly and in any event no later than 2 Business Days after it becomes aware of the occurrence of an Event of Default; and
- (j) give the Trustee (or, in respect of paragraph (iv) below, a Holder, within 10 Business Days of a request by that Holder):
  - (i) promptly after redeeming or cancelling any Note in full, details of that redemption or cancellation;
  - (ii) a copy of all documents and notices which it gives to the Holders;
  - (iii) promptly, all other information requested by the Trustee which is reasonably required for the purposes of the discharge of its duties, trusts and powers under this deed or imposed by law; and
  - (iv) a copy of this deed.

## 5.2 Directors certificate

Within 1 month after the end of each Quarter, the Company must give to the Trustee a certificate signed by any two directors (on behalf of a majority of the directors) (**Director's Certificate**) of the Company:

- (a) at the time of giving each report to the Trustee under section 283BF of the Corporations Act, which shows the aggregate principal amount of Notes on issue at the end of the Quarter for the purposes of the reports to be given under section 283BF of the Corporations Act;
- (b) 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, setting out 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 deed or any 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 14 days prior to the time when such information is required to be lodged; and

- (c) either confirming that there has been no material change to the nature of the Company' business since the date of the last Director's Certificate provided under this clause or providing details of the change.

### **5.3 Direction to pay**

For the purpose of clause 5.1(a), the Trustee directs the Company to pay the amounts referred to in clause 5.1(a) to the Holders, in accordance with their rights and entitlements and with the method of payment set out in clause 5.1 of the Terms of Issue unless:

- (a) an Event of Default has occurred and is continuing; or
- (b) the Company is directed by the Trustee to make the payment to the Trustee by the giving of notice to that effect not less than 5 Business Days' prior to the scheduled date for the making of the payment,

in which case the payment must be made to the Trustee.

### **5.4 Retained payments**

Except to the extent that clause 5 of the Terms of Issue operates:

- (a) if, for any reason other than those reasons set out in clause 5.1(b) of the Terms of Issue, an amount to be paid to a Holder under this deed is unable to be paid within 6 months of the date the Company first sought to make the payment to the Holder, at the end of that 6 months, that amount may be retained by the Company (**Retained Amount**);
- (b) where a Retained Amount has been retained by the Company pursuant to clause 5.4(a), any claim made against the Company for payment of that Retained Amount under this deed is void, to the fullest extent permitted by applicable law, unless the claim is made by the Holder within 5 years following the date that the Retained Amount was first sought to be distributed or paid under this deed; and
- (c) any interest which accrues on a Retained Amount whilst it is retained by the Company will accrue for the benefit of the Company and not the Holder entitled to make demand for it.

### **5.5 Notification**

Where the Company proposes to:

- (a) issue further indebtedness as referred to in clause 3.2(b) of this deed; or
- (b) amend this deed or the Terms of Issue,

the Company must have due regard to the Trustee's obligations under the Corporations Act before acting on such proposal and must notify the Trustee of the proposal prior to proceeding with the proposal.

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## 6 Trustee's powers, duties and discretions

### 6.1 Powers generally

- (a) Subject to this deed, the Trustee has all the powers of a natural person or corporation in relation to the Trust in connection with the exercise and discharge of its rights, powers, discretions, duties and obligations under this deed.
- (b) Subject to applicable law, the Trustee may exercise its rights, powers and discretions under this deed in any manner it thinks fit.

### 6.2 Trustee's power to invest

- (a) Without limiting clause 6.1, all moneys received by the Trustee and not required to be immediately applied in accordance with this deed may, until it is so required:
  - (i) be deposited with any bank or other deposit taking institution which has a short term credit rating of not less than 'A-1' or its equivalent by a recognised rating agency; and
  - (ii) be invested in any security which has a short term credit rating of not less than 'A-1' or its equivalent by a recognised rating agency.
- (b) The Trustee may vary any such investment.

### 6.3 Duties

- (a) The Trustee must comply with its duties under the Corporations Act.
- (b) Subject to the obligations and duties imposed on the Trustee under the Corporations Act, the Trustee has no obligations or duties except those expressly set out in this deed.
- (c) Except to the extent that the following is inconsistent with the requirements of the Corporations Act, the Trustee:
  - (i) has no obligation to exercise or to exercise in a particular way any of its rights, powers or discretions unless:
    - (A) it is directed to do so by a Special Resolution of Holders passed in accordance with Schedule 2, is directed in writing by Holders holding between them at least 25% of the total Face Value of the Notes then outstanding, or in accordance with the provisions of the Corporations Act (in which case, subject to the Corporations Act and to being adequately indemnified);
    - (B) its liability is limited in a manner consistent with clause 9.4; and
    - (C) it is indemnified to its satisfaction against any expense or liability which it may incur as a result of doing so;
  - (ii) must not interfere with the conduct of the ordinary business of the Company except as provided in clause 5 or unless otherwise required to do so in order to comply with its duties under the Corporations Act. For the avoidance of doubt, nothing in this clause restricts or precludes the

Trustee's right to remuneration in clause 10.1(a) or the Trustee's right of indemnity in clause 9.1; and

- (iii) has no responsibility in respect of moneys subscribed by applicants for Notes or to see to the application of those moneys.

#### **6.4 Exclusions of law where permitted**

- (a) To the maximum extent permitted by law, the Trustee's obligations, duties and responsibilities are expressly limited to those set out in this deed and the Terms of Issue.
- (b) All liabilities and responsibilities which may from time to time be imposed on the Trustee at law or in equity are, to the extent permitted at law or in equity, excluded and, except to the extent provided to the contrary in this deed, expressly negated and waived by the other parties.

#### **6.5 Evidence of claims**

The Trustee is entitled and is authorised by the Company to call for (and will be entitled to accept as conclusive evidence) a certificate from any Controller or similar officer of the Company as to:

- (a) the amounts of the claims of the creditors which have been admitted in any liquidation, dissolution or other winding up and which will not have been satisfied in full out of the other resources of the Company; and
- (b) the persons entitled thereto and their respective entitlements.

Any such certificate given by any such Controller or officer of the Company will be conclusive and binding on the Trustee and all Holders.

#### **6.6 Change in law**

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

however the parties agree that this clause 6.4, does not operate to exempt or excuse the Trustee from any obligation to perform the Statutory Obligations.

- (b) For the purposes of this clause 6.4:

**Change in law** means any change in law, practice, regulation, ruling, confirmation, advice or action that represents the official requirements of any Government Agency, ASIC, ASX or the law in force in New South Wales, Australia.

## 6.7 Discretions

Subject to clause 6.3, the Trustee may:

(a) **delegation:** by power of attorney or otherwise, authorise:

- (i) a Related Body Corporate of the Trustee; or
- (ii) any other person (including, without limitation, the Company and persons associated with the Company),

to do anything which the Trustee may lawfully do (on such terms and conditions as the Trustee may think fit) including, without limitation, holding any trust property and executing documents on its behalf. The Trustee is not responsible for any loss arising due to the acts or omissions of any delegate, attorney or agent (other than a Related Body Corporate of the Trustee), unless the Trustee fails to use reasonable care in selecting and monitoring them, and the Trustee may rely and act on the opinion, certificate or advice of or information obtained from such an agent, delegate, expert or legal or other professional adviser appointed by it or (where provided for by this deed) by the Holders in accordance with this deed, provided that (where the Trustee has selected them) the Trustee uses reasonable care in selecting and monitoring such agent, delegate, expert or legal or other professional adviser. The Trustee is not responsible to a Holder for any loss occasioned by so doing if the Trustee has acted in good faith in so acting;

(b) **dealings with Company:** without being liable to account to the Company or any Holder:

- (i) hold Notes, shares or any other marketable securities issued by the Company in any capacity;
- (ii) represent or act for, or contract with, individual Holders in any capacity;
- (iii) deal in any capacity with the Company or any of its Related Bodies Corporate or associates; or
- (iv) act in any capacity in relation to any other trusts,

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

(c) **directions:** apply to any court for directions in relation to any question arising either before or after Notes become repayable and assent to and approve of or oppose any application to any court made by or at the insistence of any Holder;

(d) **reliance:** rely and act upon (without enquiry) any communication or document that it reasonably believes to be genuine and correct and to have been signed or sent by the appropriate person or persons;

(e) **expert advice:** engage and rely and act upon (without enquiry) the advice or opinion of or information of any barrister, solicitor, accountant, auditor, actuary, valuer or other consultant or adviser of the Trustee;

- (f) **certificates:** accept as conclusive evidence and act upon:
- (i) a certificate which purports to be signed by any two directors of the Company as to any fact or matter, including without limitation as to whether or not any particular dealing, transaction, step or thing is commercially desirable or detrimental to the interests of the Holders; and
  - (ii) any information, report, accounts, certificate or statement supplied by the Company, or the auditor or solicitor of the Company, including without limitation, any statements or opinions contained therein.

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

- (g) **documents:** accept as conclusive evidence and act upon, any document, communication, information, report, balance sheet, profit and loss account, certificate or statement supplied by the Company or any Subsidiary or by any director, secretary, auditor, solicitor or duly authorised officer of the Company or any Subsidiary (including any electronic transmission);
- (h) **statements:** accept as conclusive evidence and act upon, all statements (including statements made or given to the best of knowledge and belief or similarly qualified) contained in any statement, certificate, report, balance sheet or profit and loss account given pursuant to the provisions of, or in any way in relation to, this deed;
- (i) **assumptions:** assume that:
- (i) any deed or information provided to it is genuine and accurate if it believes in good faith that this is the case; and
  - (ii) (unless it is notified in writing by a Holder or the Company to the contrary) any right, power, authority or discretion vested in any party has not been exercised;
- (j) **determinations:** determine as between itself and the Holders all questions and matters of doubt arising in relation to this deed. Any determination made by the Trustee shall be conclusive unless a court of competent jurisdiction otherwise determines;
- (k) **exercise of powers:** determine in any manner it thinks fit whether to exercise, and the manner, mode and time of exercise of, the Trustee's rights, powers or discretions. Unless it is fraudulent, negligent or wilfully defaults, the Trustee is not liable in its personal capacity for any loss, cost, claim, damage or expense which may result from the exercise or failure to exercise any of its rights, powers or discretions; and
- (l) **waiver:**
- (i) except where otherwise expressly provided in this deed, the Terms of Issue or by the Corporations Act, waive or excuse any breach by the Company (whether anticipatory or actual) of any provision under this deed or the Terms of Issue (in its absolute discretion) (except the redemption of, the non-payment of any Interest Payment on, or the Face Value of, any note in breach of this deed which has not been remedied) in which case the Trustee may waive the breach only if the Holders of those Notes have by a Special Resolution consented to the waiver; and

- (ii) each Holder will be bound by any such waiver or excusal of breach by the Trustee.

#### **6.8 Instructions and extent of discretion**

- (a) Each Holder authorises the Trustee to give any consent and do any other matter or thing necessary or appropriate for it to give effect to any instructions given under this deed or the Terms of Issue.
- (b) Each Holder agrees with the Trustee that the Holder will act reasonably in giving instructions to the Trustee in respect of any matter in which:
  - (i) the consent or approval of the Trustee is required, the Trustee is required to form an opinion or the Trustee is given powers; and
  - (ii) this deed or the Terms provides that the consent or approval of the Trustee may not be withheld unreasonably, that the consent or approval must be given reasonably, that the opinion must be a reasonable opinion, or that the Trustee must act reasonably in the exercise of those powers.
- (c) Any statement by the Trustee to the Company that instructions or a direction have been given to the Trustee by any Holder, all the Holders or by way of a Special Resolution, as the case may be, or as to the terms of those instructions or direction, is sufficient evidence of its contents and the Company may rely on such statement.
- (d) Unless this deed or the Terms of Issue expressly provide to the contrary, any direction by a Special Resolution of Holders is binding on all Holders except where this deed or the Terms of Issue provides that instructions must be provided by all the Holders or by such other number of Holder or Holders.
- (e) If a Special Resolution of Holders is passed by circulating resolution or otherwise other than at a Meeting of Holders, for the purpose of determining whether the Special Resolution has been given or made:
  - (i) the Trustee will request each Holder to provide to it within a reasonable specified period a signed written direction or confirmation of its decision; and
  - (ii) the Trustee will determine whether the Special Resolution has been granted or made based on the directions or confirmations provided in accordance with paragraph (i) above.
- (f) Despite any other provision of this deed, including the Terms of Issue, the Trustee is not obliged to take any action under this deed, including the Terms of Issue, or exercise any power until it is first indemnified to its satisfaction in accordance with this deed.
- (g) The Trustee may apply to a court for directions in relation to any disputes or ambiguity relating to any of its rights, powers, authorities, discretions, remedies and obligations under this deed or any applicable law and may comply with any such directions. For so long as the Trustee is using reasonable endeavours to resolve any dispute or ambiguity, the Trustee may (but need not) refuse to do anything in relation to such rights, powers, authorities, remedies or obligations (as the case may be) affected by the dispute or ambiguity until such direction is given by the court.

## **6.9 Refrain from acting**

The Trustee may:

- (a) refrain from doing anything that would, or in its reasonable opinion might, contravene any applicable law or a directive or official requirement (whether or not having the force of law) of a Government Agency or constitute a breach of trust or of any proper practice relating to secrecy or confidentiality; and
- (b) do anything that, in its reasonable opinion, is necessary to comply with any applicable law or a directive or official requirement (whether or not having the force of law) of a Government Agency.

## **6.10 Holders bound**

The exercise by the Trustee of the Trustee Powers (including the discretions referred to in this clause 6) binds all the Holders, whether or not the Holders concurred in their exercise.

## **6.11 Limit on disclosure obligations**

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

## **6.12 Other capacities**

- (a) If the Trustee also enters into any document or holds any Note in any capacity other than as Trustee, it may exercise any rights it has, and agrees to comply with any obligations it has, in such other capacities as if it were not acting as the Trustee.
- (b) The Trustee, in its capacity as a Holder, has the same rights, powers and obligations under this deed as any other Holder and may exercise, and must comply with, the same as if it were not acting as the Trustee.

In acting as trustee for the Holders, the Trustee is regarded as acting through its corporate trust division which will be treated as a separate entity from any other of its divisions or departments. If information is received by another division or department of the Trustee, it may be treated as confidential to that division or department and the Trustee is taken not to have notice of it.

## **6.13 Trustee not responsible for monitoring**

- (a) Except where provided by the Corporations Act or where the Terms of Issue specifically provide otherwise, the Trustee is not required to:
  - (i) provide to any person any information concerning the business, financial condition, status or affairs of the Company if the disclosure would constitute a breach of any law or duty of secrecy or confidence;
  - (ii) investigate or determine the adequacy, accuracy or completeness of any information it receives that is provided by the Company or that it gives to another party (including to a Holder);
  - (iii) assess, investigate or keep under review the business, financial condition, status or affairs of the Company; or



- (iv) monitor compliance by the Company of its obligations under this deed, including the Terms of Issue.
- (b) The Trustee is not required to investigate or consider whether any issue of Notes or any payment made to a Holder will be an unfair preference or other similar voidable transaction for the purposes of Chapter 5 of the Corporations Act.
- (c) The Trustee is not taken to have knowledge that an Event of Default has occurred unless:
  - (i) the Trustee becomes actually aware that an Event of Default has occurred; or
  - (ii) the Company informs the Trustee in writing that an Event of Default has occurred and gives it details of that event.

#### 6.14 Excluded roles and duties

The appointment as trustee of the Trust does not result in the Trustee being:

- (a) an agent of;
  - (b) trustee for the benefit of;
  - (c) a partner of; or
  - (d) in a fiduciary relationship with, or having a fiduciary duty to,
- any Holder, the Company or any other person except as provided in this deed.

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## 7 Representations and Warranties

### 7.1 Trustee's representations and warranties

The Trustee represents and warrants to the Company that:

- (a) **incorporation:** it is duly incorporated and has the power to carry on its business as it is now being conducted;
- (b) **requirements:** it meets the requirements of a trustee as provided in sections 283AC(1) and 283AC(2) of the Corporations Act;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) **documents binding:** this deed constitutes (or will, when signed and delivered constitute) legal, valid and binding obligations enforceable against the Trustee in accordance with its terms; and
- (f) **transactions permitted:** the entry into and performance by it of any obligations under this deed and the Terms of Issue, the exercise by it of any right or the performance or observance of any obligation under any of those documents, and

the transactions contemplated by them does not (and will not) breach or conflict with:

- (i) any laws and regulations applicable to it or any directive of any Government Agency;
- (ii) any material agreement or instrument (including any encumbrance) binding on it; or
- (iii) its constitutional documents.

## 7.2 The Company's representations and warranties

The Company represents and warrants to the Trustee that:

- (a) **incorporation:** it is a company that is limited by shares and is duly registered and remains in existence under its jurisdiction of incorporation and it has the power to own its assets and carry on its business as it is being conducted or contemplated;
- (b) **authority:** it has the full legal capacity and power to enter into, deliver and perform this deed, including the Terms of Issue and to carry out the transactions contemplated by this deed, including the Terms of Issue and to carry on its business as now conducted or contemplated;
- (c) **authorisations:** it has taken all corporate action required to enter into, deliver and perform this deed and to carry out the transactions contemplated by this deed;
- (d) **binding obligations:** this deed, including the Terms of Issue, constitutes its legal, valid and binding obligations, and is enforceable against it in accordance with its terms, (except to the extent limited by equitable principles and laws affecting creditors' rights generally) subject to any necessary stamping and registration;
- (e) **filings:** all corporate notices, filings and registrations with the ASIC or similar office in its jurisdiction of incorporation and in any other jurisdiction required to be filed or effected, as applicable, by it in connection with the execution, delivery and performance of this deed, have been filed or effected, as applicable, and all such filings and registrations are current, complete and accurate;
- (f) **transaction permitted:** the execution, delivery and performance by it of this deed and the transaction under it, including the issue of the Notes, does not and will not violate, breach, or result in a contravention of:
  - (i) any law, regulation or Authorisation;
  - (ii) its constituent documents; or
  - (iii) any Security Interest or other material document which is binding upon it or any of its assets,

and does not and will not result in:

- (iv) the creation or imposition of any Security Interest or restriction of any nature on any of its assets other than under this deed; or
- (v) the acceleration of the date of payment of any obligation existing under any Security Interest or document which is binding upon it or any of its assets;

- (g) **Prospectus:** that:
- (i) the information and disclosures contained in the Prospectus comply with the requirements of the Corporations Act; and
  - (ii) no act, matter or thing has occurred since the date of the Prospectus that renders such information misleading or deceptive or likely to mislead or deceive;
- (h) **no taxes and duties payable:** no ad valorem stamp, transaction, registration or similar taxes and duties are payable in connection with the execution, delivery, performance or enforcement of this deed (including the Terms of Issue) or the transactions contemplated by it (other than any duty that may be payable in relation to the issue of the Notes themselves and in relation to the declaration of trust in this deed);
- (i) **immunity:** the Company does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (j) **approvals:** each approval which is required in relation to:
- (i) the execution, delivery, issue and performance by the Company of this deed or any Notes and the transactions contemplated by those documents; or
  - (ii) the validity and enforceability of those documents,
- in each case has been obtained or effected, is in full force and effect, and that it has complied with, and paid all applicable fees for, each of them;
- (k) **no misrepresentation:** to the best of its information, knowledge and belief after having made due inquiry (but subject to the qualifications made when the relevant information is made available), all written information (other than any assumptions, estimates or forecasts) provided by the Company to the Trustee is true in all material respects at the it was provided or as at the date (if any) it was stated and that neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by this deed or the Notes, was or is misleading, by omission or otherwise;
- (l) **law:** it has complied with all applicable laws where a failure to comply would have or would be likely to have, a material adverse effect on the Company's ability to perform its obligations under this deed, including the Terms of Issue; and
- (m) **solvency:** it is not insolvent or unable to pay its debts as and when they become due and payable.

Each representation and warranty in this clause 7.2 is deemed to be repeated by the Company on each date Notes are issued and each Interest Payment Date by reference to the facts and circumstances existing on that date other than clause 7.2(g) which is deemed to be repeated by the Company only on the date Notes are issued pursuant to the Prospectus.

### 7.3 Trustee's undertakings

Subject to clauses 9.4 and 9.5, the Trustee undertakes for the benefit of the Holders that it will:

- (a) act honestly and in good faith and comply with all laws in performing its duties and in the exercise of its discretions under this deed;
- (b) exercise such diligence and prudence as a person qualified to be a trustee under the Corporations Act in the position of the Trustee would exercise in performing its duties and in the exercise of its discretions under this deed;
- (c) act continuously as Trustee until either the Trust is terminated, or it retires or is removed in accordance with clause 11
- (d) if and to the extent the Trustee holds Trust assets, keep accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee under this deed; and
- (e) if and to the extent the Trustee holds Trust assets, keep the assets of the Trust separate from all other assets of the Trustee which are held in a capacity other than trustee under this deed.

#### **7.4 Reliance**

The Company and the Trustee acknowledge that they each have entered into this deed in reliance on the representations and warranties in, or given under, this deed including, but not limited to, clause 7.1 and 7.2.

#### **7.5 Survival of representations and warranties**

The representations and warranties in this clause 7 survive the execution of this deed.

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## **8 Enforcement of this deed**

### **8.1 Enforcement by Trustee**

The issue of Notes to any Holder confers on that Holder the benefit of all covenants, warranties and indemnities under this deed but subject to clause 8.2, the Trustee and only the Trustee is entitled to take any action against the Company to enforce any provision of this deed or the obligation to repay the Notes or the interest thereon. No Holder shall be entitled to proceed directly against the Company to enforce any right or remedy under or in respect of any Note unless the Trustee, having become bound so to proceed, fails so to do within a reasonable period and the failure is continuing, in which case any such Holder may itself institute proceedings against the Company for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so. Any such proceedings must be brought in the name of the Holder and not the Trustee.

### **8.2 Enforcement on direction by Holder**

Subject to clause 6.3, the Trustee must take action to enforce this deed where all the following conditions are met:

- (a) the Trustee is directed in writing to take the action;
- (b) the direction made to the Trustee is made:
  - (i) in writing by Holders holding between them at least 25% of the total Face Value of the Notes then outstanding; or

- (ii) by a Special Resolution of Holders passed in accordance with Schedule 2; and
- (c) the Trustee is indemnified to its reasonable satisfaction:
  - (i) for all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action;
  - (ii) in respect of all costs, charges, damages and expenses which the Trustee may thereby incur; and
  - (iii) in respect of all management time spent by employees or officers of the Trustee in relation to such action in the amount required under clause 10 of this deed;

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

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## 9 Indemnity and limitation on liability for Trustee

### 9.1 Indemnity for Trustee

- (a) Without prejudice to any right of indemnity by any applicable law or in equity given to trustees, the Trustee and every person appointed by it pursuant to this deed is indemnified by the Company:
  - (i) in respect of all liabilities including all taxes and any fines or penalties in respect of a charge and expenses including legal fees (charged at the usual commercial rates charged by the provider of the legal services) incurred by it in the execution or purported execution of the trusts or powers constituted or conferred by this deed or an amendment to this deed;
  - (ii) moneys paid or to be paid for, or incurred as a result of, the employment or appointment of an agent or Controller;
  - (iii) against all actions, proceedings, costs, claims, damages and demands in respect of any matter or thing done or omitted in any way relating to this deed,

other than a claim arising out of its fraud, negligence or wilful default (including any breach of section 283DA of the Corporations Act), and for this purpose the Trustee shall not be taken to have committed any fraud, negligence, wilful default or breach of Section 283DA of the Corporations Act merely on account of the fraud negligence or wilful default of an agent appointed by it unless the Trustee has failed to use reasonable care in appointing or monitoring such agent.

- (b) The Trustee may retain and pay out of any moneys in its hands in priority to any claim by a Holder, all sums necessary to effect and satisfy such indemnity or an amount due and payable to the Trustee under clause 10.
- (c) This clause 9.1 has effect subject to section 283DB of the Corporations Act.
- (d) Nothing in this clause requires the Company to indemnify the Trustee for taxes (other than GST) imposed on the Trustee's remuneration for its services as trustee.

## **9.2 Continuing indemnity**

The indemnity contained in clause 9.1(a) is a continuing and independent obligation of the Company and survives:

- (a) winding up or termination of the Trust under this deed; and
- (b) the retirement or removal of the Trustee as trustee.

## **9.3 No personal indemnity by Holders**

Except as otherwise agreed with any Holder or Holders, the Trustee is not entitled to be indemnified by any Holder personally.

## **9.4 Limitation of liability**

- (a) The Trustee enters this deed as trustee of the Trust and in no other capacity. The Trustee is not liable to the Company, any Holder or any other person in any other capacity other than as trustee of the Trust.
- (b) Subject to clause 9.4(e), a liability to the Holders arising under or in connection with this deed is limited to and can be enforced by the Holders against the Trustee only to the extent to which it can be satisfied out of the Assets of the Trust against which the Trustee is actually indemnified in respect of the liability incurred by it as trustee of the Trust. This limitation of the Trustee's liability applies despite any other provision of this deed and extends to all Obligations in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The Company and the Holders may not:
  - (i) have recourse to the Trustee, or enforce their rights against the Trustee arising from breach or non-performance of the Obligations by the Trustee, beyond the Assets of the Trust against which the Trustee is actually indemnified as contemplated by clause 9.4(b); or
  - (ii) seek the appointment of a receiver, a liquidator, an administrator or any other similar person to the Trustee (except in relation to property of the Trust) or prove in any liquidation of or affecting the Trustee (exception in relation to the property of the Trust).
- (d) The Company and each Holder each waive their rights and release the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this deed or the Notes, which cannot be paid or satisfied out of any property held by the Trustee as trustee of the Trust.
- (e) The provisions of this clause will not apply to any obligation or liability of the Trustee to the extent such obligation or liability arises as a result of the Trustee's fraud, negligence or wilful default.
- (f) The Company and each Holder each acknowledges that it is responsible under this deed and the Terms of Issue for performing a variety of obligations under this deed and the Terms of Issue. 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 this clause 9.4(e) to the extent to which the act or omission was

caused or contributed to by any failure of the Company, a Holder or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Company, a Holder or any other person.

- (g) 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 liability which is not limited in the manner set out in this clause 9.4 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 9.4(e).

- (h) For the purposes of this clause 9.4:

**Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trustee under or in respect of this deed; and

**Assets** includes all assets, property and rights, real and personal of any value whatsoever.

- (i) This clause 9.4 has effect subject to section 283DB of the Corporations Act.

- (j) The provisions of this clause 9.4:

- (i) are paramount and apply regardless of any other provision of this deed or the Terms of Issue, even a provision which seeks to apply regardless of any other provision; and

- (ii) survive and enure beyond any termination of this deed for any reason.

## 9.5 Limitations

Without limiting clause 9.4, neither the Trustee nor any of its directors, officers, employees, agents or attorneys or Related Bodies Corporate will be responsible for or liable to the Company or any Holder or any other person for loss to the extent caused by:

- (a) the Trustee's acts or omissions in accordance with the terms of this deed in reliance on:
  - (i) the Register;
  - (ii) information or documents supplied by the Company or any agent of the Company;
  - (iii) the authenticity of any document it reasonably believes to be genuine and correct;
  - (iv) opinion, advice or information of any consultant or adviser of the Trustee appointed under clause 6.7(e);
  - (v) acting on any instruction or direction properly given to it by the Company or Holders under this deed,

provided that the Trustee has no actual knowledge to the contrary;

- (b) any act, omission, neglect or default of the Company or any other person under or in connection with this deed or the Notes;
  - (c) any act or omission required by law or by any court of competent jurisdiction;

- (d) anything done or omitted to be done in accordance with an instruction or direction given to it by the Holders at a Meeting;
- (e) any act or omission of an operator of any securities title, transfer or holding system or any absence of, or defect in, the title of the Company to any asset;
- (f) any payment having been made to any fiscal authority; or
- (g) the Trustee waiving or excusing, subject to any conditions that the Trustee thinks fit, any breach by the Company of the Company's obligations under this deed.

## **9.6 Trustee capacity**

In this deed, except where expressly provided to the contrary:

- (a) a reference to the Trustee is a reference to the Trustee in its capacity as trustee of the trust created by this deed only, and in no other capacity; and
- (b) a reference to the undertaking, assets, business, money or any other thing of or in relation to the Trustee is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustee only in its capacity as trustee of the trust created by this deed, and in no other capacity.

## **9.7 Notice of this deed**

- (a) The Company will give notice of the execution of this deed to ASIC in accordance with its obligations under the Corporations Act and provide a copy of the notice to the Trustee.
- (b) For the avoidance of doubt, the Trustee is not bound to give notice to any person of the execution of this deed.

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# **10 Trustee's remuneration and expenses**

## **10.1 Remuneration**

- (a) The Company must pay to the Trustee by way of remuneration for its services such amounts as may be agreed between the Trustee and the Company. The payment of such remuneration must be made by the Company by transfer to such account nominated from time to time by the Trustee to the Company or by such other means as may be agreed between the Trustee and the Company from time to time.
- (b) The Company must also pay to the Trustee on demand all Costs (and reasonable time and attendance costs of the Trustee's officers and employees involved in relation to clauses 10.1(b)(i) to 10.1(b)(v)) reasonably and properly incurred by or on behalf of the Trustee:
  - (i) in, or about, or in connection with, the negotiation, preparation, execution, registration, stamping, administration, amendments or variation of this deed;
  - (ii) in, or in connection with, the carrying out or exercise or the purported carrying out or exercise by the Trustee of any duty, obligation or power imposed or conferred expressly or impliedly by this deed on the Trustee or upon Holders or by law;



- (iii) in exercising, preserving or enforcing any rights or in connection with any breach or default in the observance or performance by the Company of any of the covenants, obligations, conditions and provisions of this deed;
  - (iv) in or in connection with all actions taken under this deed in relation to complying with any notice, request or requirement of any Government Agency and any investigation by any Government Agency into the affairs of the Company; or
  - (v) in or in connection with the preparations for the convening and holding of any Meeting of Holders and the carrying out of any directions or resolutions of Holders.
- (c) If the Trustee is required at any time to:
- (i) take any enforcement action in relation to this deed (including the Terms); or
  - (ii) undertake duties which are of an exception nature or otherwise outside the scope of the normal duties of the Trustee,
- the Company must pay to the Trustee, on demand, such additional fees as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such action or undertaking such duties, as shall from time to time be agreed between the Company and the Trustee.
- (d) In the absence of agreement in relation to the reasonable time and attendance costs referred to in clause 10.1(b), 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 clauses 10.1(b)(i) to 10.1(b)(v). 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 Australian Restructuring Insolvency and Turnaround Association for work of the kind performed by the Trustee's officers and employees.

## 10.2 Priority and survival

All remuneration and expenses referred to in this clause 10 shall be paid in priority to any claim by any Holder and continue to be payable until paid notwithstanding that this deed or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court.

## 10.3 Stamp duties

The Company:

- (a) must pay all stamp duties and any related fines and penalties payable in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and
- (b) must indemnify the Trustee against any liability arising from failure by the Company to comply with clause 10.3(a).

## 10.4 GST

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

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# 11 Retirement and removal of Trustee

## 11.1 Retirement

Subject to compliance with the relevant statutory requirements for the time being, the Trustee may retire by giving notice to the Company, without being required to give any reason, but such retirement will not be effective until the last to occur of the following:

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

## 11.2 Removal

- (a) Subject to compliance with the relevant statutory requirements for the time being, the Trustee must retire as trustee for the Holders under this deed and the Company may by at least 15 Business Days' written notice to the Trustee remove the Trustee if:
  - (i) the Trustee is in material breach of its obligations under this deed and has not rectified the breach within 10 Business Days of receiving a written notice from the Company to rectify the breach;
  - (ii) the Trustee ceases to carry on business;
  - (iii) the Trustee is placed in liquidation or is wound up or dissolved;
  - (iv) a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Trustee;
  - (v) any licence, consent, Authorisation, permit or similar thing the Trustee is required to hold to carry out its obligations and duties under or in respect of this deed is revoked or not renewed;
  - (vi) the Company reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred;
  - (vii) the Trustee ceases to be a person who can be appointed a trustee under section 283AC(1) of the Corporations Act;
  - (viii) the Trustee cannot continue to act as Trustee because of the operation of section 283AC(2) of the Corporations Act; or

- (ix) the Company is authorised or requested to do so by a Meeting of the Holders called in accordance with clause 12.
- (b) Any removal of the Trustee by the Company under this clause 11.2 will only take effect upon the appointment of a new Trustee under clause 11.3.
- (c) On the retirement or removal of the Trustee, the Trustee must at the cost of the Company do all such things and execute all such deeds and assurances as are necessary for the purpose of vesting in a new trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed.

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

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

### **11.4 Release**

- (a) When the Trustee retires or is removed in accordance with this clause 11, the Trustee is by force of this clause 11.4 discharged and released from its obligations, covenants and liabilities under this deed arising after the date it retires or is removed.
- (b) The retirement, removal or departure of the Trustee does not prejudice any accrued right or obligation of the Trustee (including, without limitation, its right of indemnity or entitlement to be paid fees that continue to accrue up to the date of appointment of the new trustee).

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## **12 Meetings of Holders**

### **12.1 Meetings of Holders**

- (a) Subject to the Corporations Act, the Trustee or the Company may at any time convene a Meeting.
- (b) The Company must convene a Meeting on receipt of a direction in writing by Holders who hold 10% or more of the Notes stating the object of the Meeting and the terms of any proposed resolution. The Company must serve a copy of the direction on the Trustee together with all other relevant information and comply with the Corporations Act.
- (c) The provisions of Part 2L.5 of the Corporations Act and Schedule 2 of this deed apply to any Meeting of Holders.
- (d) The Trustee may do all things (including executing documents) it reasonably considers necessary or desirable under or in connection with any Special Resolution.

## 12.2 Passing of resolution

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

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# 13 Register

## 13.1 Maintenance of the Register

- (a) The Company must establish and maintain (or cause to be established and maintained) the Register and enter (or cause to be entered) on the Register:
  - (i) all information required by section 171 of the Corporations Act;
  - (ii) the terms and conditions of the Notes; and
  - (iii) any other particulars which the Company thinks fit or that it is required to include on the Register under this deed.
- (b) The Company must promptly, on receipt of details of any change of name or address of a Holder notified in writing and accompanied, in the case of change of name, by any evidence which the Company may reasonably require, alter (or cause to be altered) the details recorded on the Register in respect of that Holder.
- (c) The Register must be located in:
  - (i) Sydney or Melbourne; or
  - (ii) such other Australian city as may be notified from time to time by the Company to the Trustee in writing.

The Company must notify the Trustee in writing of the location of any register maintained in respect of the Notes.

- (d) On giving a notice by advertisement or otherwise as may be required by law, or the requirements of the Listing Rules, the Company may from time to time close any Register for any period or periods not exceeding in any one year the maximum period permitted by law or those requirements in aggregate in any calendar year.
- (e) No notice of any trust (whether express, implied or constructive) will be entered in the Register except as may be ordered by a court of competent jurisdiction.
- (f) At any time the Company may (on such terms as it thinks fit) appoint a person to establish and maintain the Register and may terminate such appointment, however the Company will remain responsible for maintaining the Register and the Trustee may rely on the Register as conclusive evidence of the Notes issued under this deed.
- (g) If the Company is not itself establishing or maintaining the Register, the Company must:
  - (i) require the person that is maintaining the Register on its behalf to discharge the Company's obligations under this document in relation to the Register, to the extent they are not otherwise discharged by the Company; and

- (ii) give the Trustee notice of the name of the person that the Company has appointed from time to time to establish or maintain the Register on the Issuer's behalf being, as at the date of this deed, Computershare Investor Services Pty Limited (ABN 48 078 279 277).
- (h) The Company must give a copy of the Register to the Trustee within 48 hours of a request by the Trustee for a copy of the Register.

### 13.2 No Notice of any trust or other interests

Except as provided by statute or as required by an order of a court of competent jurisdiction:

- (a) **(No trusts)** no notice of any trust (whether express, implied or constructive or other interest) may be entered in the Register in respect of a Note; and
- (b) **(No other interests)** neither the Company nor the Trustee is to be affected by or compelled to recognise (even when having notice of it) any right or interest in any Notes other than the registered Holder's absolute right to the entire interest in the Notes, and the receipt of the Holder is a good discharge to the Trustee and the Issuer.

### 13.3 Title from Register

Each entry in the Register in respect of a Note:

- (a) **(separate obligations)** evidences a separate and independent obligation owing by the Company to the person so entered;
- (b) **(conclusive evidence of title)** evidences conclusively that the person or persons so entered is the absolute owner of, and holder of title to, the Note, except:
  - (i) if more than one person is specified in the entry, the persons hold the Note as joint tenants in accordance with clause 13.6; and
  - (ii) the entry is subject to rectification for fraud or any manifest error made in the entry; and
- (c) **(absolute ownership)** vests absolute ownership in, and title to, the Note in the person specified in the entry, to the exclusion of the previous Holder and other persons.

### 13.4 Change of details

- (a) Any change of the name or address of a Holder must be notified immediately by the Holder in writing to the Company. That notice must be accompanied, in the case of a change of name, by any evidence the Company requires.
- (b) Upon receipt of a notice pursuant to paragraph (a) above, the Company will alter the Register, or procure the alteration of the Register, accordingly.

### 13.5 Rectification of Register

If:

- (a) **(omissions)** an entry is omitted from the Register;

- (b) **(non-compliant entries)** an entry is made in the Register otherwise than in accordance with this deed;
  - (c) **(incorrect entries)** an entry wrongly exists in the Register;
  - (d) **(errors or defects)** there is an error or defect in any entry in the Register; or
  - (e) **(default)** default is made or unnecessary delay takes place in entering in the Register that any person has commenced, or ceased, to be the holder of Notes,
- then the Company may rectify the same.

### 13.6 No liability for errors

- (a) The Company is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs (a) to (e) of clause 13.5 occurring provided that it is not as a result of the Company's fraud, negligence or wilful default.
- (b) The Trustee is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs (a) to (e) of clause 13.5.

### 13.7 Closure of Register

The Company may, subject to the Listing Rules or ASX Settlement Operating Rules, from time to time close the Register for any period or periods not exceeding in total in any one year the maximum period for the time being permitted by law or 30 days, whichever is the lesser period.

### 13.8 Location of the Notes

Property in the Notes is located at the place where the Register is kept.

### 13.9 Copy of Register to the Trustee

The Company will give, or procure to be given, to the Trustee a complete copy of the Register within two Business Days after the Trustee so requests.

### 13.10 Joint Holders

Where two or more persons are registered as the holders of Notes (**Joint Holders**) they are, for the purposes of the administration of this deed and not otherwise, deemed to hold the Notes as joint tenants, on the following conditions:

- (a) the Company is not bound to register more than three persons as the Joint Holders of the Notes;
- (b) the Joint Holders are jointly and severally liable in respect of all payments, including payment of any Tax, which ought to be made in respect of the Notes;
- (c) on the death of a Joint Holder, the survivor or survivors are the only person or persons whom the Company or the Trustee will recognise as having any title to the Notes, but the Company or the Trustee may require any evidence of death which it thinks fit;
- (d) any one of the Joint Holders may give an effective receipt which will discharge the Company or the Trustee in respect of any payment or distribution;

- (e) the Joint Holders of a Note are counted as a single holder of the Note for the purposes of calculating the number of Holders or requisitioners who have applied for a Meeting of Holders;
- (f) only the person whose name appears first in the Register as one of the Holders is entitled to delivery of any notices, cheques or other communications from the Company or the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the Joint Holders; and
- (g) a payment to any one of the Joint Holders will discharge the Company's liability with respect to that payment.

#### 13.11 Holding statements

- (a) The Company or the Register (as applicable) must issue to each Holder a holding statement as soon as reasonably practicable after the issue of the Notes.
- (b) Any holding statement in respect of Notes is no guarantee that any amounts will be paid to the Holder.

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## 14 Transfers

### 14.1 Transfer

- (a) Before the Notes are quoted on the Official List (**Officially Quoted**) or at any time after the Notes cease to be Officially Quoted, all transfers of the Notes must be effected by a proper instrument of transfer and in a manner approved by the Company. The Company may decline to register a transfer of Notes under this clause 14.1(a) unless the instrument of transfer:
  - (i) is duly stamped; and
  - (ii) is accompanied by such evidence as the Company requires to prove the title of the transferor.
- (b) Where the Notes are quoted on ASX, a Holder may transfer any Notes by a Proper ASTC Transfer or any other method of transferring or dealing in Notes introduced by ASX or operating in accordance with the operating rules of a clearing and settlement facility (as that term is defined in the Corporations Act), the ASX Settlement Operating Rules or the Listing Rules and, in any such case, recognised under the Corporations Act.
- (c) A transferor of Notes remains the owner of Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Notes, and the transferee of Notes on being entered on the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Holder under this deed.

### 14.2 Transfer which are not Proper ASTC Transfers

The following provisions apply to instruments of transfer referred to in clause 14.1(b):

- (a) (**duly executed**) unless the instrument of transfer is otherwise a sufficient transfer under the Corporations Act, the instrument must be signed by, or executed by or on behalf of:

- (i) the transferor; and
- (ii) if required by the Company, the transferee;
- (b) **(lodged (and stamped, if applicable))** the instrument of transfer, duly stamped where applicable, will be left at the place where the Register is kept, accompanied by the certificate (if any) that has been issued in respect of the Notes to be transferred and such other evidence as the Company requires to prove the transferor's title to, or right to transfer, the Notes;
- (c) **(transferee must be bound)** the instrument of transfer must be endorsed or accompanied by an instrument executed by the transferee to the effect that the transferee agrees to accept the Notes subject to the terms and conditions on which the transferor held them, to become a Holder and to be bound by this deed and the Terms of Issue; and
- (d) **(cancellation of Note certificate (if any))** on registration of a transfer of Notes, the Company will cancel the old certificate for the Notes (if any).

#### 14.3 Refusal to register transfers other than Proper ASTC Transfers

- (a) **(refusal to register transfers)** The Company may refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Listing Rules or ASX Settlement Operating Rules permit the Company to do so.
- (b) **(breach of Listing Rules)** The Company will refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules require the Company to do so, or the transfer is in breach of the Listing Rules.

#### 14.4 Notice of refusal to register

- (a) **(notice to transferee)** Where the Company refuses to register a transfer of Notes under clause 14.3 the Company will give written notice of the refusal and the reasons for the refusal to the transferee and the person who lodged the transfer, if not the transferee, within five Business Days after the date on which the transfer was lodged with the Company.
- (b) **(failure to notify)** A failure by the Company to give notice under clause 14.4(a) will not invalidate the refusal to register the transfer in any way.

#### 14.5 Transaction advice after transfer

If the Company accepts a transfer under this clause 14, the Company may issue a transaction advice for:

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

#### 14.6 No general restriction on transfer

- (a) There is no restriction on the transfer of Notes and, subject to clauses 14.3 and 14.7 and the Terms of Issue, the Company may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Notes effected under clause 14.1(b).



- (b) Except as otherwise set out in this clause 14 and the Terms of Issue, there is no restriction on any other transfer of Notes.

#### **14.7 Restricted securities**

Despite any other provisions of this deed:

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

#### **14.8 Death, legal disability**

- (a) If a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated, the survivor (in the case of joint Holders), legal personal representative or the person entitled to Notes as a result of bankruptcy or liquidation, will be recognised as having a claim to Notes registered in the Holder's name.
- (b) 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 the Company in respect of any consequence arising from the transfer or transmission.

#### **14.9 Recognition of Holder**

The Company and the Trustee:

- (a) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
- (b) except as required by law or this deed, need not recognise any claim or interest in any Notes by any other person.

#### **14.10 Participation in transfer systems**

The Company may determine that Notes which are Officially Quoted will participate in the 'Clearing House Electronic Sub-register System' or any other computerised or electronic system of transfer or registration. The Company may with the approval of ASX, create rules to facilitate such participation which may be additional to or may override this clause 14.

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## 15 Amendments to deed

### 15.1 Alteration without Holder approval

- (a) Subject to clauses 15.1(b) and 15.1(c) below, and to compliance with the Corporations Act and all other applicable laws, the Company and the Trustee may, by an instrument in writing and without the authority, assent or approval of Holders, alter this deed (other than the Terms of Issue) if the Company is of the opinion that such alteration is:
  - (i) of a formal, minor or technical nature;
  - (ii) made to cure any ambiguity or correct a manifest error;
  - (iii) necessary to comply with:
    - (A) the provisions of any statute or the requirements of any statutory authority; or
    - (B) the Listing Rules or the listing or quotation requirements of any stock exchange on which the Company may propose to seek quotation of Notes;
  - (iv) necessary or expedient for the purpose of enabling the Notes to be:
    - (A) listed for quotation, or to retain quotation, on any stock exchange; or
    - (B) offered for subscription or for sale under the laws for the time being in force in any place; or
  - (v) not likely to be, and is not reasonably likely to become, (taken as a whole and in conjunction with all other alterations, if any, to be made contemporaneously with that alteration) prejudicial to the interests of the Holders,

provided that such amendment would not give rise to a Tax Event.
- (b) Prior to making an alteration to this deed in the manner outlined in clause 15.1(a):
  - (i) in the case of an alteration pursuant to paragraph (a)(v) above, the Company must provide to the Trustee an opinion of independent legal advisers of recognised standing in New South Wales that such alteration is not likely to be, and is not reasonably likely to become, (taken as a whole and in conjunction with all other alterations, if any, to be made contemporaneously with that alteration) prejudicial to the interests of the Holders;
  - (ii) the Company must provide the Trustee with a copy of the proposed alteration (and, if applicable, the opinion referred to in sub-paragraph (i) above) in reasonably sufficient time to allow the Trustee to consider and consent to the proposed amendments; and
  - (iii) the proposed alteration must not alter or conflict with any of the rights and obligations of the Trustee.

- (c) Neither party may withhold its consent to the proposed alteration outlined in clause 15.1(a) if the proposed alteration does not alter or conflict with any of the rights and obligations of the Trustee.

#### 15.2 Alteration with Holder approval

Without limiting clause 15.1, at any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Company may by instrument in writing amend this deed (other than the Terms of Issue):

- (a) in the case of an alteration to this clause 15 or to any other clause of this deed or the Terms of Issue which provides for Holders to give a direction to the Trustee by Special Resolution, or which otherwise requires a Special Resolution to be passed, if a Special Resolution is passed in favour of such alteration; and
- (b) otherwise, if such alteration is approved by a resolution passed at a meeting of Holders.

#### 15.3 Alteration binding

Any alteration of this deed in accordance with this clause 15 is binding on all Holders and the Trustee.

#### 15.4 Alteration

In this clause 15, 'alter' includes modify, cancel, amend or add to.

#### 15.5 Terms

Any amendment, addition or revocation of any provision of the Terms of Issue may only be made in accordance with the Terms of Issue. The Company must provide the Trustee with a copy of any amendment to the Terms of Issue not less than 10 Business Days prior to the date that the amendment, addition or revocation is to take effect.

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## 16 Substitution

The Trustee may, without the approval of the Holders, agree to the substitution of any Related Body Corporate of the Company (the "**Substituted Obligor**") in place of the Company (or of any previous substitute under this clause 16) as the principal debtor under this deed provided that:

- (a) **guarantee and not materially prejudiced:** the Company unconditionally and irrevocably (but subject to the subordination provision in the Terms of Issue) guarantees all amounts payable under this deed (including the Terms of Issue), and the Trustee is satisfied that the interests of Holders will not be materially prejudiced by the substitution;
- (b) **document or undertaking given:** a document is executed or an undertaking given by the Substituted Obligor to the Trustee, in form and manner satisfactory to the Trustee, agreeing to be bound by this deed and the Terms of Issue (with consequential amendments as the Trustee may deem appropriate) as if the Substituted Obligor had been named in this deed and the Terms of Issue as the principal debtor in place of the Company;
- (c) **taxing jurisdiction:** if the Substituted Obligor is subject generally to the taxing jurisdiction of a territory or any authority of or in that territory with power to tax (the

"**Substituted Territory**") other than the territory of the taxing jurisdiction to which (or to any such authority of or in which) the Company is subject generally (the "**Issuer's Territory**"), the Substituted Obligor will (unless the Trustee otherwise agrees) give to the Trustee an undertaking satisfactory to the Trustee in terms corresponding to the Terms with the substitution for the references in the Terms of Issue to the Issuer's Territory for references to the Substituted Territory whereupon this deed and the Terms of Issue will be read accordingly; and

- (d) **certification by directors:** if any two directors of the Substituted Obligor certify that it will be solvent immediately after such substitution, the Trustee need not have regard to the Substituted Obligor's financial condition, profits or prospects or compare them with those of the Company.

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## 17 Termination and release

### 17.1 Termination of trust

This deed terminates on the earlier of:

- (a) the date the last of the following occurs:
  - (i) the redemption of all Notes;
  - (ii) payment of all amounts of principal and interest due on Notes;
  - (iii) payment of all Costs reasonably and properly incurred by the Trustee; and
  - (iv) the satisfaction or waiver of all other obligations or liabilities of the Company to the Trustee and Holders;
- (b) the date on which Holders unanimously determine that the Trust be wound up; or
- (c) the date required by law.

### 17.2 Disposal of assets

If the Trust is terminated in accordance with clause 17.1, the Trustee must distribute the balance of any income and capital in accordance with clause 2.4.

### 17.3 Confirmation of release

- (a) At any time after the Company's obligations have been discharged under clause 17.1, either party (**Released Party**) may request the other to execute in favour of the Released Party, certification that the Released Party is released from the obligations under this deed and the other party must provide the Released Party with the confirmation and release so requested.
- (b) Without limiting the generality of clause 6.7(f), where the Trust terminates following satisfaction of the conditions in clause 17.1(a), neither party is required to execute a release in favour of the Released Party unless and until the Company has procured an auditor of the Company to certify the satisfaction of the conditions specified in clause 17.1(a) (**Termination Certificate**), and the Trustee may rely and act on the Termination Certificate.

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## 18 Determination of matters of doubt

The Trustee may as between itself and the Holders determine all questions and matters of doubt arising in relation to this deed and its construction, meaning, operation or effect and every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustee is conclusive and binding on all Holders.

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## 19 Confidentiality

### 19.1 Confidential information

The Trustee acknowledges that all Confidential Information is confidential to the Company and must not be disclosed to any person except as permitted by clause 19.2.

### 19.2 Permitted disclosure

The Trustee may disclose Confidential Information:

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

### 19.3 Disclosure to third parties

The Trustee must use its best endeavours to ensure that every person to whom it provides Confidential Information under clause 19.2 gives a confidentiality undertaking in favour of the Company in the same terms as this clause 19 and performs its obligations under such undertaking.

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## 20 General

### 20.1 Notices

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

- (a) must be in legible writing and in English addressed as shown below:
  - (i) if to the Company:

Address: Level 27  
45 Clarence Street  
Sydney NSW 2000  
Australia  
Attention: General Counsel  
Facsimile: +61 2 9080 1999

- (ii) if to the Trustee:

Address: Level 22  
207 Kent Street  
Sydney, NSW 2000  
Facsimile: +61 2 9028 5942  
Email: corptrustnotes@aetlimited.com.au

or to any other address specified to the sender by any party by notice;

- (b) must be signed by an officer or under the common seal of the sender;
- (c) is deemed to be given by the sender and received by the addressee:
  - (i) when delivered by hand to the street address during the hours of 9.00 am to 5.00 pm on a Business Day;
  - (ii) on the day following the day on which the envelope containing the same was posted with postage prepaid to the postal address;
  - (iii) if sent by facsimile transmission, when receipt of a legible transmission has been acknowledged; and
  - (iv) if it is sent in electronic form to the Trustee, when the addressee's email system logs the email message as having been received.

## **20.2 Prohibition and enforceability**

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

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

- (a) This deed is governed by the laws of New South Wales.
- (b) The Company and the Trustee submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia for the purpose of any legal proceedings arising out of this deed.

## **20.4 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any power arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this deed; or

- (ii) a power created or arising upon default under this deed, does not result in a waiver of that right or power.
- (c) A party is not entitled to rely on a delay in the exercise or non exercise of a right or power arising from a breach of this deed or on a default under this deed as constituting a waiver of that right or power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or power by that other party.

#### **20.5 Liability for own expenses**

The Company is liable for its own costs and expenses in complying with this document, including where it does so at the Trustee's request or for the Trustee's benefit.

#### **20.6 Statutory powers**

The powers of the Trustee under this deed and the Terms of Issue are in addition to any powers the Trustee has under applicable law.

#### **20.7 Cumulative rights**

The rights, powers, authorities, discretions and remedies arising out of or under this deed are cumulative and do not exclude any other right, power, authority, discretion or remedy. Neither the exercise of a right nor a failure to exercise, or a delay in the exercise of, a right operates as an election or variation of the terms of this deed.

#### **20.8 Further assurances**

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

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

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

#### **20.10 Discretion in exercising rights**

The Trustee or a Holder may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

#### **20.11 Conflict of interest**

The Trustee's and any Holder's rights and remedies under this deed may be exercised even if this involves a conflict of duty or the Trustee or Holder has a personal interest in their exercise.

#### **20.12 Operation of this document**

- (a) Subject to clause 20.12(b), this deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.

- (b) Any right that the Trustee may have under this deed is in addition to, and does not replace or limit, any other right that the Trustee may have.

#### 20.13 Operation of indemnities

- (a) Each indemnity in this deed survives the expiry or termination of this document.
- (b) The Trustee may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this document is expressed to:
  - (i) indemnify;
  - (ii) exclude or limit any liability of; or
  - (iii) otherwise benefit,

a person who is not a party to this deed, the Company agrees that the Trustee holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this document on their behalf and for their benefit.

#### 20.14 Consents

Where this deed contemplates that the Trustee may agree or consent to something (however it is described), the Trustee may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this deed expressly contemplates otherwise.

#### 20.15 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to this deed. If so, the signed copies are treated as making up the one document.

#### 20.16 Void or voidable transactions

If:

- (a) **(release of Company)** the Trustee has at any time released or discharged the Company from its obligations under this deed in reliance on a payment, receipt or other transaction to or in favour of the Trustee or Holders or any payment or other transaction to or in favour of the Trustee or Holders has the effect of releasing or discharging the Company from its obligations under this document;
- (b) **(payment void)** that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under any law relating to insolvency or the winding up of companies or under the general law; and
- (c) **(claim upheld)** that claim is upheld or the claim is conceded or compromised by the Trustee or a Holder,

then:



- (d) **(restitution of rights)** the Trustee and each Holder will immediately become entitled against the Company to all rights as it had immediately before that release or discharge;
  - (e) **(restore position)** the Company must immediately do all things and execute all documents as the Trustee may reasonably require to restore to the Trustee and the Holders all those rights; and
  - (f) **(indemnity)** the Company must indemnify the Trustee and each Holder against costs, losses and expenses suffered or incurred by the Trustee or Holder in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.
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## 21 FATCA

- (a) Each party must take all action required by it to comply with the *Tax Laws Amendment (implementation of the FATCA Agreement) Act 2014 (Cth)* (**FATCA Act**) and any other regulations or rules passed in relation to FATCA, the FATCA Act or any other requirements under FATCA or by the IRS in connection with its performance of its obligations under this deed (together the **FATCA Requirements**).
- (b) The Company must promptly provide to the Trustee all information and documents reasonably required by the Trustee to comply with any FATCA Requirements applicable to the Trustee in connection with the performance of its role and obligations under this deed.
- (c) The Company acknowledges that the Trustee will not collect or hold any information about the domicile or residence of any Holder or any other connection of any Holder with the United States of America, and that it is the responsibility of the Company to do so.

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**Schedule 1      Terms of Issue**

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## Schedule 1      Terms of Issue

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### 1      Form, face value, issue and title

#### 1.1      Form

Notes are unsecured and subordinated debt obligations of Qube in registered uncertificated form. Notes are constituted under, and issued according to, the Trust Deed. Notes take the form of entries in the Register. No certificate will be issued to a Holder unless Qube determines that a certificate should be available or is required by any applicable law or regulation (including the Listing Rules or the ASX Settlement Operating Rules). Notes are unsecured notes for the purposes of section 283BH of the Corporations Act.

#### 1.2      Face Value

Each Note will have a Face Value of \$100.

#### 1.3      Issue

Qube may issue Notes at any time to any person at an issue price of \$100 per Note (or such other price as Qube may choose) (the "**Issue Price**"). The Issue Price must be paid in full on application.

#### 1.4      Title

An entry in the Register is conclusive evidence that the person is the absolute owner of Notes subject to rectification for fraud or any manifest error made in the entry. Except as required by law, Qube must treat the person entered in the Register as the absolute owner of Notes.

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## 2      Ranking

### 2.1      Subordination and ranking

- (a) The Holder Claims are subordinated to the claims of Senior Creditors in that if at any time an Event of Insolvency occurs in relation to Qube (otherwise than for the purposes of a Solvent Reorganisation) the amount payable to the Holders under this clause 2 will only be paid after the amounts owing to all Senior Creditors have been paid in full.
- (b) Holder Claims will at all times rank *pari passu* and without any preference among themselves and *pari passu* and without any preference among the rights and claims of holders of Equal Ranking Obligations. On and from the occurrence of an Event of Insolvency, Holder Claims will rank senior only to claims in respect of any Qube ordinary shares.
- (c) To give effect to the intended ranking, if at any time an Event of Insolvency occurs in relation to Qube (otherwise than for the purposes of a Solvent Reorganisation), the amount payable by Qube to a Holder under or in relation to these Terms or the Trust Deed (in lieu of any other payment by Qube to the Holder under or in relation to these Terms or the Trust Deed), shall be the amount that would have been

payable to the Holder of such Notes if, immediately prior to and throughout any administration which follows such Event of Insolvency, such Holder was the holder of Notional Preference Shares.

For the purpose only of that calculation, Holders will be deemed to hold one preference share of \$1.00 each in the capital of Qube ranking equally with the Notional Preference Shares for each \$1.00 of any amount that would otherwise be payable to that Holder under these Terms or the Trust Deed including without limitation, the Face Value and any interest which has not otherwise been paid to that Holder.

## 2.2 Holder acknowledgements

Each Holder acknowledges and agrees that:

- (a) the claims of Senior Creditors to which it is subordinated include each Senior Creditor's entitlement to interest under section 563B of the Corporations Act and it does not have, and waives to the maximum extent permitted by law, any entitlement to interest under section 563B of the Corporations Act;
- (b) the debt subordination effected by this clause 2 is not affected by any act or omission of Qube or any Senior Creditor which might otherwise affect it at law or in equity;
- (c) to the maximum extent permitted by applicable law, it may not exercise or claim (nor will the Trustee exercise or claim on its behalf) any right of set-off or counterclaim in respect of any amount owed by it to Qube against any amount owed to it by Qube in respect of Notes and it shall waive and be deemed to have waived such rights of set-off or counterclaim;
- (d) it must pay or deliver to the liquidator or administrator any amount or asset received on account of its claim in the winding-up or administration of Qube in respect of Notes in excess of its entitlement under this clause 2; and
- (e) it may not exercise any voting rights as a creditor in any administration which follows an Event of Insolvency until after all Senior Creditors have been paid in full or otherwise in a manner inconsistent with the subordination contemplated in this clause 2.

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## 3 Interest

### 3.1 Interest

Subject to these Terms, Qube shall pay interest in respect of a Note on an Interest Payment Date to the person recorded as Holder on the Record Date in respect of that Interest Payment Date.

### 3.2 Interest Rate

The Interest Rate (expressed as a percentage per annum) for an Interest Period will be calculated in accordance with the following formula:

**Interest Rate = Bank Bill Rate + Margin**

where:

**"Bank Bill Rate"** (expressed as a percentage per annum) means, for an Interest Period, the rate for prime bank eligible securities having a tenor of 3 months, which is designated as the "AVG MID" on the Reuters Screen BBSW Page at approximately 10:15am, Sydney time (or such other time at which such rate customarily appears on that page) on:

- (i) in the case of the first Interest Period, the Issue Date; and
- (ii) in the case of any other Interest Period, the first Business Day of that Interest Period,

(the **"Publication Time"**).

However, if such rate does not appear on the Reuters Screen BBSW Page by 10:30am, Sydney time, on that day (or such other time that is 15 minutes after the then prevailing Publication Time), or if it does appear but Qube determines that there is an obvious error in that rate, Bank Bill Rate means the rate determined by Qube having regard to comparable indices then available.

**"Margin"** has the meaning specified in clause 17.2.

### 3.3 Interest amount

- (a) The amount of an Interest Payment in respect of a Note on an Interest Payment Date is calculated according to the following formula:

$$\text{Interest Payment} = \frac{\text{Interest Rate} \times \text{Face Value} \times N}{365}$$

where:

**"Face Value"** is the face value of each Note; and

**"N"** means:

- (i) in respect of the first Interest Payment Date, the number of days from (and including) the Issue Date until (but not including) the first Interest Payment Date; and
  - (ii) in respect of each subsequent Interest Payment Date, the number of days from (and including) the preceding Interest Payment Date until (but not including) the relevant Interest Payment Date.
- (b) Interest accrues daily and is payable to Holders in arrears on the relevant Interest Payment Date subject to these Terms.
- (c) If any Interest Payment Date would otherwise fall on a calendar day which is not a Business Day, the Interest Payment Date will be postponed to the next calendar day which is a Business Day.

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## 4 Redemption and purchase

### 4.1 Maturity

Unless redeemed earlier in accordance with these Terms and subject to applicable laws, Notes will be redeemed upon the Maturity Date at their Redemption Amount.

### 4.2 Early redemption by Qube due to the occurrence of an event

- (a) If a Change of Control Event occurs, Qube may, subject to applicable laws, redeem all Notes (in whole but not in part) at any time, in each case at their Redemption Amount, by giving at least 30 but no more than 60 calendar days' irrevocable notice of redemption to the Holders and the Trustee.
- (b) If a Tax Event, or a Clean-up Event occurs, Qube may subject to applicable laws redeem all Notes (in whole but not in part) at any time at the Redemption Amount on the giving of not less than 30 and not more than 60 calendar days' irrevocable notice of redemption to the Holders and the Trustee.
- (c) A notice of redemption under this clause 4.2 may only be given simultaneously with or after a notification to the Holders by Qube that a Change of Control Event, Tax Event, or a Clean-up Event has occurred.

### 4.3 Early redemption by Holders following a Change of Control Event

- (a) If a Change of Control Event has occurred and remains current, and provided that Qube has not redeemed all Notes in accordance with clause 4.2(a), Qube will no later than 60 calendar days after the Change of Control Event arising notify the Holders and the Trustee accordingly (a **Change of Control Notice**). The Change of Control Notice will contain a statement confirming whether or not Qube intends to exercise its right to redeem all Notes and, if Qube does not intend to exercise its right to redeem all notes, of the Holder's entitlement to exercise their rights under clause 4.3(b). The Change of Control Notice will also specify:
  - (i) the material facts comprising the Change of Control Event;
  - (ii) the Put Date; and
  - (iii) that a Put Notice, once validly given, is irrevocable.
- (b) If the Change of Control Notice specifies that Qube does not intend to exercise its right to redeem all Notes, or Qube does not give a Change of Control Notice as required by clause 4.3(a), a Holder may require Qube to redeem, or at Qube's option, purchase (or procure the purchase of), all Notes held by the Holder on the Put Date at their aggregate Redemption Amount, by giving at least 30 but no more than 60 calendar days' notice prior to the Put Date (a **Put Notice**).

### 4.4 Requirements for Put Notices

A Put Notice must include:

- (a) the name and address of the Holder; and
- (b) confirmation that the Holder authorises the production of the Put Notice in any applicable administrative proceedings.

#### **4.5 Priority of Redemption Notices and Put Notices**

After a Holder exercises its rights under clauses 4.3(b) by giving Qube notice in accordance with clause 4.3(b), Qube may, subject to all applicable laws, redeem all Notes (in whole but not in part) at any time, in each case at their Redemption Amount, by giving at least 15 calendar days' irrevocable notice of redemption to the Holders and the Trustee, provided that redemption in accordance with this clause occurs on or prior to the relevant Put Date. In such circumstances, all Put Notices will be disregarded.

#### **4.6 Purchase of Notes**

Qube or any Subsidiary of Qube may, subject to applicable laws, the Listing Rules and any rules of any other securities exchange on which any of the Notes are quoted from time to time, at any time purchase or procure others to purchase beneficially for its account, Notes in any manner and at any price. Such acquired Notes may be surrendered for cancellation or held or resold.

#### **4.7 Interest on unpaid Redemption Amounts**

When any Notes become due for redemption and the Redemption Amount is not paid on the Redemption Date, from the Redemption Date until the actual payment of the Redemption Amount to, or to the order of, the Trustee, interest on the Redemption Amount will accrue at the Interest Rate determined from time to time in accordance with clause 3.2 (except that any determination of the Bank Bill Rate required for the purposes of clause 3.2 will be by the Trustee or a calculation agent appointed by it) and such interest will be payable until Notes are finally redeemed.

#### **4.8 Cancellations**

All Notes which are (a) redeemed or (b) purchased by or on behalf of Qube or any Subsidiary of Qube and which Qube elects to cancel will promptly be cancelled, and accordingly may not be held, reissued or resold.

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## **5 Payments**

### **5.1 Method of payment**

- (a) Any amount which is payable to Holders in respect of Notes in accordance with these Terms will, unless Qube and the relevant Holder otherwise agree, be paid without set-off or counterclaim by direct credit to a nominated account denominated in Australian dollars at a financial institution notified by the relevant Holder to the Registry:

- (i) in the case of interest payments, no later than the Record Date; and
- (ii) in the case of any other amount in respect of Notes, at least eight calendar days before the day on which the relevant payment is scheduled,

or, at Qube's option, by cheque drawn in favour of the Holder and sent by prepaid post to the address of the Holder in the Register. Cheques sent to the nominated address of a Holder on or before the relevant payment date will be taken to have been received by the Holder on the relevant payment date and, no further amount will be payable by Qube in respect of the Notes as a result of the Holder not receiving payment on the due date.

- (b) Where a payment cannot be made in accordance with paragraph (a) because:

- (i) a Holder has not provided account details, or Qube determines that the account details are incorrect or the relevant account has been closed, Qube is under no obligation to make the relevant payment until correct account details have been provided; or
- (ii) a notified financial institution is not open for business (or is not open for business in the place where the account is kept) on that date, Qube is under no obligation to make the relevant payment until the payment can be made,

and, in each case, the amount of the uncompleted payment will be held in a non-interest bearing, special purpose account maintained by Qube or the Registry until:

- (iii) the Holder nominates a suitable Australian dollar account maintained with a financial institution to which the payment may be credited or Qube elects to pay the amount by cheque;
- (iv) Qube determines to refuse any claim in respect of that amount in accordance with clause 5.3 in which case Qube may treat that amount as its own; or
- (v) Qube is entitled or obliged to deal with the amount in accordance with the law relating to unclaimed moneys.

No additional interest is payable in respect of any delay in payment.

- (c) Payment of any Redemption Amount in respect of a Note will be made to the person registered at 10:00am on the Redemption Date as the Holder of that Note.

## 5.2 Payments subject to applicable laws

Payments in respect of Notes are subject in all cases to any fiscal or other laws and regulations applicable in the place of payment.

## 5.3 Time limit on payments

A claim against Qube for payment under these Terms is void, to the fullest extent permitted by applicable law, unless made within 10 years (in the case of a Redemption Amount) or five years (in case of an Interest Payment or other payment) after the relevant due date for payment.

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# 6 Taxation and gross-up

## 6.1 Payment without withholding

All payments in respect of Notes by or on behalf of Qube, will be made free and clear of, and without withholding or deduction for, or on account of, Taxes imposed, levied, collected, withheld or assessed by or on behalf of the Relevant Jurisdiction, unless the withholding or deduction of the Taxes is required by law. In that event, Qube will pay such additional amounts ("**Additional Amounts**") as may be necessary in order that the net amounts received by the Holders after the withholding or deduction will equal the respective amounts which would otherwise have been receivable in respect of Notes in the absence of the withholding or deduction. However, no Additional Amounts will be payable in relation to any payment in respect of any Notes:



- (a) to, or to a third party on behalf of, a Holder who is liable for the Taxes in respect of such Notes by reason of their having some connection with the Relevant Jurisdiction other than the mere holding of Notes;
- (b) to, or to a third party on behalf of, a Holder who is liable for the Taxes in respect of Notes by reason of that person being an associate of Qube for the purposes of section 128F of the Tax Act;
- (c) to, or to a third party on behalf of, a Holder who could lawfully avoid (but has not so avoided) the deduction or withholding by complying or procuring that any third party complies with any statutory requirements or by making or procuring that any third party makes a declaration of non-residence or other similar claim for exemption to any tax authority in the place where payment in respect of the relevant Notes is made; or
- (d) to, or to a third party on behalf of, a Holder who has not supplied to the Registry an appropriate tax file number, an Australian Business Number or exemption details, to the extent that such information would have reduced or eliminated the relevant Taxes.

## **6.2 Additional Amounts**

Any reference in these Terms to any amounts in respect of Notes includes a reference to any Additional Amounts which may be payable under this clause 6.

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## **7 No rights to new instruments**

Notes confer no rights to subscribe for new Instruments in Qube, or to participate in any bonus issues.

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## **8 Further issues**

Subject to applicable law, there are no restrictions under these Terms or the Trust Deed on Qube incurring any debt obligations, whether subordinated or not or ranking in priority ahead of, equal with or behind Notes (including any Notes that rank *pari passu* with Notes and are consolidated and form a single series with Notes) or upon such terms as to ranking, dividends or interest, conversion, redemption and otherwise as Qube may determine at the time of issue.

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## **9 Events of default**

### **9.1 Consequences of an Event of Default**

If an Event of Default occurs and while it is subsisting, the Trustee may, and must if so directed by a Special Resolution of the Holders or so requested in writing by the Holders of at least 25% of the total Face Value of Notes then Outstanding (subject in each case to clause 8.2 of the Trust Deed):

- (a) give notice to Qube that the total Redemption Amount of Notes is due and payable (and that amount will immediately become due and payable when the notice is served); and

- (b) institute proceedings for the winding-up of Qube and/or prove in the winding-up of Qube and/or claim in the liquidation or administration of Qube, for the amount payable under these Terms.

## **9.2 Enforcement by the Trustee**

The Trustee may at any time, at its discretion and without further notice, institute such proceedings against Qube as it may think fit to enforce any term or condition binding on Qube under the Trust Deed or these Terms, except that (without prejudice to clause 9.1) the Trustee must not institute any proceedings or take any steps to enforce any payment obligation of Qube under or arising from the Trust Deed or the Notes, including, without limitation, payment of any principal or interest in respect of the Notes, any Redemption Amount, Interest Payment or Additional Amount, and including damages awarded for the breach of any obligations, in order to compel Qube, and in no event shall Qube, by virtue of the institution of any such proceedings or steps, be obliged, to pay any sum or sums in cash or otherwise, sooner than the same would otherwise have been payable by it under these Terms.

## **9.3 Trustee not bound to enforce**

The Trustee shall not in any event be bound to take any action referred to in clause 9.2 unless:

- (a) it shall have been so requested by Holders holding between them at least 25% of the total Face Value of the Notes then Outstanding or it shall have been so directed by a Special Resolution of the Holders; and
- (b) it shall have been indemnified as contemplated by clause 8.2(c) of the Trust Deed.

## **9.4 No other remedies against Qube**

Except as permitted by this clause 9 (including, without limitation, any rights or remedies of the Trustee under clause 9.2), no remedy against Qube shall be available to the Trustee or the Holders in respect of any breach by Qube of any of its obligations under the Trust Deed or these Terms, other than payment of the costs, charges, liabilities, expenses or remuneration of the Trustee.

## **9.5 Holders' right to enforce**

No Holder shall be entitled to proceed directly against Qube to enforce any right or remedy under or in respect of any Note unless the Trustee, having become bound so to proceed, fails so to do within a reasonable period and the failure is continuing, in which case any such Holder may itself institute proceedings against Qube for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so. Any such proceedings must be brought in the name of the Holder and not the Trustee.

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# **10 Amendments and meetings**

## **10.1 Alteration without Holder approval**

- (a) Subject to clause 10.1(b) below, and to compliance with the Corporations Act and all other applicable laws, Qube may, by an instrument in writing without the consent, authority, assent or approval of Holders or the Trustee, alter these Terms if Qube is of the opinion that such alteration is:

- (i) of a formal, minor or technical nature;
- (ii) made to cure any ambiguity or correct a manifest error;
- (iii) necessary to comply with:
  - (A) the provisions of any statute or the requirements of any statutory authority; or
  - (B) the Listing Rules or the listing or quotation requirements of any stock exchange on which Qube may propose to seek quotation of Notes;
- (iv) necessary or expedient for the purpose of enabling the Notes to be:
  - (A) listed for quotation, or to retain quotation, on any stock exchange; or
  - (B) offered for subscription or for sale under the laws for the time being in force in any place; or
- (v) not likely to be, and is not reasonably likely to become, (taken as a whole and in conjunction with all other alterations, if any, to be made contemporaneously with that alteration) prejudicial to the interests of the Holders,

provided that such alteration would not give rise to a Tax Event.

- (b) Where an alteration to these Terms is to be made in the manner outlined in clause 10.1(a):
  - (i) in the case of an alteration pursuant to paragraph (a)(v) above, Qube must, before such alteration becomes effective, provide to the Trustee an opinion of independent legal advisers of recognised standing in New South Wales that such alteration is not likely to be, and is not reasonably likely to become, (taken as a whole and in conjunction with all other alterations, if any, to be made contemporaneously with that alteration) prejudicial to the interests of the Holders; and
  - (ii) the proposed alteration must not alter or conflict with any of the rights and obligations of the Trustee.

## **10.2 Alteration with Holder approval**

Without limiting clause 10.1, at any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, Qube may by instrument in writing alter these Terms:

- (a) in the case of an alteration to this clause 10 or to any other clause of these Terms which provides for Holders to give a direction to the Trustee by Special Resolution, or which otherwise requires a Special Resolution to be passed, if a Special Resolution is passed in favour of such alteration; and
- (b) otherwise, if such alteration is approved by a resolution passed at a Meeting of Holders.

## **10.3 Alteration binding**

Any alteration of these Terms in accordance with this clause 10 is binding on all Holders.

#### 10.4 Meetings of Holders

The Trust Deed contains provisions for convening meetings of the Holders.

#### 10.5 No consent of Senior Creditors etc

Nothing in these Terms requires the consent of any Senior Creditor or any holder of any Equal Ranking Obligation to the alteration of any Terms made in accordance with this clause 10.

#### 10.6 Alteration

In this clause 10, 'alter' includes modify, cancel, amend or add to.

#### 10.7 Terms

The Company must provide the Trustee with a copy of any amendment to these Terms not less than 10 Business Days prior to the date that the amendment, addition or revocation is to take effect.

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### 11 Substitution

The Trustee may, without the approval of the Holders, agree to the substitution of any Related Body Corporate of Qube (the "**Substituted Obligor**") in place of Qube (or of any previous substitute under this clause 11) as the principal debtor under these Terms provided that:

- (a) **guarantee and not materially prejudiced:** Qube unconditionally and irrevocably (but subject to the subordination provision in these Terms) guarantees all amounts payable under these Terms, and the Trustee is satisfied that the interests of Holders will not be materially prejudiced by the substitution;
- (b) **document or undertaking given:** a document is executed or an undertaking given by the Substituted Obligor to the Trustee, in form and manner satisfactory to the Trustee, agreeing to be bound by the Trust Deed and these Terms (with consequential amendments as the Trustee may deem appropriate) as if the Substituted Obligor had been named in the Trust Deed and these Terms as the principal debtor in place of Qube;
- (c) **taxing jurisdiction:** if the Substituted Obligor is subject generally to the taxing jurisdiction of a territory or any authority of or in that territory with power to tax (the "**Substituted Territory**") other than the territory of the taxing jurisdiction to which (or to any such authority of or in which) Qube is subject generally (the "**Issuer's Territory**"), the Substituted Obligor will (unless the Trustee otherwise agrees) give to the Trustee an undertaking satisfactory to the Trustee in terms corresponding to these Terms with the substitution for the references in these Terms to the Issuer's Territory for references to the Substituted Territory whereupon the Trust Deed and these Terms will be read accordingly; and
- (d) **certification by directors:** if any two directors of the Substituted Obligor certify that it will be solvent immediately after such substitution, the Trustee need not have regard to the Substituted Obligor's financial condition, profits or prospects or compare them with those of Qube.

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## 12 Notices

### 12.1 Service of notices

- (a) Without limiting anything else in these Terms, a notice may be given by Qube to any Holder, or in the case of joint Holders to the Holder whose name appears first in the Register, personally, by leaving it at the Holder's address as shown on the Register or by sending it by prepaid post (airmail if posted to a place outside Australia) to the Holder's address as shown on the Register or, in any case, by other electronic means determined by Qube. If the notice is signed, the signature may be original or printed.
- (b) Where a notice is given by Qube to Holders generally, a copy of the notice must also be given to ASX and the Trustee.
- (c) A notice given by a Holder to Qube must:
  - (i) be in writing; and
  - (ii) 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 Qube, or sent by facsimile transmission to the fax number below or the fax number last notified by Qube:

Qube Holdings Limited  
Level 27, 45 Clarence Street  
Sydney, NSW 2000 Australia  
Facsimile: +61 2 9080 1999  
Attention: General Counsel

### 12.2 When notice considered to be received

Any notice is taken to be given:

- (a) if served personally or left at the intended recipient's address, when delivered;
- (b) if sent by post, on the second Business Day after it is mailed in a prepaid envelope to the intended recipient's address; and
- (c) if sent by facsimile transmission, when receipt of a legible transmission has been acknowledged.

### 12.3 Notice to transferor binds transferee

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

#### 12.4 Service on deceased Holders

A notice served in accordance with this clause 12 is (despite the fact that the Holder is dead and whether or not Qube has notice of the Holder's death) considered to have been properly served in respect of any Notes, whether held solely or jointly with other persons by the Holder, until some other person is registered in the Holder's place as the Holder or joint Holder. The service is sufficient service of the notice or document on the Holder's personal representative and any person jointly interested with the Holder in Notes.

#### 12.5 Copy of notices to Trustee

Whenever Qube issues any notice under these Terms to Holders, Qube must at the same time provide to the Trustee a copy of the notice.

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### 13 Transfer of notes

#### 13.1 Transfer

- (a) Before the Notes are quoted on the Official List (**Officially Quoted**) or at any time after the Notes cease to be Officially Quoted, all transfers of the Notes must be effected by a proper instrument of transfer and in a manner approved by Qube. Qube may decline to register a transfer of Notes under this clause 13.1(a) unless the instrument of transfer:
  - (i) is duly stamped; and
  - (ii) is accompanied by such evidence as Qube requires to prove the title of the transferor.
- (b) Where the Notes are quoted on ASX, a Holder may transfer any Notes by a Proper ASTC Transfer or any other method of transferring or dealing in Notes introduced by ASX or operating in accordance with the operating rules of a clearing and settlement facility (as that term is defined in the Corporations Act), the ASX Settlement Operating Rules or the Listing Rules and, in any such case, recognised under the Corporations Act.
- (c) A transferor of Notes remains the owner of Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Notes, and the transferee of Notes on being entered on the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Holder under these Terms.

#### 13.2 Transfer which are not Proper ASTC Transfers

The following provisions apply to instruments of transfer referred to in clause 13.1(b):

- (a) (**duly executed**) unless the instrument of transfer is otherwise a sufficient transfer under the Corporations Act, the instrument must be signed by, or executed by or on behalf of:
  - (i) the transferor; and
  - (ii) if required by Qube, the transferee;
- (b) (**lodged (and stamped, if applicable)**) the instrument of transfer, duly stamped where applicable, will be left at the place where the Register is kept, accompanied

by the certificate (if any) that has been issued in respect of the Notes to be transferred and such other evidence as Qube requires to prove the transferor's title to, or right to transfer, the Notes;

- (c) **(transferee must be bound)** the instrument of transfer must be endorsed or accompanied by an instrument executed by the transferee to the effect that the transferee agrees to accept the Notes subject to the terms and conditions on which the transferor held them, to become a Holder and to be bound by the Trust Deed and these Terms; and
- (d) **(cancellation of Note certificate (if any))** on registration of a transfer of Notes, Qube will cancel the old certificate for the Notes (if any).

### **13.3 Refusal to register transfers other than Proper ASTC Transfers**

- (a) **(refusal to register transfers)** Qube may refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Listing Rules or ASX Settlement Operating Rules permit Qube to do so.
- (b) **(breach of Listing Rules)** Qube will refuse to register any transfer of Notes (other than a Proper ASTC Transfer) where the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules require Qube to do so, or the transfer is in breach of the Listing Rules.

### **13.4 Notice of refusal to register**

- (a) **(notice to transferee)** Where Qube refuses to register a transfer of Notes under clause 13.3 Qube will give written notice of the refusal and the reasons for the refusal to the transferee and the person who lodged the transfer, if not the transferee, within five Business Days after the date on which the transfer was lodged with Qube.
- (b) **(failure to notify)** A failure by Qube to give notice under clause 13.4(a) will not invalidate the refusal to register the transfer in any way.

### **13.5 Transaction advice after transfer**

If Qube accepts a transfer under this clause 13, Qube may issue a transaction advice for:

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

### **13.6 No general restriction on transfer**

- (a) There is no restriction on the transfer of Notes and, subject to clause 13.7 and these Terms, Qube may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Notes effected under clause 13.113.1(b).
- (b) Except as otherwise set out in this clause 13 and these Terms, there is no restriction on any other transfer of Notes.

### **13.7 Restricted securities**

Despite any other provisions of these Terms:

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

### **13.8 Death, legal disability**

- (a) If a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated, the survivor (in the case of joint Holders), legal personal representative or the person entitled to Notes as a result of bankruptcy or liquidation, will be recognised as having a claim to Notes registered in the Holder's name.
- (b) Qube need not register any transfer or transmission under this clause unless the transferee provides an indemnity in favour of Qube in a form determined by Qube in respect of any consequence arising from the transfer or transmission.

### **13.9 Recognition of Holder**

Qube and the Trustee:

- (a) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
- (b) except as required by law or these Terms, need not recognise any claim or interest in any Notes by any other person.

### **13.10 Participation in transfer systems**

Qube may determine that Notes which are Officially Quoted will participate in the 'Clearing House Electronic Sub-register System' or any other computerised or electronic system of transfer or registration. Qube may with the approval of ASX, create rules to facilitate such participation which may be additional to or may override this clause 13.

### **13.11 Register**

At any time Qube may (on such terms as it thinks fit) appoint a person to establish and maintain the Register and may terminate such appointment in accordance with the Trust Deed.

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## **14 Non-resident holders**

- (a) Where Notes are held by, or on behalf of, a person resident outside the Commonwealth of Australia, then, despite anything else to the contrary contained in or implied by these Terms, it is a condition precedent to any right of the Holder to receive payment of any monies in respect of those Notes that all necessary authorisations (if any) and any other statutory requirements which may then be in



existence and which are required to be obtained by the Holder are obtained at the cost of the Holder and satisfied.

- (b) For the purposes of clause 14(a), authorisation includes any consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with any government or any government agency.

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## 15 Quotation

- (a) Qube must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure, at its own expense, that Notes are quoted by ASX within seven Business Days after the initial issue of Notes and to maintain quotation so long as any Notes remain on issue.
- (b) Qube will comply with the Listing Rules or the rules of any stock exchange on which Notes are quoted in connection with any amendment under clause 10.

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## 16 Governing law

- (a) These Terms are governed by the law in force in the State of New South Wales, Australia.
- (b) Qube, the Trustee and each Holder submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia in connection with matters concerning Notes or these Terms. Qube, the Trustee and each Holder waives any right they have to an objection to an action being brought in those courts, or to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

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## 17 Interpretation and definitions

### 17.1 Interpretation

In these Terms:

- (a) headings and boldings are for convenience only and do not affect the interpretation of these terms;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (e) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

- (f) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (g) where the day on or by which any thing is to be done, or payment is to be made, is not a Business Day, that thing must be done, or payment must be made, on or by the next succeeding Business Day;
- (h) a reference to cash includes cheques and bank cheques;
- (i) a reference to a body including a commission or an exchange, whether statutory or not, which ceases to exist or whose functions or powers are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers and functions;
- (j) references to sums of money are to amounts in Australian dollars;
- (k) a reference to a thing or things after the words "include" or "including" or similar expressions is not limited to that thing or those things;
- (l) a calculation, determination, election or decision made under these Terms, will (in the absence of manifest error, negligence, default or bad faith) be binding upon Qube, the Trustee and all Holders;
- (m) if a calculation is required under these Terms, the calculation will be rounded to four decimal places, provided that any amount to be paid to a Holder will be rounded down to the nearest whole cent; and
- (n) the word "amend" includes modify, cancel, amend or add to.

## 17.2 Definitions

Unless the context otherwise requires, the following terms will have the following meanings in these Terms:

**"Additional Amounts"** means additional amounts payable by Qube under clause 6.1.

**"ASX"** means ASX Limited (ABN 98 008 624 691) or the market operated by it, as the context requires.

**"ASX Settlement"** means ASX Settlement Pty Limited (ABN 49 008 504 532).

**"ASX Settlement Operating Rules"** means the operating rules of ASX Settlement.

**"Bookbuild"** means the process, described in the Prospectus, to be conducted by, or on behalf of Qube whereby certain institutional investors and brokers who wish to obtain a firm allocation of Notes (whether for themselves or for their clients) lodge bids for Notes.

**"Business Day"** has the meaning given in the Listing Rules.

A **"Change of Control Event"** occurs, at any time, if any person either alone or together with its associates (as defined in the Corporations Act), either in a single transaction or series of related transactions, beneficially acquires more than 50% of the issued ordinary shares of Qube (such acquiring person or person together with its associates being a **"Relevant Person"**).

A **"Clean-up Event"** occurs, at any time, if Qube or any of its Related Bodies Corporate has, individually or in aggregate, purchased (and cancelled) or redeemed Notes equal to or in excess of 80% of the aggregate Face Value of Notes issued on the Issue Date.

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

**"Disruption Event"** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Notes (or otherwise in order for the transactions contemplated by the Notes to be carried out) which disruption is not caused by, and is beyond the control of, Qube; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of any party preventing that, or any other party:
  - (i) from performing its payment obligations under the Notes; or
  - (ii) from communicating with other parties in accordance with the terms of the Notes,

and which (in either such case) is not caused by, and is beyond the control of, Qube.

**"Equal Ranking Obligations"** means:

- (a) any obligation in relation to claims of holders of Instruments issued by Qube which claims rank or are expressed to rank *pari passu* with Holder Claims under these Terms and the Trust Deed; or
- (b) any obligation in relation to claims of holders of Instruments issued by Qube, which claims are under, or are expressed to be treated as, Notional Preference Shares if at any time an Event of Insolvency occurs in relation to Qube.

An **"Event of Default"** occurs if:

- (a) Qube does not pay any Redemption Amount or Interest Payment which is due and payable in respect of the Notes within, in the case of any amount representing or in the nature of interest, five Business Days of the due date for payment and, in the case of any amount representing or in the nature of principal, two Business Days of the due date for payment unless its failure to pay is caused by:
  - (i) administrative or technical error and payment is made within 10 Business Days of the due date for payment; or
  - (ii) a Disruption Event and payment is made by the later of:
    - (A) 10 Business Days after the due date for payment; or
    - (B) 5 Business Days after the end of the Disruption Event, provided Qube has used all reasonable efforts to overcome the Disruption Event in order to perform its payment obligations under the Notes;
- (b) Qube fails to comply with any of its other material obligations under these Terms or the Trust Deed and such failure, if it is capable of being remedied, is not remedied

to the satisfaction of the Trustee within 30 Business Days after Qube has received written notice from the Trustee in respect of the failure; or

- (c) an order is made (other than an order successfully appealed or permanently stayed within 60 days) by a State or Federal Court in the Commonwealth of Australia or a resolution is passed by the shareholders of Qube for the winding up of Qube (other than for the purposes of a Solvent Reorganisation),

except that the non-payment by Qube of any amount due and payable in respect of any of the Notes in order to comply with any fiscal or other law or regulation or with the order of any court of competent jurisdiction (in each case applicable to such payment) does not constitute an Event of Default.

**"Event of Insolvency"** means the appointment of an administrator, a liquidator, provisional liquidator or other similar officer in respect of Qube or any corporate action is taken by Qube to appoint such a person (other than for the purposes of Solvent Reorganisation of Qube).

**"Face Value"** means the face value of a Note, being \$100 per Note.

**"Holder"** means a person who is entered into the Register as the holder of a Note.

**"Holder Claims"** means the rights and claims of the Trustee (in respect of Notes) and of the Holders in respect of Notes.

**"Instrument"** means, in relation to a company, shares in the capital of that company and any indebtedness in the form of or represented by notes, bonds, debentures or other securities issued by that company or any indebtedness (other than to a wholly-owned Subsidiary of Qube or from a wholly-owned Subsidiary of Qube to Qube or another wholly-owned Subsidiary of Qube) in respect of any loan or similar agreement.

**"Interest Payment"** means the interest payable on a Note on the Interest Payment Date, as calculated in accordance with clause 3.3.

**"Interest Payment Date"** means, subject to clause 3.3, 5 April, 5 July, 5 October and 5 January in each year, commencing on the first such date following the Issue Date until Notes are redeemed.

**"Interest Period"** means:

- (a) in respect of the first interest period, the period from and including the Issue Date to but excluding the first Interest Payment Date; and
- (b) for each subsequent interest period, from and including each Interest Payment Date to but excluding the immediately following Interest Payment Date.

**"Interest Rate"** has the meaning specified in clause 3.2.

**"Issue Date"** means 5 October 2016, or such later date as Qube may determine.

**"Issue Price"** has the meaning specified in clause 1.3.

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

**"Margin"** means the margin expressed as a percentage per annum determined by Qube (or another party on its behalf) on the basis of the bids made under the Bookbuild.

**"Maturity Date"** means 5 October 2023.

**"Notes"** means Qube subordinated notes to which these Terms apply, as described in clause 1.1.

**"Notional Preference Share"** means an actual or notional class of preference shares in the capital of Qube ranking junior to the claims of Senior Creditors and having an equal right to return of assets in the winding-up to, and so ranking pari passu with, the most junior class or classes of preference shares in the capital of Qube from time to time and which have a right to a return of assets in the winding-up over, and so rank junior to the holders of all other classes of issued shares for the time being in the capital of Qube other than its ordinary shares.

**"Official List"** means the official list of the ASX.

**"Outstanding"** means a Note that has not been cancelled or redeemed by Qube and is not held by or on behalf of Qube, or any Subsidiary of Qube or any Relevant Person.

**"Proper ASTC Transfer"** has the meaning given in the Corporations Regulations 2001 (Cth).

**"Prospectus"** means a prospectus to be issued by Qube in respect of a public offer of Notes.

**"Put Date"** means the Business Day which is, or immediately follows 120 days after the occurrence of the Change of Control Event.

**"Put Notice"** means a notice given by a Holder to Qube requiring Qube to redeem or, at Qube's option, purchase (or procure the purchase of), Notes held by the Holder on the Put Date at their Redemption Amount, in accordance with clause 4.3.

**"Qube"** means Qube Holdings Limited (ABN 14 149 723 053) or any Related Body Corporate which is substituted for Qube Holdings Limited under clause 11 and the Trust Deed.

**"Record Date"** means, in relation to any date on which Qube is obliged to make an Interest Payment to a Holder in relation to a Note, eight calendar days before the relevant Interest Payment Date or such other date as Qube determines in its absolute discretion (subject to compliance with the Listing Rules) and notifies to Holders by a market release to ASX by the time required by the Listing Rules (or if no such time is required by the Listing Rules, at least six Business Days before the specified Record Date). If the Record Date is changed because of a requirement of ASX, Qube will give notice of the changed Record Date to all Holders by issuing a market release to ASX.

**"Redemption Amount"** in respect of a Note means the sum of:

- (a) 100% of the Face Value; and
- (b) any accrued but unpaid interest for the Interest Period in which the Redemption Date falls determined in accordance with clause 3 and clause 4.8 calculated up to (but excluding) the Redemption Date as if that date were an Interest Payment Date.

**"Redemption Date"** means the day on which Notes become due for redemption in accordance with these Terms.

**"Register"** means the register of Notes maintained by or on behalf of Qube.

**"Registry"** means Computershare Investor Services Pty Limited (ABN 48 078 279 277) or such successor registry as Qube may appoint.

**"Related Body Corporate"** has the meaning given in the Corporations Act.

**"Relevant Jurisdiction"** means:

- (a) the Commonwealth of Australia or any State or Territory of Australia; or
- (b) in the event of any substitution, Solvent Reorganisation or other corporate action resulting in Qube being incorporated in or becoming resident in or carrying on business in any other jurisdiction, that other jurisdiction or any political subdivision or any authority of that jurisdiction having power to tax.

**"Relevant Person"** has the meaning given in the definition of Change of Control Event.

**"Senior Creditors"** means all creditors or claimants in respect of Qube other than:

- (a) Holders;
- (b) holders of claims in respect of Equal Ranking Obligations; and
- (c) holders of claims in respect of or ranking equally with ordinary shares in the capital of Qube.

**"Solvent Reorganisation"** means, with respect to Qube, a solvent winding-up, deregistration, dissolution, scheme of arrangement or other reorganisation of Qube solely for the purposes of a consolidation, amalgamation, merger or reconstruction, the terms of which have been approved by the holders of the ordinary shares of Qube or by a court of competent jurisdiction under which the continuing or resulting corporation effectively assumes the obligations of Qube under these Terms and the Trust Deed.

**"Special Resolution"** means a resolution approved by not less than 75% of all votes cast by Holders present and entitled to vote on the resolution.

**"Subsidiary"** has the meaning given in the Corporations Act.

**"Tax Act"** means the Income Tax Assessment Act 1936 (Cth).

**"Tax Event"** means that:

- (a) in the opinion of a recognised independent legal or tax adviser (which has been obtained by Qube and delivered to the Trustee), on or after the Issue Date, as a result of:
  - (i) any amendment to, or change in, the laws (or any rules or regulations under them) of the Relevant Jurisdiction which is enacted, promulgated, issued or becomes effective on or after the Issue Date; or
  - (ii) any amendment to, or change in, an official interpretation of any laws, rules or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination) which is enacted, promulgated, issued or becomes effective on or after the Issue Date; or

- (iii) any generally applicable official interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the previous generally accepted position which is issued or announced on or after the Issue Date,

either:

- (iv) interest paid by Qube on Notes would no longer, or within 90 calendar days of the date of that opinion will no longer, be deductible (or the entitlement to make such deduction would or will be materially reduced) by Qube for corporate income tax purposes in the Relevant Jurisdiction; or
- (v) any payment of interest, the principal amount outstanding or the Redemption Amount is, or within 90 calendar days of that date of that opinion will be, subject to an amount of withholding or deduction in respect of any Taxes or other governmental charges for which Qube must pay an additional amount; and

- (b) that risk cannot be avoided by Qube taking reasonable measures available to it.

**"Taxes"** means any present or future taxes, duties, assessments or governmental charges of whatever nature.

**"Terms"** means these terms and conditions of Notes.

**"Trust Deed"** means the Qube Subordinated Notes Trust Deed dated 29 August 2016 between Qube and the Trustee as trustee for the Holders.

**"Trustee"** means Australian Executor Trustees Limited (ABN 84 007 869 794) and includes a successor of it.

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## **Schedule 2 Meetings of Holders**

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### **1 Notice of Meeting**

- (a) At least 21 days' notice in writing of any Meeting must be given to the Trustee, the Company and the Holders by the party convening the Meeting.
- (b) If a Holder does not receive notice, the Meeting is still valid.
- (c) The party convening the Meeting must notify the Trustee, the Company and Holders (as the case requires) in writing of:
  - (i) the place, day and time of the Meeting and, where a resolution to amend this deed or the Terms of Issue is proposed, must specify the terms of the proposed amendment (but, in other cases, need not specify the precise terms of the resolutions proposed); and
  - (ii) the nature of the business to be transacted; andmust provide that Holders may attend personally or through a duly authorised representative in accordance with the terms of this deed.
- (d) If either the Company or the Trustee omits to give notice under paragraph 1(c) or if either does not receive notice, the Meeting is invalid unless the person who did not receive notice waives the notice requirement or refused delivery.

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### **2 Who may attend and address Meeting**

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

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### **3 Quorum**

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

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### **4 Chair**

- (a) Subject to the Corporations Act, a nominee of the Trustee may preside as chair at a Meeting of Holders.



- (b) If the Trustee does not appoint a nominee, or the Trustee's nominee does not appear within 15 minutes from the time appointed for the Meeting, the Holders present must elect one of their number to preside as chair.

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## 5 Voting

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

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## 6 Votes

At a Meeting:

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

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## 7 Voting by joint holders

- (a) If Notes are held jointly, the most senior Holder's vote either in person or by proxy is accepted to the exclusion of the other joint holders.
- (b) The most senior Holder is the person whose name appears first on the Register.

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## 8 Voting by corporation

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

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## 9 Voting by person of unsound mind

If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or Trustee

or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting of Holders as if the committee, Trustee or other person were the Holder.

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## 10 Objection to voter's qualification

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

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## 11 Proxies

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

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## 12 Proxy instrument

- (a) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (b) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (i) under its common seal; or
  - (ii) under the hand of an officer or attorney who has been authorised by the corporation.

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## 13 Voting authority to be deposited with Trustee

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

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

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

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## **15 Adjournments**

The chair may adjourn a Meeting with the consent of the majority of Holders present.

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## **16 Declaration by chair of voting**

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

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## **17 Demand for a poll and manner of poll**

- (a) A poll is to be conducted as directed by the chair at the Meeting or any adjournment of the Meeting.
- (b) The demand for a poll may be withdrawn by the person who demanded it.
- (c) The demand for a poll does not discontinue the Meeting except to decide the question for which the poll is demanded.
- (d) The result of the poll is regarded as the resolution of the Meeting.

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

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

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## **19 Effect of resolution**

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

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## **20 Minutes**

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

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## 21 Resolution by Postal Ballot

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

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## 22 Powers

Without derogating from the powers conferred on the Trustee by this deed, a Meeting of Holders may exercise the following powers by Special Resolution:

- (a) power to authorise the Trustee to take or to refrain from taking any action which may be taken by the Trustee under any express or implied power or authority howsoever conferred;
- (b) power to sanction the release by the Trustee or the Company from any obligation under this deed either unconditionally or upon such conditions as the Trustee may arrange with the Company;
- (c) power to sanction agreement by the Trustee to any modification or compromise of or arrangement with respect to any of the rights of all the Holders against the Company;
- (d) power to authorise the Trustee to agree to the postponement of the repayment of the principal secured in respect of any part of the Notes beyond their due dates and to the suspension or postponement of the payment of interest on any part of the Notes;
- (e) power to authorise the Trustee to sanction on behalf of all the Holders any scheme for reconstruction of the Company or for the amalgamation of the Company with any other corporation;
- (f) power to authorise the Trustee to accept on behalf of the Holders any other property or securities instead of any part of the Holder's rights and in particular any debt securities of the Company;
- (g) power to approve the appointment of a new trustee in accordance with the provisions of this deed;
- (h) power to give any release or waiver in respect of anything done or omitted by the Trustee or any breach or default by the Company; and
- (i) power to approve any amendment or alteration to the terms of this deed and the Terms of Issue as contemplated in this deed.

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## 23 Further procedures for meetings

Subject to all other provisions of this deed, the Terms of Issue and this schedule, the Trustee may without the consent of Holders prescribe such further regulations regarding the holding of meetings of the Holders and attendance and voting at such meetings

including particularly (but without prejudice to the generality of the foregoing) such regulations and requirements as the Trustee thinks reasonable:

- (a) **(Regarding entitlement to vote):** so as to satisfy itself that persons who purport to attend or vote at any meeting of Holders are entitled to do so in accordance with this schedule and the other provisions of this document; and
- (b) **(Regarding representatives):** as to the form of appointment of a proxy, attorney or other representative.

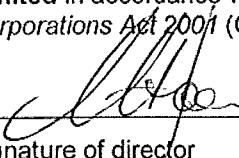
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## Execution page

Executed as a deed.

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Signed sealed and delivered by **Qube Holdings Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

  
\_\_\_\_\_  
Signature of director

**MAURICE JAMES**  
\_\_\_\_\_

Name of director (print)

  
\_\_\_\_\_  
Signature of director/secretary

**William Hara**  
\_\_\_\_\_

Name of director/secretary (print)

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Signed sealed and delivered by **Australian Executor Trustees Limited ABN 84 007 869 794**:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of attorney (print)

---

## Execution page

Executed as a deed.

---

Signed sealed and delivered by **Qube Holdings Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Signature of director

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Signature of director/secretary

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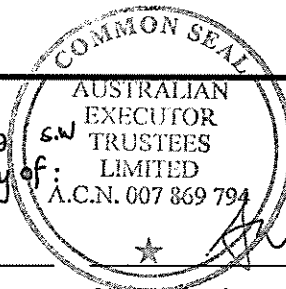
Name of director (print)

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Name of director/secretary (print)

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Signed sealed and delivered by **Australian Executor Trustees Limited ABN 84 007 869 794** *was hereunto affixed with the authority of:*



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Signature of ~~witness~~ *FIDES DIVINA* Authorised Officer

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Signature of ~~attorney~~ *Steven Woods* Authorised Officer

FIDES DIVINA

Steven Woods

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Name of ~~witness~~ (print)  
Authorised Officer

---

Name of ~~attorney~~ (print)  
Authorised Officer