

Convertible Note Trust Deed

Mosaic Brands Limited
(ACN 003 321 579)

Melbourne Securities Corporation Ltd
(ACN 160 326 545)

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Date: September 2021

Parties

Company	Name	Mosaic Brands Limited
	ACN	003 321 579
	Address	61 Dunning Avenue, Rosebery NSW 2018
	Email	Luka.Softa@mosaicbrandsltd.com.au
	Attention	Luka Softa
Trustee	Name	Melbourne Securities Corporation Ltd
	ACN	160 326 545
	AFSL	428289
	Address	Level 2, 395 Collins Street, Melbourne VIC 3000
	Email	trustee@msc.group
	Attention	Company Secretary

Background

- (A) The Company proposes to issue convertible notes in accordance with the provisions of this Deed.
- (B) The Company has agreed to enter into this Deed in order to make provision for the appointment of a trustee for Noteholders.
- (C) The Trustee has agreed to act as trustee of the trust constituted under this Deed on the terms contained in this Deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Terms defined in the Note Terms have the same meanings in this Deed. In addition, the following terms have the following meanings unless the contrary intention appears:

In this Deed:

Administrator has the same meaning as in the Corporations Act.

ASIC means the Australian Securities and Investments Commission.

ASIC Instrument means ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82.

Auditor means the auditor or firm of auditors appointed from time to time by the Company as required by the Corporations Act.

Authorisation means:

- (a) any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption; or

- (b) in relation to anything which a Government Authority may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.

CHESS means the Clearing House Electronic Subregister System, operated in accordance with the Corporations Act.

Conversion Rate means the rate set out in clause 3.4 of the Note Terms.

Date of Conversion means the date on which fully paid ordinary Shares are issued to the Noteholder in accordance with clause 3.1 of the Note Terms consequent upon the issue of a Conversion Notice.

Date of Redemption means the date on which a Note is redeemed in accordance with clause 4 of the Note Terms by payment of the Redemption Amount.

Deed or **Trust Deed** means this trust deed (including the Note Terms set out in Schedule 1) between the Company and the Trustee and includes any document or documents supplemental to the Trust Deed or executed pursuant to the Trust Deed signed by the Trustee and any schedules or appendices to the Trust Deed.

Delegate means a person appointed to act as a delegate of the Trustee for the purposes of the Trust Deed under clause 11.9.

Delisting Event will occur if:

- (a) the Shares cease to be quoted on ASX;
- (b) the Notes cease to be quoted on ASX; or
- (c) trading of the Shares or Notes on the ASX is suspended for a period of more than 20 consecutive Business Days.

Early Redemption means redemption of the Notes by the Company as set out in clause 4.2 of the Note Terms.

Engagement Letter means the letter dated 2 September 2021 between the Company and the Trustee in accordance with which the Company agrees to pay certain fees to the Trustee as remuneration for its services as trustee on the terms set out in that letter.

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

Intercreditor Deed has the meaning given to that term in the Note Terms.

Law means:

- (a) any law; or
- (b) any administrative guideline, directive, regulation, request or policy of any Government Authority whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible banks or financial institutions, and without limitation to the generality of the foregoing, Law expressly includes the requirements of Part 2L of the Corporations Act.

Liabilities means all liabilities and provisions including, without limitation, liabilities and provisions in respect of:

- (a) income and other taxes;

- (b) annual and long service leave of employees; and
- (c) dividends recommended, declared or accrued but unpaid.

Liquidation includes winding up, dissolution, deregistration, administration, amalgamation, receivership, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy.

Liquidator means the liquidator, provisional liquidator, trustee, administrator, manager, receiver, receiver and manager or other officer who is appointed to administer or implement the Liquidation.

Note Obligations means all Liabilities of the Company to Noteholders, and of the Company to the Trustee on behalf of Noteholders, under the Note Terms, including the Principal Amount Outstanding, interest on the Principal Amount Outstanding but does not include any Liabilities of the Company to the Trustee for the costs, fees and expenses of the Trustee in respect of its duties under the Trust Deed.

Noteholder Resolution has the meaning given to the term defined as “Ordinary Resolution” in the Note Terms.

Note Terms means, in respect of a Note, the terms and conditions of issue of that Note (as set out in Schedule 1).

Obligor means the Company and each person that grants a Transaction Security Interest.

Outstanding Moneys means the Principal Amount Outstanding and any interest payable on the Notes (in accordance with clause 3.1 of the Note Terms) and any other moneys payable to the Trustee or the Noteholders (including damages) under or in respect of the Trust Deed or the Notes and, in relation to a Noteholder, means that portion of those moneys which is owing to that Noteholder.

Permitted Finance Arrangement means indebtedness:

- (a) pursuant to the Senior Debt Obligations;
- (b) as expressly permitted by the Senior Debt Obligations;
- (c) any indebtedness incurred or guaranteed after the Issue Date for the purpose of replacing, refinancing or extending the maturity of or the Notes; or
- (d) any Permitted New Debt,

which must not exceed \$75 million in aggregate and must be on terms that are at market levels for indebtedness of this nature

Permitted New Debt has the meaning given to that term in the Note Terms.

Power means a power, right, authority, discretion or remedy which is conferred on a person:

- (a) under any Transaction Document; or
- (b) by law in relation to any Transaction Document

Principal Amount Outstanding means the principal amount outstanding from time to time under the Notes.

Quarter means each period of 3 calendar months (ending on 31 December, 31 March, 30 June and 30 September in each year) which ends on or before the Maturity Date and the period of less than 3 calendar months ending on the Maturity Date.

Redeemed has the meaning given to that term in the Note Terms.

Redemption Amount of a Note means the face value of the Note plus interest which has accrued but which has not become due, plus unpaid interest up to the Date of Redemption of the Note.

Registry means Computershare Investor Services Pty Limited (ABN 48 078 279 277) or any other person appointed by the Company (with such appointment notified to the Trustee) to maintain the Note register.

Related Body Corporate has the meaning given to it in the Corporations Act.

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

Senior Debt Obligations has the meaning given to that term in the Note Terms.

Special Resolution has the meaning given to it in the Note Terms.

Transaction Documents has the meaning given to that term in the Note Terms.

Transaction Security Interest has the meaning given to that term in the Note Terms.

Trust means the trust constituted by this Deed.

Trust Fund means:

- (a) the right to enforce the Company's duty to repay the Notes;
- (b) the right to enforce any other duties that the Company has under the terms of the Notes, this Deed and Chapter 2L of the Corporations Act;
- (c) the amount of A\$10 referred to in clause 4.4;
- (d) the right to enforce any Transaction Security Interest granted as security for repayment of the Outstanding Moneys and/or performance of the Note Obligations;
- (e) any other property held by the Trustee on the trust established under this Deed (including, without limitation, the proceeds of sale or enforcement of any property forming part of the Trust Fund, the benefit of any covenants, undertakings, representations, warranties, rights, powers, benefits or remedies in favour of the Trustee under the Transaction Documents); and
- (f) any other property which the Trustee receives, has vested in it or otherwise acquires to hold from time to time in respect of the Trust.

Trustee Default means, in respect of the Trustee, and subject to clause 13.3, fraud, gross negligence, wilful default or breach of section 283DA of the Corporations Act.

Trustee Company means a body corporate which would be entitled to act as a trustee for the Notes under section 283AC of the Corporations Act.

Voting Share has the meaning given to that expression in section 9 of the Corporations Act.

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) if there is inconsistency between the Note Terms, the Trust Deed and any other Transaction Document, then, to the maximum extent permitted by law, the order of priority of application is:
 - (i) the Intercreditor Deed;
 - (ii) the Note Terms (except that in relation to the rights and obligations of the Trustee, the Trust Deed will prevail);
 - (iii) this Deed; and
 - (iv) the Transaction Security Interests.
- (b) headings are for convenience only and do not affect its interpretation;
- (c) no provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision;
- (d) specifying anything after the words “include” or “for example” or similar expressions does not limit what else is included;
- (e) and, unless the context otherwise requires:
- (f) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (g) the expression person includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (h) a reference to any party includes that party’s executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (i) a reference to a body, other than a party to this Deed whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
- (j) is a reference to the body which replaces it or substantially succeed its powers or functions;
- (k) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (l) a reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- (m) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (n) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;

- (o) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (p) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (q) a reference to time is to Australian Eastern Standard Time as observed in Sydney, New South Wales;
- (r) if a period of time is specified and dates from a given day or the day of an event, it is to be calculated exclusive of that day;
- (s) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (t) a reference to the place or venue of a meeting shall be taken to include any applicable electronic, online or virtual platform;
- (u) a reference to the signing or execution of any document includes signing or execution by electronic means;
- (v) a reference to a document being in writing includes being in electronic form;
- (w) if an act prescribed under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (x) where an action is required to be undertaken on a day that is not a Business Day it shall be undertaken on the next Business Day;
- (y) a reference to a payment is to a payment by bank cheque or such other form of cleared funds the recipient otherwise allows in the relevant lawful currency specified;
- (z) a reference to \$ or dollar is to the lawful currency of the Commonwealth of Australia; and
- (aa) a reference to a party using or an obligation on a party to use reasonable endeavours or its best endeavours does not oblige that party to:
 - (i) pay money:
 - (A) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (B) in circumstances that are commercially onerous or unreasonable in the context of this Deed;
 - (ii) provide other valuable consideration to or for the benefit of any person; or
 - (iii) agree to commercially onerous or unreasonable conditions.

2. Benefit and Burden of Deed

2.1 Noteholders

- (a) Each Noteholder (and any person claiming through or under a Noteholder) is bound by, and is taken to have notice of, each Transaction Document. The Noteholders are

taken to have authorised the Trustee to enter into each Transaction Document in its capacity as trustee of the Trust.

- (b) It is a fundamental condition of receiving any of the rights or benefits under a Note that a Noteholder must perform all of the obligations and comply with all restrictions and limitations applicable to it under the Transaction Documents (including, for the avoidance of doubt, the Note Terms) in respect of the Notes.

2.2 Limit on Noteholder's rights

All of the rights against the Company in connection with the Notes are held by the Trustee for the Noteholders. Accordingly:

- (a) no Noteholder is entitled to directly enforce any rights, powers or remedies in connection with the Notes (whether under this Deed or the other Transaction Documents) directly against the Company or any other Obligor; and
- (b) the rights, powers and remedies of the Trustee under and in respect of the Transaction Documents are exercisable and enforceable by the Trustee only. No Noteholder may exercise any of them (whether in its own name or the Trustee's name).

3. Trust Deed

3.1 Trust Deed

This Deed:

- (a) is the trust deed for the Trust; and
- (b) is the trust deed in respect of the Notes required by section 283AB of the Corporations Act.

3.2 Consistency with section 283DB(1) of the Corporations Act

This Deed is to be interpreted so as not to give rise to the operation of section 283DB(1) of the Corporations Act.

3.3 Constitution and status

The Notes are debt obligations of the Company constituted by, and owing under, this Deed and issued on the terms set out in this Deed. The obligations of the Company in respect of each Note:

- (a) constitute separate and independent acknowledgements of the indebtedness of the Company;
- (b) are subject to the terms of this Deed;
- (c) are direct, secured and subordinated pursuant to the Intercreditor Deed; and
- (d) rank equally and without any preference amongst themselves as described in the terms of this Deed.

3.4 Undertaking to pay

- (a) In respect of each Note, the Company undertakes to the Trustee (on behalf of the relevant Noteholder), to pay the amounts due and payable in respect of the Notes under and in accordance with the Transaction Documents.

- (b) The Trustee directs the Company to pay such amounts under this Deed directly to the Noteholders, unless:
- (i) an Event of Default occurs;
 - (ii) the Company is directed by the Trustee to make the payments to the Trustee by the giving of notice to that effect not less than five Business Days before the scheduled date for the making of the payment; or
 - (iii) the Company advises the Trustee that it is not likely to meet its obligations under this Deed,
- in which event the payment must be made to the Trustee.
- (c) The payment of an amount due under a Note to either the Noteholder or the Trustee discharges the obligation of the Company to pay that amount under that Note to each of the Noteholders and the Trustee.
-

4. Appointment of Trustee

4.1 Appointment of Trustee

The Trustee is hereby appointed as trustee and agrees for the consideration expressed in this Deed to perform the obligations imposed on it by this Deed for the benefit of Noteholders.

4.2 Noteholders regarded as beneficial owners of Trust Fund

Subject to the rights of the Trustee, the Noteholders are the persons beneficially entitled to the Trust Fund from time to time in accordance with the terms of the Transaction Documents. They hold that beneficial entitlement as equitable tenants in common.

4.3 Constitution of Trust

The Trust is constituted on the execution of this Deed by the Company and the Trustee.

4.4 Declaration of Trust

The Trustee declares that, on execution of this Deed, it holds the sum of \$10 and thereafter will hold:

- (a) any Transaction Security Interest in favour of the Trustee and any obligations expressed to be given by an Obligor in favour of the Trustee under the Transaction Security Interests; and

- (b) all other assets forming part of the Trust Fund from time to time,

on trust for the benefit of itself and the persons who are Noteholders from time to time on the terms of this Deed.

4.5 Name of Trust

The trust established under this Deed will be known as the "Mosaic Brands Limited Trust".

4.6 Commencement and termination of Trust

The Trust commences on the date of this Deed and unless determined earlier ends on the earlier of:

- (a) the day occurring immediately before the 80th anniversary of the date of this Deed; and
- (b) the date being six (6) months after the date that each of the following is satisfied:
 - (i) the redemption in full of all Notes or the conversion of all of the Notes;
 - (ii) the payment of all Note Obligations; and
 - (iii) the payment of all costs, charges and expenses incurred by the Trustee under or in connection with the Transaction Documents.

4.7 Perpetuity period

The perpetuity period applicable to the Trust is the period of 80 years commencing on the date of this Deed.

4.8 Receipt of moneys

All money received by the Trustee in respect of amounts payable under this Deed must be applied by the Trustee in accordance with clause 6.

5. Notes

5.1 Issue of Notes

The Company may from time to time issue Notes in accordance with and subject to the terms and conditions in this Deed.

5.2 Conditions of issue

Each Note will be issued subject to the Note Terms.

5.3 Conditions and this Deed binding

The Transaction Documents including the Note Terms will be binding on the Company, the Trustee, the Noteholders and all persons claiming through or under them and Noteholders will be entitled to the benefit of, will be bound by and will be deemed to have notice of, all the provisions of the Transaction Documents and the Note Terms.

5.4 Validity of Notes

- (a) Neither the Trustee nor any Noteholder will be concerned or obliged to enquire whether any Note has been issued in contravention of this Deed or the Note Terms.
- (b) Each Note issued for valuable consideration will be deemed to have been validly issued and constituted under this Deed and entitled to the benefit of the provisions of this Deed and the Note Terms, notwithstanding that it may subsequently be determined that the issue of such Note was in breach of any provision of this Deed or the Note Terms (but without prejudice to the Trustee's rights under or pursuant to this Deed against the Company in relation to such breach).

5.5 Registration of Notes

- (a) The Company will not issue certificates in respect of the Notes unless the Company determines that certificates should be available or are required by any applicable law. The Company (or its share registry) will provide Noteholders with a statement that sets out the number of Notes issued to a Noteholder.

- (b) When Notes are issued to a Noteholder the Company will include in the Register the particulars required by clause 17.1.

5.6 Equal ranking

All Notes will rank equally.

5.7 Security

The Notes will be secured and subordinated to existing Senior Debt Obligations pursuant to the terms and conditions in the Intercreditor Deed.

5.8 Fees relating to issue of Notes

The Company may pay to any person a commission, brokerage or procuration or other fees in relation to the issue or purchase of Notes (including, without limitation, for underwriting the issue or purchase of Notes).

5.9 Purchase by Company

The Company may from time to time and in accordance with the Note Terms purchase issued Notes on market or by private treaty and may cancel or re-issue any of those Notes so purchased subject to any necessary shareholder or regulatory approvals.

6. Payment on Notes

6.1 Payment of Outstanding Moneys

Subject to clause 3.4 and the Note Terms the Company irrevocably undertakes to make all payments of the Principal Amount Outstanding and interest in respect of Notes to Noteholders directly as and when due in accordance with the Note Terms and to duly and punctually observe, fulfil, perform and comply with all the obligations imposed on it under the Transaction Documents.

6.2 Receipt and Distribution by Trustee

- (a) If the Trustee is required to pay amounts to the Noteholders as opposed to payments by the Company and if the Trustee receives any Outstanding Moneys paid to it under clause 6.1 as trustee for Noteholders, it must distribute those Outstanding Moneys to Noteholders in respect of Notes by cheque mailed to the address of each Noteholder as specified in the Register or electronically to the account as advised by the individual Noteholders to the Trustee.
- (b) Subject to clause 6.3, payment of the Outstanding Moneys to the Trustee will satisfy the Company's obligations in respect of those moneys to Noteholders in accordance with the Note Terms.

6.3 Return of Outstanding Moneys

- (a) If for any reason any amount to be distributed under clause 6.1 or 6.2 is unable to be distributed within six (6) months of the date the Company or the Trustee sought to make the distribution to the Noteholders, at the expiration of that six (6) months the relevant amount will be provided to the Trustee by the Company or retained by the Trustee as the case may be (**Retained Amounts**) so that clause 6.2 will not apply in respect of Retained Amounts.
- (b) Where the Trustee is holding Retained Amounts, it will make payment to a Noteholder entitled to the Outstanding Moneys on demand by the Noteholder at any

time before expiration of six (6) years following the date the relevant Retained Amount was originally distributed to the Noteholder under clause 6.1 or paid to the Trustee for distribution under clause 6.1 (as the case may be).

- (c) After the expiration of six (6) years following the date the relevant Retained Amount was originally paid to the Trustee for distribution under clause 6.1, any Retained Amounts held by the Trustee will be paid to the Company.

6.4 Interest accruing on Outstanding Moneys

Any interest which accrues on any Outstanding Moneys which have become Retained Amounts will accrue to the benefit of the Company and not to any Noteholder until such time as those moneys are distributed to Noteholders in accordance with clauses 6.1, 6.2 or 6.3.

7. Obligations of Company

7.1 Section 283BF – quarterly report

- (a) The Company must, as soon as possible after each issue of Notes, specify a day for the purpose of section 283BF(2) of the Corporations Act.
- (b) The directors of the Company must provide to the Trustee (and lodge a copy with the ASIC) within one month of the end of a Quarter a report of the Company which must include confirmation as to the amount of cash at bank it has in accounts that it controls and must set out in detail any matter relating to that Quarter adversely affecting the security or the interests of Noteholders and otherwise include the matters referred to in section 283BF of the Corporations Act (as it may be amended from time to time).

7.2 Section 2L.2 Company Duties

The Company must comply with all the duties of a borrower as set out in Part 2L.2 of the Corporations Act and, in particular, provide to the Trustee all information and accounts at the relevant time as specified under that Part 2L.2.

7.3 ASX reporting

The Issuer must:

- (a) comply with the applicable ASX Listing Rules and the ASX Settlement Operating Rules; and
- (b) to the extent not already provided under this clause 7, use reasonable efforts to make available to the Trustee, within seven days of issue, copies of all reports and releases made by the Issuer to the ASX.

7.4 Notice of default

The Company must notify the Trustee in writing of the occurrence of any Event of Default in accordance with clause 8.2 of the Note Terms, in each case stating what action it is taking to cure the default and procure its directors to notify the Trustee immediately when they are aware that any condition of this Deed or the Note Terms cannot be fulfilled or has been breached.

7.5 Details of charge

The Company undertakes to the Trustee that it will not create or allow to exist a charge on the whole or any part of its present or future property, other than as permitted in the Note Terms.

7.6 Dividends

The Company undertakes to the Trustee that, in accordance with clause 7(c) of the Note Terms, unless permitted under the Senior Debt Obligations, it will not declare or pay any dividends to Shareholders without approval via a Noteholder Resolution.

7.7 Capital reduction

The Company undertakes to the Trustee that, in accordance with clause 7(d) of the Note Terms, unless permitted under the Senior Debt Obligations, other than in respect of the Notes, it will not redeem, purchase, cancel, reduce, return capital on or otherwise acquire any Share or other securities issued by the Company for repayment or return of capital upon appointment of a liquidator or provisional liquidator of that person (and where the appointment is made by a court, by a court of competent jurisdiction in Australia) without approval via a Noteholder Resolution.

7.8 Information at reasonable request of Trustee

- (a) The Company agrees to provide the Trustee such information as the Trustee reasonably requests about the Company and any of its Subsidiaries to enable the Trustee to carry out its duties under this Deed and the Corporations Act, including, subject to confidentiality and commercial or price sensitive information, making available for inspection its financial records required to carry out its duties under this Deed and the Corporations Act and providing any reasonable explanation, information or other assistance in relation to those records.
- (b) Where the information requested in clause 7.8(a) relates to financial information, the Trustee may request the Company to:
 - (i) provide an Auditor's certificate stating that the Auditor has reviewed that financial information and acknowledges that based on the Auditor's reasonable enquiries nothing has come to the Auditor's attention which causes the Auditor to believe that the information provided to the Trustee may be incorrect or incomplete; or
 - (ii) arrange for the Auditor to meet with the Trustee and the Company must promptly arrange such meeting (or virtually, if not practicable to meet in person).

7.9 Compliance with Deed and Law

- (a) The Company undertakes to the Trustee to comply with this Deed and to comply with the Law.
- (b) The Trustee declares and acknowledges that the benefit of the undertaking of the Company set out in clause 7.9(a) is held for the Trustee and separately on trust by the Trustee for the benefit of the Noteholders.

7.10 Representations and Warranties

The Company represents and warrants to the Trustee that:

- (a) **status:** it is duly incorporated in its place of incorporation and is validly existing under the laws of that jurisdiction with power to own its assets and carry on its business;
- (b) **corporate authority:** it has taken all necessary action to authorise the execution, delivery and performance of the Transaction Documents;
- (c) **documents binding:** the Transaction Documents constitute legal, valid and binding obligations enforceable against it in accordance with their terms;
- (d) **transactions permitted:** the execution, delivery and performance of the Transaction Documents did not and will not:
 - (i) contravene its constitution, any law, authorisation, agreement or obligation binding upon it or applicable to its assets or revenues;
 - (ii) cause any limitation on its powers or the powers of its directors to be exceeded;
 - (iii) result in the creation of any security interest over any of its assets or revenues;
 - (iv) result in the acceleration or cancellation of any agreement or obligation in respect of its indebtedness; or
 - (v) involve any act, matter or thing which constitutes (or which would, with the giving of notice, the passage of time or the fulfilment of any other condition, constitute) an event of default or prepayment, cancellation or similar event under any agreement or obligation relating to its indebtedness;
- (e) **Authorisations:** all authorisations necessary or advisable from any person for or in connection with the execution, delivery and performance by it and the validity and enforceability against it of the Transaction Documents have been obtained and are in full force and effect and it is not necessary in order to ensure the validity, enforceability or admissibility in evidence of the Transaction Documents in any relevant jurisdiction that the Transaction Documents or any other document be filed or registered with any person or stamped;
- (f) **accuracy of information:** all information given to the Trustee by or with its authority in connection with the Transaction Documents, at the time it was given, was true and correct in all material respects and if the information was given prior to the date of this Deed, at the date of this Deed, or, if the information was given later, when provided, in the light of the circumstances subsisting at the time and all expressions of expectation, intention belief and opinion contained in that information were given honestly and on reasonable grounds after due and careful enquiry;
- (g) **no litigation:** no proceeding or other procedure for the resolution of disputes is currently taking place, pending or, to the best of the Company's knowledge, threatened against the Company or the business, assets or revenues of the Company (other than as publicly disclosed by the Company prior to the date of this Deed);
- (h) **other default:** it is not in default in any material respect under any law, authorisation, agreement or obligation binding upon it or applicable to its business, assets or revenues;
- (i) **Accounts:** the most recent financial statements of the Company for the time being were prepared in accordance with applicable accounting standards and show a true and fair view of the financial position of the Company as at the end of, and the results of its operations for, the financial period to which they relate and the Company has no

indebtedness or other liabilities which have not been disclosed in those financial statements;

- (j) **no adverse change:** except as disclosed in writing by the Company to the Trustee prior to the date of this Deed, since the date of the financial statements referred to in paragraph (i) of this clause, no material change in the financial or business affairs of any member of the Company;
- (k) **not a trustee:** it is not the trustee of any trust;
- (l) **no immunity:** neither the Company nor any of its assets or revenues have any immunity from jurisdiction, suit, execution, attachment or other legal process in any jurisdiction in which its assets are located or business is carried;
- (m) **completeness:** there is no fact known to it which has not been disclosed in writing by it to the Trustee which materially and adversely affects it;
- (n) **ranking:** its obligations in respect of the Notes are subordinated to the existing Senior Debt Obligations pursuant to the terms and conditions in the Intercreditor Deed and rank in priority to all its other unsecured and unsubordinated obligations other than any Permitted Finance Arrangement and those mandatorily preferred by law;
- (o) **Event of Default:** no Event of Default has occurred which has not been remedied or waived in writing to the satisfaction of the Trustee; and
- (p) **solvency:** it is solvent (as that term is defined in the Corporations Act).

7.11 Repetition of Representations and Warranties

Each representation and warranty in this Deed will be repeated on each day whilst the Trustee acts as trustee pursuant to this Deed with reference to the facts and circumstances then subsisting, as if made on each such day.

7.12 Reliance

The Company acknowledges that the Trustee has each entered into this deed in reliance on the representations and warranties in, or given under, this deed, by the Company including under this clause 7.

8. Covenants by Company

The Company hereby covenants with the Trustee that it will comply with the following covenants.

8.1 Conduct of business

The Company will carry on and conduct the business of the Company in a proper and efficient manner and will procure that each of its subsidiaries will carry on and conduct their businesses in a proper and efficient manner.

8.2 Meeting convened by Noteholders

The Company must convene a meeting of Noteholders if called by Noteholders in accordance with clause 20.1.

8.3 Transaction Documents

The Company will comply with, perform and observe all its obligations under the Transaction Documents.

9. Events of Default

9.1 Events

Each of the events of default detailed in Schedule 1, clause 8.1 of the Note Terms is an Event of Default.

9.2 Notification

If an Event of Default occurs, the Company must notify the Trustee in accordance with clause 8.2 of the Note Terms.

9.3 Action upon an Event of Default

- (a) Nothing in this clause 9.3 prevents the Trustee from taking any action permitted by clause 9.5 or 9.6 or bringing proceedings or taking any other action from time to time to recover moneys owing to it.
- (b) The Trustee will be entitled where an Event of Default has occurred:
 - (i) to call a meeting of Noteholders where the Trustee may:
 - (A) appoint a person to be the chairperson of the meeting;
 - (B) inform Noteholders of the Event of Default;
 - (C) submit proposals for protection of Noteholder's interests; and
 - (D) ask for directions from Noteholders in relation to the Event of Default; and
 - (ii) subject to the terms of the Intercreditor Deed:
 - (A) to commence enforcement proceedings action against the Company or any other Obligor in relation to the Event of Default in accordance with the Transaction Documents, but the proceeds of any such enforcement action must be dealt with in accordance with either clause 9.6 or as set out in the relevant Transaction Security Interest as applicable;
 - (B) to declare by notice (with a copy to the Registry) that all Note are to be Redeemed at their Note Principal Amount (together with any accrued Interest) immediately (but not earlier than 10 Business Days after the date the Trustee gives notice under this clause 9.3(b)(ii)(B));
 - (C) to take other action relating to enforcement of payment of Outstanding Moneys to Noteholders;
 - (D) to prove in any Liquidation of the Company (irrespective of when that Liquidation is commenced) subject to this Deed, and in particular to the provisions set out in clause 9.6; and
 - (E) to take enforcement action in accordance with the Transaction Documents.

- (c) Notwithstanding any other provision in this Deed, the Company must also notify the Noteholders that an Event of Default has occurred promptly following its occurrence.
- (d) The Trustee will not be bound to take the action referred to in section 9.3(b)(ii) to enforce the obligations of the Company in respect of the Notes or any other proceedings or action pursuant to or in connection with the Transaction Documents unless:
 - (i) it has been so directed by a Special Resolution of the Noteholders of the relevant Notes;
 - (ii) it is indemnified, to its satisfaction, against all costs, charges, liabilities and expenses which may be incurred by it (including legal costs on a solicitor and own client basis) in connection with that action;
 - (iii) it is first placed in funds sufficient to cover the costs that it may incur as a result of doing so; and
 - (iv) it is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.
- (e) If the Trustee forms the view that such action is or could be inconsistent with these Note Terms, the Transaction Documents or the Corporations Act or any applicable law, it must take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction given by Special Resolution, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take by Special Resolution.
- (f) Any proceeds received by the Trustee as a result of an enforcement action being taken under a Transaction Security Interest pursuant to clause 9.3(b)(ii)(E) will be applied by the Trustee as set out in that Transaction Security Interest.

9.4 No enforcement

- (a) Unless the Trustee, having become obliged to take action to enforce the rights of the Noteholders under the Transaction Documents and the Note Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing, then the rights of each Noteholder to enforce the obligations of the Company under the Notes are limited to the exercise of its rights to enforce and seek due administration by the Trustee of the Trust Deed.
- (b) Whether or not an Event of Default has occurred, no Noteholders may demand, plead or seek to enforce, directly or indirectly, including by way of set off or counterclaim, or in any other manner, the payment of any obligations of the Company in respect of the Notes other than as provided for in this clause 9.

9.5 Permitted actions by Trustee

Nothing in this Deed will exclude, limit, defer or otherwise prejudicially affect:

- (a) the right of the Trustee to seek directions from a court, pursuant to section 283HA or section 283HB of the Corporations Act or to take any other proceedings seeking the directions or guidance of any court, tribunal or other authority as to the performance of its functions and duties pursuant to this Deed;
- (b) any proceedings taken by the Trustee and/or any Noteholder at any time seeking a judgment or order declaratory of the rights or obligations of any Noteholder or any of the parties to this Deed;

- (c) the right to take proceedings in respect of any breach or threatened breach of, or to compel or enforce performance of, any of the covenants, undertakings and obligations of the Company hereunder other than in relation to the payment of Note Obligations prior to the Company entering Liquidation;
- (d) the right to take proceedings under the Constitution; or
- (e) the right to take proceedings for the Liquidation of the Company for failure to redeem a Note, in any circumstances where the Note Terms or this Deed specifically give that power to the Trustee.

9.6 Liquidation

Upon the Company entering Liquidation:

- (a) subject to the provisions of this clause 9.6, each Note will be due to be redeemed for an amount equal to the Redemption Amount of the Note calculated at the date of the Company entering Liquidation;
- (b) no Noteholder nor the Trustee will be entitled to receive payment from the Liquidator or the Company (including by way of set off or counterclaim) of any Outstanding Moneys until any Permitted Finance Arrangement has been discharged in full. If any such payment or benefit by way of set off is received by a Noteholder or constitutes a voidable preference, the amount or benefit received will be held upon trust by the Noteholder for the Trustee and will be paid by the Noteholder to the Trustee upon trust for the purpose of being applied as provided in clause 9.6(d);
- (c) any proof of debt or other claim (including by way of set off) made by a Noteholder or the Trustee in respect of a Note Obligation will be made subject to the Noteholder or the Trustee acknowledging the priority for payment of a Permitted Finance Arrangement and will be limited to the Redemption Amount;
- (d) any amounts received by the Trustee from the Company under clause 9.6(b) will be received by it on trust to be applied:
 - (i) firstly, in or towards payment or satisfaction of the costs, charges, expenses and Liabilities incurred by it in the execution of the trusts of this Deed (including any unpaid remuneration);
 - (ii) secondly, in or towards payment of the claims of a holder of any Permitted Finance Arrangement to the extent that those claims have been admitted to proof in the Liquidation (and have not been satisfied out of the other resources of the Company) but excluding interest accruing on those claims after the commencement of the Liquidation;
 - (iii) thirdly, in or towards payment pari passu and rateably the Redemption Amount of all Notes remaining unpaid and any other obligations of the Company which rank pari passu with the Note Obligations; and
 - (iv) fourthly, the balance, if any in payment to the Liquidator.
- (e) The trust mentioned in clause 9.6(d) may be performed by the Trustee or any Noteholder paying over to the Liquidator for the time being the relevant amounts received by the Trustee or the Noteholder on terms that the Liquidator is to distribute those amounts in accordance with the ranking of priority or payment set out in this Deed. The receipt of the Liquidator will be a good discharge to the Trustee or any Noteholder for the performance of that trust.

9.7 Judgment to be entered in the name of Trustee

Any judgment or amount obtained by or on behalf of Noteholders in respect of the Outstanding Moneys as a result of the proceedings referred to in clause 9.6 must be entered or held in the name of the Trustee and will be held by or on behalf of the Trustee under and for application in accordance with the provisions of this Deed.

9.8 Enforcement rights of Noteholders correspond with those of Trustee

No Noteholder will take action or institute any proceedings against the Company for the enforcement of any provision of this Deed (including in particular recovery of Outstanding Moneys and including without limitation applying for Liquidation or lodging a proof or claim or seeking damages) unless the Trustee would in similar circumstances be entitled to take such action or institute such proceedings under this Deed.

10. Remuneration of Trustee

10.1 Fee

The Company will pay to the Trustee by way of remuneration for its services as trustee the following fees:

- (a) a cash payment of \$20,000 (excluding GST) as an initial trustee engagement fee (**Initial Trustee Engagement Fee**), to be paid in the following allotments:
 - (i) \$10,000 (excluding GST) of the Initial Trustee Engagement Fee is to be paid up front upon execution of the Trustee's Engagement Letter; and
 - (ii) \$10,000 (excluding GST) of the Initial Trustee Engagement Fee is to be paid upon the execution of this Trust Deed by all parties; and
- (b) an ongoing trustee fee of \$80,000 (excluding GST) per annum, payable quarterly in arrears plus scaled fees to the value of the total number of Notes on issue subject to the following thresholds:
 - (i) where the total value of Notes on issue is less than \$25,000,000, the Trustee is entitled to the base \$80,000 (excluding GST) (**Base**);
 - (ii) where the total value of Notes on issue is between \$25,000,000 and \$150,000,000, the Trustee is entitled to the Base plus a cash payment equivalent to 0.05% of the value of Notes on issue between \$25,000,000 and \$150,000,000 (**Tier 1 Fee**); and
 - (iii) where the total value of Notes on issue is greater than \$150,000,000, the Trustee is entitled to the Base plus the Tier 1 Fee plus a cash payment equivalent to 0.03% of the value of Notes on issue greater than \$150,000,000,

(together, the **Ongoing Trustee Fee**),

The Ongoing Trustee Fee is payable quarterly in arrears and is calculated in reference to the aggregate calendar month-end Notes on issue, with the first quarter commencing from the issue of the first Notes.

The Ongoing Trustee Fee's will be increased annually in line with CPI as notified by the Trustee to the Company in writing, and may be reviewed by the Trustee, acting reasonably, having regard to all costs.

10.2 Expenses

Without limiting the generality of the other provisions of this Deed the Company will indemnify the Trustee on demand against all costs charges liabilities and expenses which are properly incurred by the Trustee, or its Delegate properly appointed under clause 11.9 (other than costs, charges, liabilities and expenses which are of an overhead or administrative nature) including, without limitation, legal costs and any stamp or other duty;

- (a) in or about the preparation, execution and amendment of the Transaction Documents;
- (b) in or in connection with the carrying out by the Trustee or a Delegate of any right, power or privilege conferred by the Transaction Documents or by law conferred on the Trustee or upon any Noteholder, (including without limitation in respect of any waiver or consent sought by the Company);
- (c) in or in connection with the transfer of Notes;
- (d) in or in connection with any breach or default in the observance or performance by the Company of the covenants, obligations and conditions of the Transaction Documents;
- (e) in or in connection with the convening, holding and carrying out of any directions or resolutions of any meeting of Noteholders;
- (f) in or in connection with any actual or contemplated legal proceedings (including without limitation any application for directions) brought by or against the Trustee, or in which the Trustee is otherwise involved or any advice sought by the Trustee in relation to any such legal proceedings from any legal, accounting or other professional advisers;
- (g) in connection with any licensing requirements; or
- (h) in or in connection with any enquiry or investigation from or by a government or judicial body.

10.3 Additional and Exceptional Duties

If the Trustee is required at any time to:

- (a) undertake duties which relate to the enforcement of the terms of a Transaction Document by the Trustee upon the occurrence of a default by any other party under the terms of that Transaction Document; or
- (b) undertake duties which are of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee,

then the Trustee is entitled to charge an additional fee in respect of such duties calculated at its usual hourly rate and the Company must pay any such properly incurred fees so demanded.

10.4 Costs of Enforcement

If the Company defaults under the terms of this Deed and the Trustee is required to take any enforcement action on behalf of Noteholders, the costs associated with the taking of any such enforcement action are to be borne by the Company. If an Administrator, Liquidator or Receiver is appointed to the Company, the Trustee is entitled to receive from them sums on account of its costs of enforcement.

10.5 Priority of Trustee entitlements

All remuneration and payments referred to in this clause 10 will be paid in priority to any claim by any Noteholder and will continue to be payable until the trusts of this Deed are finally wound up and whether or not the trusts of this Deed are in the course of administration by or under the order of any court and the Trustee may retain and pay to itself in priority to any claim by any Noteholder all such remuneration and payments out of any moneys for the time being in its hands on the trusts of this Deed.

11. Trustee's Powers and Duties

11.1 Powers

- (a) Subject to this Deed, the Trustee has all the powers that it is legally possible for a natural person or corporation to have in connection with the exercise of its powers under this Deed.
- (b) Subject to clauses 11.4 and 11.13, the Trustee:
 - (i) is entitled to exercise all Powers under the Transaction Security Interests (including those Powers conferred on trustees generally by statute and those conferred on trustees generally by law or equity in respect of the Transaction Security Interests) as if the Trustee were the sole beneficial owner of the Transaction Security Interests; and
 - (ii) may exercise its rights and comply with its obligations under the Transaction Documents in any manner it thinks fit.

11.2 Extent of obligations

The Trustee has no obligations except those expressly set out in the Transaction Documents to which it is a party and those arising under the Corporations Act (including chapter 2L of the Corporations Act). The obligations of the Trustee to act, or refrain from acting, are at all times subject to the Corporations Act.

11.3 Excluded roles and duties

The appointment as trustee does not mean that the Trustee:

- (a) is a trustee for the benefit of;
- (b) is a partner of; or
- (c) has a fiduciary duty to, or other fiduciary relationship with,

any Noteholder, the Company or any other person, except as provided in the Transaction Documents.

11.4 Role of the Trustee

Other than as required by the Corporations Act or as expressly provided in the Transaction Documents to which it is a party, the Trustee:

- (a) is not required to take any action or exercise any right, power or discretion in connection with any Transaction Document or the Company or any other related matter, fact or circumstance;

- (b) is not in any way involved in the day to day running, management or decision making process of the Company; and
- (c) has no duty, obligation or liability to the Noteholders or the Company.

11.5 Binding nature of relationship

Each Noteholder is bound by anything properly done or not done by the Trustee in accordance with the Transaction Documents, whether or not on instructions, and whether or not the Noteholder gave an instruction or approved of the thing done or not done.

11.6 Determination by Trustee

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

11.7 Waiver and application to Court

The Trustee may whenever it thinks fit and so long as it is not detrimental to the interests of the Noteholders:

- (a) subject to clause 16 (*Power of Amendment*), waive on any terms or conditions any breach by the Company of any of the covenants or obligations binding upon the Company under this Deed or the Note Terms; and
- (b) apply to any court for directions under section 283HA or section 283HB of the Corporations Act or in relation to any question of law or fact and assent to and approve of or oppose any application to any court made by or at the instance of any Noteholder.

11.8 Trustee may act on advice

The Trustee may in relation to this Deed act or decline to act on the advice or opinion of or any information obtained from any barrister, solicitor, accountant, valuer, surveyor, broker, auctioneer or other expert and the Trustee will not be responsible or liable for any loss incurred by its acting or declining to act in good faith on any such advice, opinion or information.

11.9 Appointment of Delegates

The Trustee may appoint in writing from time to time a Delegate to undertake, perform or discharge any of the duties, powers, discretions or other functions of the Trustee under this Deed. Where more than one corporation is appointed as the delegate of the Trustee to undertake, perform or discharge the same duty, power, discretion or other function of the Trustee under this Deed, the corporations so appointed will act jointly and severally.

11.10 Dealing with Delegates

The Trustee may by the terms of any appointment of a Delegate under clause 11.9 include provisions for the protection and convenience of persons dealing with that Delegate as the Trustee thinks fit. The Delegate may be a Related Body Corporate of the Trustee. A Delegate who is not a Related Body Corporate of the Trustee may be appointed only with the prior written consent of the Company. Notwithstanding those provisions, the Trustee will be liable, for any act or omission of any Delegate who is a Related Body Corporate of the Trustee but not in any other case.

11.11 Meetings convened by Trustee

Subject to the Note Terms, the Trustee may at any time convene a meeting of the Noteholders for any purpose, or otherwise seek from the Noteholders a direction or instruction (in the form of any Noteholder Resolution or Special Resolution (as applicable)) or in any other form or type of resolution provided for under the Transaction Documents or otherwise in relation to any matter it thinks appropriate.

11.12 Trustee may take action

Subject to the provisions of this Deed, the Trustee may at any time on behalf of Noteholders take any action or proceeding against the Company in the event of a breach by the Company of this Deed, and the Note Terms in relation to a Noteholder's Notes.

11.13 Trustee's duties

- (a) Notification to ASIC for non-compliance with ss 283BE, 283BF, 318

The Trustee must notify ASIC as soon as practicable if it becomes aware that the Company has not complied with section 283BE, 283BF or subsection 318(1) or (4).

- (b) Notification to ASIC if cannot be trustee

The Trustee must notify ASIC and the Company as soon as practicable if the Trustee discovers that it cannot be a trustee under section 283AC of the Corporations Act.

- (c) Duty to apply to the Court

The Trustee may apply to the Court for an order under section 283HB of the Corporations Act.

- (d) Duty to comply with directions

- (i) The Trustee must comply with any directions given to it at a meeting called under sections 283EA, 283EB or 283EC of the Corporations Act unless:

- (A) the Trustee is of the opinion that the direction is inconsistent with the terms of the Notes, the provisions of this Deed or the Corporations Act or is otherwise objectionable; and
- (B) has either obtained, or is in the process of obtaining, an order from the Court under section 283HA of the Corporations Act setting aside or varying the direction.

- (ii) The Trustee is not liable for anything done or omitted to be done in accordance with a direction given by the Noteholders at any meeting called under sections 283EA, 283EB or 283EC of the Corporations Act.

11.14 No notice of execution

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

11.15 No notice of default

The Trustee is not obliged to notify the Noteholders:

- (a) of the occurrence of any Event of Default; or

- (b) of the occurrence or existence of any contravention or non-observance of any provision of this Deed.

11.16 No representation

Each Noteholder is taken to acknowledge that the Trustee has not made any representation or given any warranty upon which the Noteholder has relied, except to the extent expressly set out in this deed. Without limitation, each Noteholder is taken to acknowledge that its decision to acquire any Note and the terms on which it made the acquisition was made without reliance on any statement, opinion, forecast or other representation (including a representation by omission) by the Trustee.

11.17 No negotiations

Each Noteholder acknowledges that the Trustee has not negotiated and is not under any obligation to negotiate the Note Terms, this deed or any other Transaction Document on behalf of or in the best interests of any Noteholder.

11.18 Permitted Reliance

- (a) The Trustee is entitled to accept a certificate or report signed by any 2 directors of the Company on behalf of the Board of directors or a resolution of the Board of directors of the Company to the effect that any particular dealing or transaction or step or thing is in the opinion of the directors of the Company commercially desirable and not detrimental to the Noteholders as sufficient evidence that it is so and the Trustee is in no way bound to call for further evidence or to enquire as to the accuracy thereof or be responsible for any loss that may be occasioned by its relying thereupon.
- (b) The Trustee is entitled to accept as conclusive and act upon any information, report, balance sheet, account certificate, and statement supplied by the Company or any duly authorised officer.
- (c) The Trustee is entitled to accept and act upon the statements contained in any document, certificate, report, balance sheet, or account given by the Company or any duly authorised officer pursuant to this Deed as conclusive evidence of the facts therein stated.
- (d) In relation to any Transaction Document, and any exercise of its rights or powers thereunder, the Trustee may rely:
 - (i) on any communication or document it has had no reasonable grounds to believe is not genuine and correct and to have been signed or sent by the appropriate person; and
 - (ii) as to legal, accounting, taxation or other professional matters, on opinions and statements received by it from any legal, accounting, taxation or professional advisers engaged or appointed by it, provided that it has acted in good faith in engaging or appointing such adviser.

12. Discretion of Trustee

12.1 General discretion

- (a) Subject to paragraph (b), the Trustee has, as regards all the powers and authorities and discretions vested in it by this Deed, an absolute and uncontrolled discretion as to the exercise of that discretion in all respects and, in the absence of its fraud, gross negligence or wilful default (or the fraud, gross negligence or wilful default of any

attorney, employee, agent or person (including, subject to clause 11.10, a Delegate) appointed by it under this Deed), the Trustee will not be in any way responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of that discretion.

- (b) Subject to the Note Terms and section 283DA(h) of the Corporations Act, where the Trustee has a discretion to act under the Transaction Documents (including by way of an exercise of a Power or granting a waiver) it is not required to exercise that discretion unless:
 - (i) it has first sought instructions from the Noteholders by way of:
 - (A) a Special Resolution where this Deed requires a Special Resolution; or
 - (B) in all other cases, a Noteholder Resolution; and
 - (ii) is indemnified to its satisfaction in accordance with clause 14.

12.2 Administrator appointed to Obligor

If:

- (a) the Trustee is notified by the Company, a Noteholder or any other person that under the Corporations Act or the Companies Act 1993 (NZ) that an Administrator has been appointed (other than by the Trustee) to an Obligor; and
- (b) the Trustee is entitled under section 441A of the Corporations Act or 239ABL of the Companies Act 1993 (NZ) (as applicable) to enforce a Transaction Security Interest over that Obligor's property within the decision period provided for under that section,

then, subject to the Intercreditor Deed:

- (c) the Trustee shall promptly notify the Noteholders and seek instructions as to whether or not it should enforce that Transaction Security Interest within that decision period; and
- (d) unless it receives instructions from sufficient Noteholders not to enforce by a time which it considers to be the latest time by which instructions should be received in order for it to be able to arrange the enforcement of the Transaction Security Interest within that period, then the Trustee may enforce that Transaction Security Interest but need not do so (and is not liable to the Noteholders if it does not do so).

13. Trustee's Liability

13.1 Limitation of liability

- (a) Subject to paragraph (c) and clause 13.2, a liability or obligation arising under or in connection with this Deed or another Transaction Document is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the Trust Fund out of which the Trustee is actually indemnified for the liability.
- (b) No person may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to the Trust Fund), a liquidator, an administrator or any other similar person to the Trustee or prove in any administration or liquidation of or affecting the Trustee (except in relation to the Trust Fund).

- (c) If any person does not receive the full amount of any money owing to it arising from the non-performance by the Company of any of its obligations, or non-payment by the Company of any of its liabilities, under or in respect of any Transaction Document, by enforcing the rights referred to in paragraph (b), that person may not (except in the case of a Trustee Default) seek to recover the shortfall by:
 - (i) bringing proceedings against the Trustee in its personal capacity; or
 - (ii) applying to have the Trustee wound up, put into administration or applying to have a receiver or similar person appointed to the Trustee or proving in the administration or winding up of the Trustee.
- (d) The Noteholders and the parties other than the Trustee waive their rights and release the Trustee from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - (A) breach by the Trustee of any of its obligations; or
 - (B) non-performance by the Trustee of its obligations; and
 - (ii) which cannot be paid or satisfied out of the Trust Fund of which the Trustee is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (e) No attorney, agent or delegate appointed in accordance with this Deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered a breach or non-performance by the Trustee of any of its obligations under this Deed or a breach of section 283DA of the Corporations Act for the purposes of this clause 13.1.
- (f) This limitation of liability clause applies to the maximum extent permitted by section 283DB of the Corporations Act despite any other provision of this Deed or of any other Transaction Document, any provisions of equity or law to the contrary (other than clause 14) and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, document or transaction related to this Deed or any other Transaction Document.
- (g) This clause 13 applies despite any other provision in this Deed or any other Transaction Document and extends to all liabilities and obligations of the Trustee in any way connected with any representations, warranty, conduct, omission, agreement or transaction related to this Deed or any other Transaction Document.
- (h) The Trustee is not obliged to do or refrain from doing anything under this Deed or any other Transaction Document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in this clause 13.1.

13.2 Trustee Default

The provisions of clause 13.1 do not apply to any liability of the Trustee to the extent that it is not satisfied because, under the Transaction Documents or by operation of Law there is a reduction in the extent of the Trustee's indemnification out of the Trust Fund, as a result of a Trustee Default.

13.3 Failure by the Company

No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under the Transaction Documents) will be considered a

Trustee Default for the purposes of the Transaction Documents to the extent to which the act or omission was caused or contributed to by any failure, act or omission by the Company.

13.4 Evidence of claims

The Trustee will be entitled and is authorised by the Company to call for (and will be entitled to accept as conclusive evidence thereof) a certificate from any receiver, administrator or liquidator 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 assets of the Company; and
- (b) the persons entitled to those assets and their respective entitlements.

13.5 Certificate

Save in the case of manifest or proven error, any certificate given by any receiver, administrator or liquidator of the Company will be conclusive and binding on the Trustee and all Noteholders.

13.6 No monitoring obligation

Notwithstanding any other provisions of the Transaction Documents, but subject to the Trustee's obligations under the Corporations Act, the Company acknowledges that the Trustee has no obligation to monitor compliance by the Company with its covenants and obligations under the Transaction Documents or any obligation or duty to enquire as to any other activities or status of the Company whatsoever.

13.7 Noteholder capacity

The Trustee's duties and obligations to Noteholders are owed to Noteholders only in their capacity as Noteholders.

13.8 Knowledge of the Trustee

The Trustee will only be considered to have knowledge or awareness of a thing, or grounds or reason to believe anything, by virtue of the officers of the Trustee having the day to day responsibility for the administration of the Trust, having actual knowledge, actual notice or actual awareness of that thing, or actual grounds or reason to believe that thing (and similar references will be interpreted in this way). In addition, notice, knowledge or awareness of a default or breach of this Deed means actual knowledge, notice or awareness of the events or circumstances constituting the default or breach.

13.9 Acting on directions

To the extent permitted by Law, the Trustee is not liable to a Noteholder or any other person for acting in accordance with any Noteholder Resolution or Special Resolution or any other direction given by any Noteholder or Noteholders in accordance with this Deed or the terms with which the Trustee is required to comply.

14. Trustee Indemnity

14.1 Corporations Act

The Trustee's right of indemnity and any limitation on the Trustee's liability under the Transaction Documents is subject to the Corporations Act.

14.2 Indemnity

- (a) The Trustee, its officers, directors, employees and attorneys (together included in the defined term "Trustee" for the purposes of this clause) are entitled to be indemnified by the Company, without limitation, out of the property of the Trust Fund in respect of all costs, liabilities, demands or claims suffered or properly incurred by the Trustee in the execution of the Trust or the exercise or purported exercise of any of the powers, authorities or discretions vested in the Trustee under this Deed and any other Transaction Document or otherwise in connection with the Trust and the Transaction Documents, but this indemnity does not extend to:
 - (i) any such costs, liabilities, demands or claims to the extent arising out of a Trustee Default; or
 - (ii) any taxes imposed on the Trustee's remuneration for its services as Trustee.
- (b) The Trustee may retain and pay out of any moneys in its hand (or any other property of the Trust Fund) in priority to any claim by a Noteholder, all sums necessary to effect and satisfy an amount due and payable to the Trustee under this clause or any other amount due and payable to the Trustee by the Company under this Deed or any other Transaction Document.

14.3 Indemnity additional

Any indemnity to which the Trustee is entitled under this Deed is in addition to, and without prejudice to, any indemnity allowed by Law or equity to the Trustee.

14.4 No obligation to act

The Trustee is not obliged to carry out any act or refrain from doing any act (including incurring any liability) under any Transaction Document until such time as it is placed in funds or is otherwise indemnified to its satisfaction against any expense or liability which it may incur as a result of doing so.

14.5 Survival

The provisions of this clause shall survive the termination of this Deed and any other Transaction Document and where the Trustee ceases for any reason to be trustee of the Trust.

15. Retirement and removal of Trustee and appointment of new Trustee

15.1 Retirement

The Trustee may retire at any time (with or without giving any reason for its retirement) after the expiration of not less than sixty (60) days' notice in writing to the Company of its intention so to do or such shorter period as is agreed to by the Company. The retirement will not take effect until a new trustee has been appointed in accordance with the provisions of this clause 15 and has taken office.

15.2 Appointment of new Trustee

Subject to clause 15.3 the power of appointing a new trustee of this Deed is vested in the Company but a trustee of this Deed must not be appointed unless:

- (a) the new trustee is a Trustee Company; and

- (b) it has undertaken to the Company or any other party in whose favour the undertaking is to be made or acknowledgment is to be given to comply with any undertakings or confirm any acknowledgments previously given by a Trustee under this Deed.

15.3 Appointment by Trustee

If when the period of notice referred to in clause 15.1 expires a new trustee has not been appointed, the Trustee may at any time thereafter and so long as an appointment has not been made by the Company under clause 15.2 appoint by deed under its seal a Trustee Company willing to act as new trustee of this Deed and that appointment will be effective without the need for approval of the Noteholders.

15.4 Removal

The Company may, subject to the provisions of this clause 15 and the Corporations Act, and by at least sixty (60) days' prior written notice to the Trustee in accordance with clause 23, remove the Trustee from office if:

- (a) the Company reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred, which include:
 - (i) the Trustee ceasing to exist; or
 - (ii) the Trustee had not been validly appointed; or
 - (iii) the Trustee cannot be a trustee as required under Section 283AC of the Corporations Act; or
 - (iv) the Trustee has failed or refused to act as the trustee;
- (b) the Trustee has:
 - (i) not paid any moneys required to be paid by the Trustee in relation to the Trust Deed within 10 Business Days of receipt of all relevant information (including bank account details, If applicable) necessary for the Trustee to effect payments; or
 - (ii) not observed or performed any of its material obligations under this Deed or has otherwise acted fraudulently or with gross negligence or is in wilful default (and, if such is capable of rectification, it is not rectified within 10 Business Days of notice to the Trustee of its occurrence);
- (c) the Trustee ceases to be a Trustee Company;
- (d) the Trustee ceases to hold any licence, consent, authorisation or similar thing the Trustee is required to hold to carry out its obligations under this Deed is revoked or is not renewed;
- (e) a Special Resolution of Noteholders determines that the Trustee should be removed;
- (f) the Trustee ceases to carry on business (other than in its capacity as trustee of another trust), enters into a scheme of arrangement (other than for the purposes of or in connection with a solvent reconstruction or amalgamation) or goes into liquidation, provisional liquidation or administration or has a receiver or receiver and manager appointed over any part of the assets or undertakings of the Trustee (not being assets or undertakings of the Trustee held in its capacity as trustee of another trust) which is not removed or withdrawn within thirty (30) days after the date of the appointment; and

- (g) the Trustee defaults in performing or observing any of its obligations under this Deed and:
 - (i) that default is incapable of remedy and has had or is likely to have a material adverse effect on the ability of the Company to perform or observe its obligations to Noteholders; or
 - (ii) if that default is a material default and is capable of remedy, that default has not been remedied within 10 Business Days of receiving written notice of the default from the Company requiring that default to be remedied.

15.5 No removal without new appointment

- (a) The Company may not remove the Trustee pursuant to clause 15.4 until the Company has appointed a new trustee of this Deed which is a Trustee Company.
- (b) The Company must take all reasonable steps to replace the Trustee as soon as practicable after a Special Resolution has been passed to remove the Trustee.

15.6 Trustee covenant

Notwithstanding anything contained in this clause 15 the Trustee covenants with the intent that the benefit of the covenant will ensure for the Noteholders that it will not cease to be the Trustee until a corporation qualified to act pursuant to section 283AC of the Corporations Act has been appointed as trustee in its stead.

15.7 Outgoing Trustee discharged

On the retirement or removal of the Trustee taking effect:

- (a) the successor trustee succeeds to the position of the retiring or removed Trustee;
- (b) the retiring or removed Trustee is discharged from any further obligations under this Deed, but without affecting any accrued rights or obligations;
 - (i) the Indemnities under this Deed In favour of the retiring or removed Trustee survive concerning matters occurring before the appointment of the successor trustee, and the retiring or removed Trustee continues to have the benefit of this clause 15; and
 - (ii) the successor trustee, the Company and the Noteholders have the same rights and obligations as if the successor trustee had been a party to this Deed.

15.8 ASIC to be advised of new Trustee

The Company must advise ASIC of the name of the new Trustee, and any other information as required under section 283BC of the Corporations Act, within 14 days after the appointment of the new Trustee.

16. Power of Amendment

16.1 Amendment without Noteholder consent

The Company and the Trustee are entitled without any authority or assent on the part of the Noteholders to amend or add to this Deed (other than the Note Terms) if in the opinion of the Trustee such amendment or addition:

- (a) is of a formal, minor or technical nature;
- (b) is made to correct a manifest error;
- (c) is expedient or requisite to enable the Notes to be listed or remain listed for quotation on the ASX or to be offered for subscription or sale under the laws for the time being in force in any place;
- (d) is not likely (taken as a whole and in conjunction with all other modifications, if any, to be made contemporaneously therewith) to be materially prejudicial to the interests of the Noteholders and two directors of the Company on behalf of the board of directors of the Company have so certified to the Trustee. The Trustee in determining whether or not such amendment or addition is materially prejudicial to the interests of the Noteholders may act upon the advice or the opinion of or any information obtained from an expert (at the expense of the Company) and will not be responsible for any loss occasioned by its acting or declining to act on such advice, opinion or information;
- (e) is necessary and expedient to enable the Company to claim any deduction or rebate for income tax purposes in respect of interest payable on any Notes provided that the amendment is not materially prejudicial to the interests of Noteholders as a whole;
- (f) is necessary to comply with:
 - (i) the provisions of any statute or the requirements of any statutory authority; or
 - (ii) the ASX Listing Rules or the listing or quotation requirements of any stock exchange on which the Company may propose to seek a listing or quotation of Notes,
 - (iii) and, otherwise not materially prejudicial to the interests of Noteholders generally; or
 - (iv) not, and is not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to Noteholders generally.

16.2 Amendment with Noteholder consent

The Company and the Trustee may, except as otherwise provided in clause 16.1 above and clause 16.3 below, amend a provision of this Deed (other than the Note Terms) if authorised by a Noteholder Resolution, provided that such amendment does not adversely affect the rights and obligations of the Trustee.

16.3 Amendment with Special Resolution

An amendment or waiver of any term of this Deed or any other Transaction Document (other than the Note Terms) that has the effect of changing or which relates directly to:

- (a) clause 3.4 (*Undertaking to pay*);
- (b) this clause 16;
- (c) clause 20 (*Meeting of Noteholders*);
- (d) clause 26 (*Governing Law*),

shall not be made without the authority of a Special Resolution, provided that such Special Resolution does not adversely affect the rights and obligations of the Trustee.

16.4 Amendment with Noteholder consent but not Trustee consent

If an amendment to the Note Terms is proposed by the Company under section 12.2 of the Note Terms, and the Trustee will not consent to any such amendment, the Note Terms may be amended in the manner proposed by the Company if such amendment is authorised by a Special Resolution, provided that such amendment does not adversely affect the rights and obligations of the Trustee.

16.5 Amendment to a provision of the Note Terms

Where the amendment is to a provision of the Note Terms, the amendment must be in accordance with clause 12 of the Note Terms.

17. Register of Noteholders

17.1 Maintenance of Register

The Company must establish and maintain or cause to be established and maintained a Register in accordance with section 168 of the Corporations Act and there must be entered into the Register all information required by section 171 of the Corporations Act.

17.2 Alteration of Register

The Register will be altered accordingly on receipt of details of any change of name or address of Noteholder notified in writing to the Company and accompanied in the case of change of name by any evidence which the Company may reasonably require.

17.3 Register to be kept open

Subject to clause 17.4 and to any instrument of exemption granted by the ASIC to the Company from the provisions of section 168 ("Instrument of Exemption") the Register will remain open at all reasonable times during normal business hours for inspection by the Trustee and each Noteholder or any person authorised in writing by either of them. Upon requisition from a Noteholder, the Company must provide that Noteholder within 14 days with a document setting out that Noteholder's registry entry in the Register (a **Noteholder Statement**). This Trust Deed constitutes an acknowledgment of openness in respect of all the Notes on issue at any time. A Noteholder Statement does not constitute a certificate of title or an acknowledgment of debt. The Company must provide the Trustee with a copy of the Register in machine readable form within two Business Days of a request by the Trustee (or such lesser time as is necessary to enable the Trustee to comply with its obligations under this Deed).

17.4 Closure of Register

On giving a notice by advertisement or otherwise as may be required by Law the Company may from time to time close any Register for any period or periods not exceeding 30 days in aggregate in any calendar year.

17.5 No trust

No notice of any trust express implied or constructive will be entered in any Register.

17.6 Compliance with conditions

The Company agrees to comply with all conditions relating to the Registers which may be imposed on it under the terms of any Instrument of Exemption granted to it.

17.7 Delegation

The Company may delegate any of its powers and obligations in respect of the Registers.

18. General Trust Provisions

18.1 Interference by Trustee in conduct of Company's business

Subject to the Transaction Documents, the Trustee must not interfere with the conduct of the business of the Company.

18.2 Appointment of attorneys by Company

The Company severally and irrevocably appoints the Trustee and its Directors and Secretary for the time being severally to be its attorney and in its name and on its behalf upon the Trustee determining that the Notes will have become immediately repayable under this Deed to sign and do all assurances, deeds, instruments, acts and things which the Company ought to execute, sign and do under the covenants contained in this Deed and generally to use the name of the Company in the exercise of all or any of the powers hereby conferred on the Trustee.

18.3 Liability of Noteholders to taxes

Whenever in consequence of the death of a Noteholder any law of the Commonwealth or any State or any other country or place imposes an immediate, future or possible liability on the Company to make any payments to any government or taxation authority, with respect to any Notes held by the Noteholder, the Company is in respect of such liability indemnified by such Noteholder, its executors and administrators. Any moneys paid by the Company in respect of any such liability may be recovered by action from such Noteholder, its executors and administrators as a debt due to the Company and the Company has a lien in respect of such moneys upon the principal sum represented by the Notes held by such Noteholder, its executors and administrators and upon the interest on such sum.

18.4 Taxation

To the maximum extent permitted by Law the provisions of this Deed in relation to any Note must be construed and have effect so as to choose that construction permitting compliance with any requirement under or pursuant to the Income Tax Assessment Act, as amended, which must be satisfied in order to enable the Company to claim a deduction from its assessable income in respect of the interest paid on that Note, in the manner most conducive to the preservation of the availability of such a deduction.

19. Confidentiality

19.1 Non-disclosure

All information and other matters provided to or obtained by the Trustee, a Delegate or any officer, employee, professional adviser or other consultant of the Trustee on a confidential basis:

- (a) under, in connection with or related to this Deed; or
- (b) in the performance of any obligation, duty or power of the Trustee under this Deed,

(collectively the **Information**) is confidential to the Company and may not be disclosed to any person other than as set out in clause 19.2.

19.2 Permitted disclosure

Information which is in the public domain is not required to be kept confidential. Information may be disclosed:

- (a) as (but only to the extent) required by this Deed or in connection with any obligation, duty or power of the Trustee under this Deed, a law or any judicial or regulatory body or authority;
- (b) to those officers, employees, Delegates and professional advisers of the Trustee to whom it is necessary to reveal the Information or any part of it;
- (c) to a person approved of in writing by the Company; or
- (d) if the Company is listed on ASX, to ASX to enable the Company or the Trustee to comply with the ASX Listing Rules.

19.3 Confidentiality

The Trustee is required to use reasonable endeavours to ensure that every person to whom Information is given under clause 19.2(b) keeps that Information confidential.

20. Meetings of Noteholders

The Trustee or the Company may call a meeting of Noteholders in the manner provided in this clause 20 and those meetings will be conducted and have the powers as are set out in this clause 20.

20.1 Convening meetings

- (a) The Trustee or the Company may at any time summon a meeting of Noteholders.
- (b) The Company must summon a meeting of Noteholders if requested in writing to do so by persons holding Notes representing not less than 10% in value of the Principal Amount Outstanding in accordance with section 283EA of the Corporations Act.
- (c) Meetings are to be held in Sydney or at such other place as the Trustee and the Company may agree.

20.2 Notice

- (a) Noteholders and the Auditor must be given at least 14 days' notice of a meeting by the Company but if the meeting is to consider a Special Resolution, 21 days' notice of the meeting will be required to be given by the Company.
- (b) The period of notice is to be determined exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given.

20.3 Provision of notices

- (a) Notices to Noteholders may be given:
 - (i) to a Noteholder personally;
 - (ii) by sending it by post to the address for the Noteholder in the register of Noteholders;
 - (iii) by sending it by email to the email address nominated by the Noteholder; or

- (iv) by any other means that the Company and the Trustee agree in writing and notify to the Noteholder.
- (b) A notice of meeting must specify the place day and hour of meeting and the general nature of the business to be transacted but it is not necessary to specify in the notice the precise terms of the resolutions to be proposed.
- (c) A copy of the notice of meeting must be promptly sent by post or email to the Trustee unless the meeting has been convened by the Trustee and to the Company unless the meeting has been convened by the Company.

20.4 Failure to give notice does not invalidate

The accidental omission to give notice to or the non-receipt of notice by any of the Noteholders does not invalidate the proceedings at any meeting but where notice of a meeting convened by the Company or Trustee is not received by the other of them all business transacted and all resolutions passed at the meeting will be void and of no effect unless such notice is waived by such other of them.

20.5 Quorum

At any meeting a quorum for the transaction of business will be formed by 2 Noteholders present in person or by proxy or being a corporation by proxy or duly authorised representative holding Notes in aggregate representing at least 10% in value of the Principal Amount Outstanding.

20.6 Adjournment in the absence of quorum

- (a) If within 30 minutes from the time appointed for the meeting a quorum is not present the meeting convened upon the requisition of Noteholders will be dissolved. In any other case it will stand adjourned to such day and time not being less than 14 days thereafter or in the case of an adjourned meeting of Noteholders at which a Special Resolution is to be submitted 21 days thereafter and to such place as may be appointed by the Chairman.
- (b) At an adjourned meeting in accordance with clause 20.6(a), the Noteholders present and entitled to vote whatever the value of the Notes held by them will be a quorum for the transaction of business including the passing of Special Resolutions.
- (c) Notice of any adjourned meeting of Noteholders at which a Special Resolution is to be submitted must be given in the same manner as of an original meeting and such notice must state that the Noteholders present at the adjourned meeting whatever their number and the amount of Notes held by them will form a quorum.

20.7 Chairman

- (a) The Trustee or some other person nominated in writing by the Trustee and independent of the Company may be Chairman at every meeting but if no such person is nominated or if at any meeting the person nominated will not be present within 15 minutes after the time appointed for holding the meeting the Noteholders present may choose one of their number to be Chairman.
- (b) The Trustee and the solicitors to the Trustee and any director or officer of a corporation being the Trustee and any director and the secretary and solicitors of the Company and any other person authorised by the Company, may attend any meeting and be heard.

20.8 Adjournment by chairman

The Chairman may with the consent of any meeting at which a quorum is present (such consent being obtained if the Trustee so requires on a poll) and must if directed by the meeting so resolving on a poll, adjourn the meeting from time to time and from place to place but no business may be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

20.9 Voting

- (a) At any meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman, the Trustee or the Company or in writing by one or more Noteholders present in person or by proxy and holding or representing 5% in value of the Principal Amount Outstanding.
- (b) Unless a poll is so demanded in accordance with clause 20.9(a), a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

20.10 Casting vote

In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Noteholder.

20.11 Poll demands

- (a) A poll demanded on the election of a Chairman or on a question of adjournment is to be taken at the meeting without adjournment.
- (b) A poll demanded on any question other than as set out in clause 20.11(a) is to be taken either immediately or at such time (not being more than thirty days from the date of the meeting) and place as the Chairman may direct. No notice need be given of a poll not taken immediately.
- (c) The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (d) The result of a poll will be deemed to be the resolution of the meeting at which the poll was demanded.

20.12 Voting entitlements

On a show of hands every Noteholder who being an individual is present in person or by proxy or attorney or being a corporation is present by proxy or attorney or by its authorised representative has one vote and on a poll every Noteholder who is present in person or by proxy has one vote for every Note with respect to which he is the registered holder.

20.13 Joint holders

In the case of joint registered holders of Notes the vote of the senior who tenders a vote whether in person or by proxy is to be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority is determined by the order in which the names appear in the Register of Noteholders in respect of the joint holding.

20.14 Noteholder entitled to more than one vote

On a poll votes may be given either personally or by proxy and a Noteholder entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

20.15 Noteholder which is a corporation

A Noteholder which is a corporation may be represented at a meeting of Noteholders or may vote at the meeting or on a poll or in relation to any resolution of Noteholders by proxy or by attorney or by representative appointed in accordance with the provisions of section 250D of the Corporations Act as if references to "member" or "members" in that section were references to "Noteholder" or "Noteholders".

20.16 Proxy

- (a) The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under its Common Seal or under the hand of an officer or attorney so authorised and need not be witnessed.
- (b) A person appointed to act as proxy need not be a Noteholder.
- (c) The proxy will be deemed to include the right to demand or join in demanding a poll.
- (d) Unless the contrary is stated on the instrument of proxy, a proxy is valid for any adjournment of the meeting to which it relates.

20.17 Deposit of proxies

- (a) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of the power or authority, must be deposited at such place as the Trustee or the Company may in the notice convening the meeting direct, or if no such place is appointed, then at the registered office of the Company not less than 24 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy will not be treated as valid. A proxy may be deposited with the Company by sending it by email to the email address nominated by the Company or the Trustee (as applicable) in the notice convening the meeting.
- (b) No instrument appointing a proxy is valid after the expiration of 12 months from the date named in it as the date of its execution.

20.18 Proxy Voting

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the principal, revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Notes in respect of which the proxy is given, provided that no notice in writing of such death, insanity, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

20.19 Powers of meeting of Noteholders

Without limiting the rights of Noteholders, the Company and the Trustee pursuant to the Trust Deed, a meeting of the Noteholders has in addition to all other powers, the following powers exercisable by Special Resolution only:

- (a) power to sanction any modification or compromise or any arrangement in respect of the rights of the Noteholders against the Company whether such rights will arise under the Trust Deed, the Note Terms or otherwise;
- (b) power to assent to any modification of the provisions contained in this Deed or the Note Terms and to authorise the Trustee to concur in and execute any supplemental deed embodying any such modification, provided that such modification does not adversely affect the rights and obligations of the Trustee;
- (c) power to give any sanction, direction or request which under any of the provisions of this Deed is required to be given with the consent of Noteholders;
- (d) power to give a release in respect of anything done or omitted to be done by the Trustee;
- (e) power to discharge or release any property subject to a Security Interest under a Transaction Security Interest;
- (f) power to release an Obligor from its obligations under a Transaction Security Interest; and
- (g) power to remove a Trustee.

20.20 Resolutions binding

Any Noteholder Resolution or Special Resolution passed at a meeting of the Noteholders duly convened and held in accordance with this Deed is binding upon all the Noteholders whether or not present at the meeting and each Noteholder is bound to give effect to it accordingly.

20.21 Minutes

Minutes of all resolutions and proceedings at every meeting must be made and duly entered in the books to be from time to time provided for that purpose by the Company and any minute if purporting to be signed by the Chairman of the meeting at which a resolution was passed or proceedings were held or by the Chairman of the next succeeding meeting of Noteholders is prima facie evidence of the matters stated in it.

20.22 Written Resolution

Notwithstanding any other provision of this clause 20, a written resolution signed by all Noteholders will be binding upon all Noteholders without the requirement to hold a meeting.

21. Transfer of Notes

21.1 Transfer must comply with this clause

Subject to this Deed, each Note is transferrable in whole but not in part in accordance with this clause but not otherwise.

21.2 Form of transfers

A Noteholder may transfer all or any of the Notes the Noteholder holds by:

- (a) where, at any time, a Note is quoted on the Official List, by an instrument in writing in any usual form or in any other form that the Company approves, provided it complies with the requirements of the Corporations Act and ASX Listing Rules (in respect of an off market transfer);

- (b) where, at any time, a Note is quoted on the Official List, in accordance with the ASX Listing Rules or the ASX Settlement Operating Rules (as applicable), and recognised under the Corporations Act (in respect of an on market transfer); and
- (c) where, at any time, a Note is not quoted on the Official List, by a written instrument of transfer in a form that the Company approves, provided it complies with the requirements of the Corporations Act.

21.3 Registration of transfer

A transferor of Notes remains the owner of the 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 Noteholder under this Deed.

21.4 Company to register transfers

Subject to clause 21.5, the Company will not refuse to register or fail to register or give effect to a transfer of Notes.

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

21.6 Notice of refusal to register

- (a) **(notice to transferee)** Where the Company refuses to register a transfer of Notes under clause 21.5, 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 such period of time required by the Corporations Act.
- (b) **(failure to notify)** A failure by the Company to give notice under clause 21.6(a) will not invalidate the refusal to register the transfer in any way.

21.7 Participation in transfer systems

The Company may determine that the Notes which are quoted on the official list of ASX will participate in the CHESS or any other computerised or electronic system of transfer or registration and may create rules to facilitate such participation which may be additional to or may override this clause 21.

21.8 Death and legal disability

- (a) **(legal personal representative)** The legal personal representative of a deceased Noteholder (not being a joint Noteholder) will be the only person recognised by the Company as having any title to that Noteholder's Notes. Any person becoming entitled to Notes in consequence of the death or liquidation of any Noteholder may, on producing such evidence of that person's title as the Company requires be registered as the holder of the Notes or may transfer those Notes. The Company may retain the Face Value and interest payments and any other money payable in respect of any Notes which any person under this clause is entitled to or to transfer until that

person is registered or has transferred the Notes. Nothing in this clause will prejudice the rights of any person to vote in respect of that Note at any meeting or on a poll.

- (b) **(joint Noteholders)** In the case of the death of any one joint Noteholder, the survivors will be the only persons recognised by the Company as having any title to or interest in the Notes registered in their names jointly.

21.9 Transfer and transmission under clause 21.8

The Company need not register any transfer or transmission under clause 21.8 unless the transferee provides an indemnity in favour of the Company in a form determined by or satisfactory to the Company in respect of any consequence arising from the transfer or transmission.

21.10 Two or more persons jointly entitled

Where two or more persons are jointly entitled to any Note in consequence of the death of the registered holder of that Note, they will be regarded as joint holders of that Note.

21.11 Moneys payable in respect of Notes

The Company may retain any moneys payable in respect of any Notes which any person under this clause 21 is entitled to or to transfer until such person is registered or has duly transferred the Notes.

22. Inspection of Trust Deed

- (a) On receipt of a request from a Noteholder or the Trustee for a copy of this Deed, the Company must provide that Noteholder or the Trustee with a copy of the Deed within 5 Business Days after the date that request is made.
- (b) Copies of this Deed will be provided to the Noteholder at the Company's registered office unless the Company otherwise agrees and to the Trustee at its address for notices in clause 23.
- (c) The Trustee is not liable for any loss or damage suffered by any Noteholder in relation to the provision by the Trustee of certified copies of, or the original of, this deed including any loss or damage suffered by a Noteholder who has requested the original of this deed which is at that time produced to a court in connection with a proceeding or action brought by another Noteholder.

23. Notices

23.1 Requirements for notice

Each notice authorised or required to be given to a Party shall be in writing and may be delivered personally or sent by properly addressed and prepaid mail or email in each case addressed to the Party at its address set out in clause 23.2, or as the case may be to such other address as it may from time to time notify to the other Parties pursuant to clause 23.3.

23.2 Address of Parties

The initial address of the Parties shall be as follows:

In the case of the Company:

61 Dunning Avenue

Rosebery
NSW 2018
Email: Luka.Softa@mosaicbrandsltd.com.au
Attention: Luka Softa

In the case of the Trustee:

Level 2, 395 Collins Street
Melbourne
VIC 3000
Email: trustee@msc.group
Attention: Company Secretary

23.3 Change of Address

Each Party may from time to time change its address by giving notice pursuant to clause 23.1 to the other Parties.

23.4 Receipt of notice

Any notice given pursuant to clause 23.1 will be conclusively deemed to have been received:

- (a) in the case of personal delivery, on the actual day of delivery if delivered prior to 5:00 pm (AEST) on a Business Day or on the next following Business Day if delivered after 5:00 pm (AEST) on a Business Day or on a day other than a Business Day;
- (b) if sent by mail, on the second clear Business Day after the day of posting; or
- (c) if sent by email, on the day the email was sent provided the sender does not receive any evidence that the email has not been sent or received.

24. Notice to Noteholders

- (a) Notices to Noteholders may be given:
 - (i) to a Noteholder personally;
 - (ii) by sending it by post to the address for the Noteholder in the Register;
 - (iii) by the Company posting, at the request of the Trustee, the notice on its website or by the Trustee posting such notice on its website; or
 - (iv) by any other means that the Company and the Trustee agree in writing and notify to the Noteholder.
- (b) If an Insolvency Event occurs in respect to the Company, the Company must promptly do all things reasonably necessary to assist the Trustee to post a notice of the occurrence of the Insolvency Event and periodic updates in relation to the same on the Trustee's website.
- (c) A notice sent to a Noteholder is taken to be given 3 days after it is posted if posted within Australia (or 7 days after it is posted if posted to or from a place outside Australia), or on the next Business Day if sent by email or other electronic means.

25. Further Assurance

Each Party shall sign, execute and do all deeds, acts, documents and things as may reasonably be required by the other Party to effectively carry out and give effect to the terms and intentions of this Deed.

26. Governing Law

This Deed shall be governed by and construed in accordance with the law from time to time in the State of New South Wales and the Parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts which hear appeals therefrom.

27. Variation

No modification or alteration of the terms of this Deed shall be binding unless made in writing dated subsequent to the date of this Deed and duly executed by the Parties.

28. Costs

28.1 Stamp Duty

All stamp duty assessed on or in respect of this Deed shall be paid by the Company.

28.2 Legal Costs

The Company shall bear all legal costs of and incidental to the preparation, negotiation and execution of this Deed, including the legal costs and expenses of the Trustee.

29. Electronic signatures and counterparts

This Deed may be signed in counterparts and by email copy and all counterparts (including emailed copy counterparts) taken together constitute one document.

29.1 Electronic signature

Each party warrants that immediately prior to entering into this deed, it has unconditionally consented to:

- (a) the requirement for a signature under any law being met; and
- (b) any other party to this deed executing it,

by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature. The parties intend that any copy so signed will constitute an executed original counterpart, and any print-out of the copy with the relevant signatures appearing will also constitute an executed original counterpart.

29.2 Counterparts

This deed may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

29.3 Electronic communication

Without limitation, the parties agree that this deed may be exchanged by hand, post, facsimile or any electronic method that evidences a party's execution of this deed, including by a party forwarding a copy of its executed counterpart by hand, post, facsimile or electronic means to the other party.

30. Miscellaneous

30.1 Severance

If any provision of this Deed is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision, shall be and continue to be valid and forceful in accordance with their terms.

30.2 Entire Agreement

This Deed shall constitute the sole understanding of the Parties with respect to the subject matter and replaces all other agreements with respect thereto.

30.3 Conflict of interest

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

30.4 Remedies cumulative

The rights and remedies of the Trustee under this deed are in addition to other rights and remedies given by law independently of this deed.

30.5 Indemnities

Any indemnity in this deed is a continuing obligation, independent of the Company's other obligations under this deed and continues after this deed ends. It is not necessary for the Trustee to incur expense or make payment before enforcing a right of indemnity under this deed.

30.6 Rights and obligations are unaffected

Rights given to the Trustee under this deed and the liabilities of the Company under this deed are not affected by any law that might otherwise adversely affect them.

30.7 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

30.8 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Company in connection with this deed with the result that the Trustee's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

30.9 Counterparts

This Deed may be executed in any number of counterparts each of which shall be deemed for all purposes to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

30.10 Time

Time shall be of the essence in this Deed in respect of the Company's obligations under this Deed.

Schedule 1 – Notes Terms

Convertible Note Terms

1. FORM OF NOTES

1.1 Form

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

1.2 Face Value and Issue Price

- (a) The Notes are each issued fully paid with a face value of \$1.00 (**Face Value**).
- (b) Each Note will be issued by the Company at an issue price of \$1.00 (**Issue Price**). The Issue Price must be paid in full on application.

1.3 Currency

The Notes are denominated in Australian dollars.

1.4 CHESS

For such time as the Notes are quoted on ASX, the rights of a person holding an interest in the Notes are subject to the rules and regulations of the CHESS operated by ASX Settlement Pty Ltd or any other applicable securities trading and/or clearance system.

1.5 No certificates

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

1.6 ASX quotation of Notes

The Company will seek quotation of the Notes in accordance with the ASX Listing Rules and the Corporations Act, subject to satisfaction of the minimum quotation conditions under the ASX Listing Rules. The Company must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure that the Notes are, and until Redeemed or Converted remain, quoted on ASX. If quotation of the Notes cannot be obtained, the Notes will remain unlisted.

1.7 No participation in the new issues

- (a) To the maximum extent permitted by the Corporations Act, the ASX Listing Rules and any other applicable laws, there will be no participation rights or entitlements inherent in the Notes and Noteholders will not be entitled to participate in new issues of capital offered to shareholders during the currency of the Notes without converting the Notes into shares.
- (b) However, if at any time the issued capital of the Company is reconstructed, all rights of a holder are to be changed in a manner consistent with the Corporations Act and the ASX Listing Rules at the time of the reconstruction.

1.8 No other rights

The Notes confer no rights on a Noteholder:

- (a) to vote at any meeting of members of the Company; or
- (b) to otherwise participate in the profits or property of the Company, except as set out in these Note Terms or the Transaction Documents, or as required by law.

1.9 Entry in the Register

The Company must ensure that each Noteholder's details are entered in the Register.

2. INTEREST

2.1 Interest rate

Each Note bears interest on:

- (a) its Note Principal Amount from (and including) the Issue Date to (but excluding) its End Date at the Additional Interest Rate; and
- (b) its Notional Note Principal Amount from (and including) the Issue Date to (but excluding) its End Date at the Cash Interest Rate.

2.2 Accrual and calculation

Interest:

- (a) accrues daily and for the actual number of days elapsed; and
- (b) is calculated on the basis of a year of a 365 day year.

2.3 Payment

- (a) Subject to the balance of this section 2.3, Interest for the previous Interest Period is payable in arrears on each Interest Payment Date.
- (b) In respect of Interest payable on the First Interest Payment Date, Interest will accrue from the Issue Date until the First Interest Payment Date and will be payable in arrears on the First Interest Payment Date.
- (c) In respect of such part of the Interest that accrued on the Note Principal Amount of a Note during an Interest Period at the Additional Interest Rate (**Additional Interest Amount**), that Additional Interest Amount will be capitalised on the relevant Interest Payment Date and added as principal to the Note Principal Amount of that Note.
- (d) Subject to section 2.3(e), in respect of such part of the Interest that accrued on the Notional Note Principal Amount of a Note during an Interest Period at the Cash Interest Rate (**Cash Interest Amount**), the Cash Interest Amount will be paid by the Company in cash on the relevant Interest Payment Date.
- (e) If on any Interest Payment Date, pursuant to the terms of the Intercreditor Deed, the Company is not permitted to make payment (in whole or in part) contemplated in section 2.3(d):
 - (i) no Event of Default will occur as a result of such non-payment; and
 - (ii) any part of the Cash Interest Amount not paid will be capitalised on the relevant Interest Payment Date and added as principal to the Note Principal Amount and Notional Note Principal Amount of the relevant Note.
- (f) If any part of the Cash Interest Amount is capitalised as contemplated in section 2.3(e), the Company may, if permitted pursuant to the terms of the Intercreditor Deed, subsequently on an Interest Payment Date pay some or all of that Cash Interest Amount in cash, in which case the Notional Note Principal Amount and Note Principal Amount is reduced by an amount equal to the cash paid.

2.4 Adjustment

- (a) In respect of each Note, if on its End Date, no Event of Default set out in section 8.1(a) or section 8.1(b) is continuing, then on that End Date:

- (i) the Note Principal Amount of each Note will be deemed to be the Notional Note Principal Amount;
 - (ii) the Additional Interest Rate will be deemed to be 0.00%; and
 - (iii) the Company will not owe, and will not be required to pay, any Additional Interest Amount.
- (b) If an Event of Default set out in section 8.1(a) or section 8.1(b) occurs and is not waived or remedied within the prescribed remedy period, section 2.4(a) will not apply and the Note Principal Amount will not be adjusted.

2.5 Default interest

If an Event of Default set out in sections 8.1(c) to 8.1(i) occurs and is continuing, Interest accrues on the Note Principal Amount of each Note at a sum of the Interest Rate plus a default rate of 3.00% per annum while the relevant Event of Default continues. However, if at the same time an Event of Default in section 8.1(a) or section 8.1(b) is continuing and section 2.4(b) applies, the default rate will not be applicable.

3. CONVERSION

3.1 Conversion

- (a) Subject to sections 3.1(c) and 13, a Noteholder will be entitled to Convert all or some of the Notes held by that Noteholder by giving written notice to the Company (**Conversion Notice**):
- (i) at any time during the Conversion Period;
 - (ii) in accordance with section 4.2(c); or
 - (iii) in accordance with section 5(a)(v)(A).
- (b) The Company will proceed to issue to the Noteholder that number of Shares as calculated in accordance with section 3.4, within 10 Business Days of receipt of a Conversion Notice, and will notify the Trustee accordingly.
- (c) In order to Convert any Notes into Shares, either:
- (i) the Note Principal Amount of the Notes the subject of a Conversion Notice must be at least equal to \$2,000; or
 - (ii) the Noteholder must Convert the entire balance of their holding of Notes.
- (d) The issue of Shares on Conversion pursuant to this section 3 will be and will be deemed for all purposes to be in full satisfaction and discharge of the principal amount owing to the Noteholder pursuant to the Notes the subject of the Conversion Notice. However, the Conversion will in no way affect any liability of the Company for unpaid Interest accrued up to the Conversion Date which the Company will pay to the Noteholder in accordance with section 2.
- (e) The Company will apply for official quotation by ASX of all Shares issued upon the Conversion. Such application will be made as soon as reasonably practicable after Shares are issued.
- (f) Within 10 Business Days of the issue of Shares to a Noteholder upon the Conversion, the Company will deliver to the Noteholder a shareholding statement in respect of the Shares issued.

3.2 Conversion Notice

- (a) A Conversion Notice must:
 - (i) be in writing (in such form as the Company may accept, acting reasonably, or as is required by the ASX Listing Rules);
 - (ii) specify the number of Notes to be Converted; and
 - (iii) be signed by the Noteholder or an authorised representative or officer of the Noteholder.
- (b) Once a Conversion Notice has been given:
 - (i) the notice cannot be withdrawn without the written consent of the Company;
 - (ii) the Noteholder must not deal with, transfer, dispose of or otherwise encumber any Notes the subject of the Conversion Notice; and
 - (iii) the Noteholder must provide such evidence of title to the Notes the subject of the Conversion Notice as may be reasonably required by the Company and the Registrar.

3.3 Conversion Price

Subject to section 3.7, the **Conversion Price** of the Notes is the lower of:

- (a) \$0.515; and
- (b) a 15% discount to the 30-day VWAP of Shares (as traded on ASX) prior to the Conversion Date; and
- (c) a 15% discount to the price of any equity capital raising by the Company that occurred in the 30-day period prior to the Conversion Date,

subject to a minimum Conversion Price of \$0.25 (**Minimum Price**).

3.4 Conversion Rate

Subject to section 3.7, the number of Shares to which a Noteholder will be entitled on Conversion of each Note will be equal to the Note Principal Amount of the Note divided by the Conversion Price.

3.5 Ranking of Shares

Shares issued on Conversion of the Notes will:

- (a) be fully paid Shares;
- (b) in all respects rank equally with all other fully paid Shares on issue on the relevant Conversion Date, except that they will not be entitled to any dividend or any other distribution or entitlement that has not been paid as at the Conversion Date but for which the record date was prior to the Conversion Date; and
- (c) be free of any encumbrances and freely tradable without any on-sale restrictions under the Corporations Act.

3.6 No Fractional Shares

No fractional Shares will be issued on Conversion of a Note. If the calculation under section 3.4 results in an entitlement to a number of Shares which includes a fraction of a Share, the number of Shares will be rounded up to the nearest whole number of Share.

3.7 Adjustments for reorganisation of capital

Subject to the ASX Listing Rules, if there is a reconstruction (including consolidation, subdivision, reduction or return) of the issued capital of the Company, the basis for Conversion of the Notes (being the Minimum Price) will be reconstructed in the same proportion as the issued capital of the Company is reconstructed and in a manner which will not result in any additional benefits being conferred on the Noteholders which are not conferred on the Shareholders of the Company (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of shareholders approving the reconstruction of capital) but in all other respects the terms for Conversion of the Notes will remain unchanged.

4. REDEMPTION

4.1 Scheduled redemption on Maturity Date

Subject to the Intercreditor Deed, each Note is Redeemable by the Company on the Maturity Date at its Note Principal Amount (together with any accrued Interest payable in accordance with section 2.3) unless:

- (a) the Note has been previously Converted;
- (b) the Note has been previously Redeemed in accordance with section 4.2 or 5; or
- (c) the Note has been purchased by the Company and cancelled in accordance with section 4.3.

4.2 Early Redemption by the Company

- (a) Subject to section 4.2(c), the Intercreditor Deed and compliance with any applicable law and the ASX Listing Rules, the Company may Redeem all (but not some) of the Notes in whole before their Maturity Date at their Note Principal Amount, together with any Interest accrued on those Notes up to (but excluding) the applicable Redemption Date, provided that the Company has given not less than 30 days' notice in writing to the Trustee, the Noteholders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the intention of the Company to Redeem the Notes (**Early Redemption Notice**).
- (b) Subject to section 4.2(c), if an Early Redemption Notice is given by the Company under section 4.2(a), the notice will be effective (and Redemption will occur) on the Redemption Date as specified by the Company in the Early Redemption Notice (which must be not less than 30 days after the date of the Early Redemption Notice).
- (c) If, no later than 5 Business Days prior to Redemption of the Notes taking place pursuant to an Early Redemption Notice, a Noteholder delivers a Conversion Notice for some or all of its Notes, the Conversion Notice will prevail for the Notes that are the subject of the Conversion Notice.

4.3 Purchase

Subject to compliance with any applicable law, requirement of ASX (and any stock exchange or other relevant authority on which the Notes are quoted) or the Senior Debt Obligations:

- (a) the Company and any of its Related Bodies Corporate (or any third party nominated by the Company) may, at any time, purchase Notes in the open market or otherwise and at any price;
- (b) if purchases are made by tender for the Notes by the Company or any of its Related Bodies Corporate, tenders must be available to all Noteholders alike; and
- (c) Notes purchased under this section 4.3 may be held, resold or cancelled at the discretion of the purchaser (and, if the Notes are to be cancelled, the Company).

5. TAKEOVER, CHANGE IN CONTROL, OR SALE OF MAIN UNDERTAKING

- (a) Other than as contemplated by these Note Terms, if:
- (i) a takeover bid is made to acquire Shares and the offer under the takeover bid is, or becomes, unconditional and the bidder has acquired at any time a relevant interest in more than 50% of the Shares on issue;
 - (ii) a court approves a proposed scheme of arrangement which, when implemented, will result in a person having a relevant interest in more than 50% of the Shares on issue; or
 - (iii) there is a sale of the main undertaking of the Company that would require approval of the Shareholders in accordance with ASX Listing Rule 11.2,
- at any time after the issue of the Notes and prior to the issue of a Conversion Notice in respect of such Notes, then:
- (iv) the Company will give to each Noteholder written notice (**Sale Notice**) of the takeover bid, change of control or sale of main undertaking as soon as practicable and in any event not less than 20 Business Days prior to the relevant transaction occurring; and
 - (v) each Noteholder must within 10 Business Days after the Sale Notice is sent to Noteholders either:
 - (A) elect to Convert all the Notes held by that Noteholder to Shares in accordance with section 3 by providing the Company with a Conversion Notice; or
 - (B) subject to the Intercreditor Deed, require the Company to Redeem all the Notes held by that Noteholder at their Note Principal Amount, together with any Interest accrued on those Notes by giving written notice to the Company.
- (b) If a Noteholder does not comply with section 5(a)(v) within the time period specified in that section, then the Company will Redeem all the Notes held by that Noteholder at their Note Principal Amount (together with any accrued Interest payable in accordance with section 2.3).
- (c) In the event that the Company is required to Redeem all Notes held by a Noteholder under section 5(a)(v) or 5(b), the Notes will be Redeemed:
- (i) in the event of a takeover bid in accordance with section 5(a)(i), within 10 Business Days after the later of the close of the takeover offer and the date that the Company's Shareholders receive their consideration under the takeover bid;
 - (ii) in the event a court approves a proposed scheme of arrangement in accordance with section 5(a)(ii), within 10 Business Days after the transfer of the Shares to the new Shareholder; and
 - (iii) in the event of a sale of the main undertaking of the Company in accordance with section 5(a)(iii), within 10 Business Days after completion of the transfer of the main undertaking.

6. STATUS, SECURITY AND RANKING

6.1 Status

The Notes at all times constitute secured debt obligations of the Company.

6.2 Security

- (a) The Notes are secured by the security interests granted by the Company and each of its subsidiaries to the Trustee under the Transaction Security Interests.
- (b) The Trustee holds the rights under the Transaction Security Interest on trust for the benefit of the Trustee and each Noteholder in accordance with the terms of the Trust Deed and the Transaction Security Interests.
- (c) The Company will ensure that any wholly owned subsidiaries incorporated or acquired after the Issue Date grants a Transaction Security Interest to the Trustee over all of its assets and undertakings on substantially similar terms to the Transaction Security Interest executed by the Company (with such amendments as required by local law) within:
 - (i) in respect of any newly incorporated subsidiary, 45 days of incorporation; or
 - (ii) in respect of any acquired subsidiary, 120 days of the acquisition.

6.3 Ranking of Notes

- (a) Each Note ranks for payment in a Winding Up of the Company:
 - (i) after all Senior Debt Obligations and any Permitted New Debt;
 - (ii) equally with each other Note;
 - (iii) ahead of all present and future unsubordinated and unsecured debt obligations of the Company (subject to the laws and principles of equity affecting creditor rights or obligations preferred by mandatory provisions of applicable law); and
 - (iv) ahead of all Shares.
- (b) Without in any way limiting the Company's obligations to Redeem the Notes as set out in these Note Terms, in order to give effect to the ranking specified in section 6.3(a), in any Winding Up of the Company, the Noteholders agree that their claims are limited to the extent necessary to ensure that:
 - (i) all holders of Senior Debt Obligations of the Company receive payment in full before any payment is made to Noteholders; and
 - (ii) Noteholders of the Notes receive payments on a pro-rata basis.
- (c) Without in any way limiting the Company's obligations to Redeem the Notes as set out in these Note Terms, neither the Trustee nor any Noteholder has any right to prove in a Winding Up of the Company in respect of the Notes, except on the basis set out in sections 6.3(a) and 6.3(b).
- (d) Neither the Trustee nor any Noteholder may exercise voting rights as a creditor in respect of the Notes in a Winding Up of the Company to defeat the subordination in this section 6.3.
- (e) The ranking of Notes is not affected by the date of registration of any Noteholder in the Register.

7. NEGATIVE COVENANTS

For so long as any of the Notes remain outstanding, the Company must not, without the approval of an Ordinary Resolution:

- (a) **(new debt)** incur any indebtedness, except:
 - (i) pursuant to the Senior Debt Obligations;
 - (ii) as expressly permitted by the Senior Debt Obligations;

- (iii) any indebtedness incurred or guaranteed after the Issue Date for the purpose of replacing, refinancing or extending the maturity of the Notes; or
 - (iv) any Permitted New Debt,

which must not exceed \$75 million in aggregate and must be on terms that are at market levels for indebtedness of this nature;
- (b) **(Security Interests)** other than in the ordinary course of business:
 - (i) create or permit to exist a Security Interest over any of its assets or attempt or agree to do so (including by entering into an indicative term sheet), except:
 - (A) Security Interests securing the Senior Debt Obligations;
 - (B) Security Interests expressly permitted by the Senior Debt Obligations;
 - (C) Security Interests securing any indebtedness incurred after the Issue Date for the purpose of replacing, refinancing or extending the maturity of the Notes; or
 - (D) Security Interests securing any Permitted New Debt; or
 - (ii) if the creation of a Security Interest cannot by law be restricted, create such a Security Interest over any of its assets without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Trustee;
- (c) **(dividends)** declare or pay any dividends to Shareholders unless:
 - (i) such dividends are permitted under the Senior Debt Obligations; and
 - (ii) at the time such dividends are declared, all amounts of Interest that accrued on the Notes in relation to the Cash Interest Rate only (including any amount that capitalised in accordance with section 2.3(e)) have been paid or otherwise discharged in accordance with section 2.3(f); or
- (d) **(Capital Reduction)** unless permitted under the Senior Debt Obligations, other than in respect of the Notes, redeem, purchase, cancel, reduce, return capital on or otherwise acquire any Share or other securities issued by the Company for repayment or return of capital in a Winding Up **(Capital Reduction)**:
 - (i) such Capital Reduction is permitted under the Senior Debt Obligations; and
 - (ii) at the time such Capital Reduction occurs, all amounts of Interest that accrued on the Notes in relation to the Cash Interest Rate only (including any amount that capitalised in accordance with section 2.3(e)) have been paid or otherwise discharged in accordance with section 2.3(f).

8. EVENTS OF DEFAULT

8.1 Events of Default

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

- (a) **(insolvency)** an Insolvency Event occurs in respect of the Company;
- (b) **(cross default)**:
 - (i) any Senior Debt Obligation is not paid when due nor within any originally applicable grace period;
 - (ii) ANZ or the Refinancing Financier becomes entitled to declare any Senior Debt Obligation (as applicable) due and payable prior to its specified maturity as a result of an event of default or review event (however described);

- (iii) any commitment for any Senior Debt Obligation is cancelled or suspended by ANZ or the Refinancing Financier (as applicable) as a result of an event of default or review event (however described); or
- (iv) any Senior Debt Obligation is declared to be due and payable prior to its specified maturity as a result of an event of default (however described),

and such default is not remedied within 15 Business Days;

- (c) **(non-payment)** the Company fails to pay any amount payable by it under these Note Terms, including if the Company fails to Redeem the Notes on the Maturity Date in accordance with section 4.1, and such default is not remedied within 15 Business Days;
- (d) **(breach of Negative Covenants)** the Company fails to comply with section 7 and such failure remains unremedied for a period of 15 Business Days;
- (e) **(breach of other obligations)** the Company fails to comply with any of its other material obligations under the Note Terms or the Transaction Documents and such failure remains unremedied for a period of 15 Business Days after the earlier of:
 - (i) the Company receiving written notice from the Trustee in respect of the failure to comply; and
 - (ii) the Company becoming aware of the failure to comply;
- (f) **(cessation of business)** the Company ceases or suspends (or threatens to cease or suspend) the conduct of all of its business or a substantial part of its business;
- (g) **(unlawfulness)** at any time, it is unlawful for the Company to perform any of its payment obligations under the Notes;
- (h) **(vitiation)** all or any rights or obligations of the Company, Noteholders or the Trustee under the Trust Deed or the Note Terms are terminated or are or become void, illegal, invalid, unenforceable or of limited force and effect; or
- (i) **(ASX)** the Company is delisted from ASX.

8.2 Notification

- (a) If an Event of Default occurs, the Company must, promptly after becoming aware of it but in any event no later than 2 Business Days after the Event of Default occurs, notify the Trustee of the occurrence of the Event of Default (specifying details of it) and use its reasonable endeavours to promptly notify the Noteholders and, if required, ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the occurrence of the Event of Default.
- (b) The Trustee is taken not to have knowledge of the occurrence of an Event of Default unless the Trustee has received written notice from the Company or a Noteholder stating that an Event of Default has occurred and describing it.
- (c) Nothing contained in the Trust Deed imposes on the Trustee an obligation to inform any Noteholder of any breach by the Company of any provision of the Trust Deed.

8.3 Consequences of an Event of Default

- (a) If an Event of Default occurs and is continuing in relation to the Notes, the Trustee may:
 - (i) declare by notice to the Company (with a copy to the Noteholders and the Registrar) that all the Notes are to be Redeemed at their Note Principal Amount (together with any accrued Interest) immediately (but not earlier than 10 Business Days after the date the Trustee gives notice under this section 8.3(a)) or on such other date specified in that notice; or

- (ii) subject to the terms of the Intercreditor Deed, take enforcement action against the Company in relation to the Event of Default in accordance with the Transaction Documents.
- (b) The Trustee will not be bound to take the action referred to in section 8.3(a) to enforce the obligations of the Company in respect of the Notes or any other proceedings or action pursuant to or in connection with the Transaction Documents unless:
 - (i) it has been so directed by a Special Resolution of the Noteholders of the relevant Notes;
 - (ii) it is indemnified, to its satisfaction, against all costs, charges, liabilities and expenses which may be incurred by it (including legal costs on a solicitor and own client basis) in connection with that action;
 - (iii) it is first placed in funds sufficient to cover the costs that it may incur as a result of doing so; and
 - (iv) it is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

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

8.4 No enforcement by Noteholders

Unless the Trustee, having become obliged to take action to enforce the rights of the Noteholders under the Transaction Documents and these Note Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing, the rights of each Noteholder to enforce the obligations of the Company under the Notes are limited to the exercise of its rights to enforce and seek due administration by the Trustee of the Trust Deed. In particular, unless the Trustee, having become obliged to take action to enforce the rights of the Noteholders under the Transaction Documents and these Note Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing, no Noteholder may, with respect to payment of any amount due under the Notes held by it:

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

9. REGISTRATION OF TRANSFERS

9.1 Title

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

9.2 Effect of entries in Register

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

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

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

9.3 Register conclusive as to ownership

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

9.4 Non-recognition of interests

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

9.5 Joint holders

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

9.6 Transfers in whole

The Notes may be transferred in whole but not in part.

9.7 Transfer

A Noteholder may, subject to this section 9, transfer any Notes:

- (a) by a proper ASTC transfer according to the ASX Settlement Operating Rules;
- (b) by a proper transfer under any other computerised or electronic system recognised by the Corporations Act;
- (c) under any other method of transfer which operates in relation to the trading of securities on any securities exchange outside Australia on which the Notes are quoted; or
- (d) by any proper or sufficient instrument of transfer of marketable securities under applicable law.

The Company must not charge any fee on the transfer of a Note.

9.8 Market obligations

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

9.9 Company must request holding lock or refuse to register transfer

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

9.10 Notice of holding lock and refusal to register transfer

If, in the exercise of its rights under section 9.9, the Company requests the application of a holding lock to prevent a transfer of Notes or refuses to register a transfer of Notes, it must,

within 5 Business Days after the date the holding lock is requested or the refusal to register a transfer, give written notice of the request or refusal to the Noteholder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Company.

9.11 Delivery of instrument

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

9.12 Transferor to remain Noteholder until registration

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

9.13 Effect of transfer

Upon registration and entry of the transferee in the Register the transferor ceases to be entitled to future benefits under the Transaction Documents and the Note Terms in respect of the transferred Notes and the transferee becomes so entitled in accordance with section 9.2.

9.14 Estates

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

9.15 Transfer of unidentified Notes

Where the transferor executes a transfer of less than all the Notes registered in its name, and the specific Notes to be transferred are not identified, the Registrar may register the transfer in respect of such of the Notes registered in the name of the transferor as the Registrar thinks fit, provided the aggregate of the Note Principal Amount of all the Notes registered as having been transferred equals the aggregate of the Note Principal Amount of all the Notes expressed to be transferred in the transfer.

10. PAYMENTS

10.1 Summary of payment provisions

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

10.2 Payments subject to law

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

10.3 Payments on Business Days

If a payment:

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

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

10.4 Payments to accounts

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

10.5 Payments by cheque

- (a) The Company may decide that payments in respect of the Notes will be made by cheque sent by prepaid post on the payment date to the Noteholder (or to the first named joint holder of the Notes) at its address appearing in the Register.
- (b) Cheques sent to the nominated address of a Noteholder will be at the risk of the registered Noteholder and will be taken to have been received by the Noteholder on the payment date and, no further amount will be payable by the Company in respect of the Notes as a result of the Noteholder not receiving payment on the due date.

10.6 Unsuccessful attempts to pay

Subject to applicable law and the ASX Listing Rules, where the Company:

- (a) decides that an amount is to be paid to a Noteholder by a method of direct credit and the Noteholder has not nominated an account to which amounts are to be paid by that method;
- (b) attempts to pay an amount to a Noteholder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful;
- (c) has made reasonable efforts to locate a Noteholder but is unable to do so; or
- (d) has issued a cheque which has not been presented within six months of its date and, as a consequence, the Company has cancelled such cheque,

then, in each case:

- (e) the amount will be taken to have been duly paid to the Noteholder and will not bear Interest; and
- (f) the amount will be held by the Company for the Noteholder in a non-interest bearing deposit with a bank selected by the Company until the Noteholder (or any legal personal representative of the Noteholder) nominates an account for payment or otherwise claims the amount or the amount is paid by the Company according to the legislation relating to unclaimed moneys.

10.7 Payment to joint Noteholders

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

11. DEDUCTIONS

11.1 No set-off, counterclaim or deductions

All payments in respect of the Notes must be made in full without set-off or counterclaim, and without any withholding or deduction for or in respect of Taxes, unless such withholding or deduction is required by law.

11.2 Withholding and other taxes

- (a) The Company may withhold or deduct from any amount payable to a Noteholder in respect of the Notes an amount in respect of any Tax which a qualified legal or taxation advisor advises that it is required by law to withhold or deduct from that payment.
- (b) The Company must pay the full amount required to be withheld or deducted to the relevant revenue authority within the time allowed for such payment (without incurring

penalty under the applicable law) and must, if required by a Noteholder, deliver to that Noteholder a copy of the relevant receipt issued by the relevant revenue authority without unreasonable delay after it is received by the Company.

- (c) If an amount is deducted or withheld under section 11.2(a) from a payment to a Noteholder in respect of any Tax, the full amount payable to the Noteholder will be deemed to have been duly paid and satisfied by the Company, and the Company will have no obligation to pay any additional amount to the Noteholder on account of the deduction or withholding.

12. AMENDMENT OF THE NOTE TERMS

12.1 Amendment without the approval of the Noteholders

At any time, and from time to time, the Note Terms may be modified, altered, cancelled, amended or added to (**Modified**), without the consent of the Noteholders, if such modification, alteration, cancellation, amendment or addition (**Modification**) is:

- (a) of a formal or technical nature or made to cure any ambiguity or correct any manifest error;
- (b) necessary to cure any ambiguity or correct or supplement any defective or inconsistent provision;
- (c) necessary or expedient for the purpose of listing the Notes on ASX or to comply with the applicable ASX Listing Rules or the listing or quotation requirements of any other any securities exchange on which the Company may propose to seek a listing of the Notes;
- (d) necessary or expedient for the purpose of enabling the Notes to be offered for issue or for sale under the laws for the time being in force in any place;
- (e) necessary or expedient to comply with the provisions of any law or regulation or the requirements of any statutory authority; or
- (f) necessary or advisable following the introduction of, or any amendment to, clarification of, or change (including any announced prospective change) in, any law or regulation of the Commonwealth of Australia or an announcement, action or decision or a proposal to introduce, amend, clarify or change any such law or regulation or any official administrative pronouncement or action or judicial decision interpreting or applying any such law or regulation which is likely to cause the Notes to cease to be treated as debt for tax or accounting purposes; and
- (g) in respect of a Modification sought by a party in reliance on:
 - (i) any one of sections 12.1(a) to 12.1(e) above: the Company and the Trustee have either jointly or separately obtained a legal opinion from legal advisers of recognised standing in New South Wales, which opinion is in a form satisfactory to the Company and the Trustee, as applicable (each acting reasonably) and is addressed to or is otherwise able to be relied on by each of the Company and the Trustee, as applicable, to the effect that such Modification (taken as a whole and in conjunction with all other Modifications) is:
 - (A) a Modification within the scope of any one or more of sections 12.1(a) to 12.1(e); and
 - (B) not materially prejudicial to the interests of Noteholders of the Notes (taken as a whole); or
 - (ii) section 12.1(f) above: the Company and the Trustee have either jointly or separately obtained an opinion from an accountancy or taxation adviser of recognised standing in New South Wales, which opinion is in a form satisfactory to the Company and the Trustee, as applicable (each acting

reasonably) and is addressed to or is otherwise able to be relied on by each of the Company and the Trustee, as applicable, to the effect that such Modification (taken as a whole and in conjunction with all other Modifications) is:

- (A) a Modification within the scope of section 12.1(f); and
- (B) not materially prejudicial to the interests of Noteholders of the Notes (taken as a whole).

12.2 Amendment with the approval of the Noteholders

- (a) At any time, and from time to time, but subject to sections 12.2(b) and 12.2(c), the Note Terms may be Modified if such Modification is authorised by an Ordinary Resolution.
- (b) If the Trustee considers the Modification will materially and adversely affect the rights of Noteholders (taken as a whole), then the Modification must be authorised by a Special Resolution.
- (c) If a section in these Note Terms provides for Noteholders to give a direction to the Trustee by a Special Resolution, then that section may only be Modified if such Modification is authorised by a Special Resolution.

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

If a Modification to these Note Terms is proposed by the Company under section 12.2 and the Trustee will not consent to the Modification, the Note Terms may be Modified in the manner proposed by the Company if such Modification is authorised by a Special Resolution, provided that such amendment does not adversely affect the rights and obligations of the Trustee.

13. CONVERSION TO VOTING SHARES PRECLUDED

13.1 Breaches of law

- (a) Despite any other term of the Trust Deed or these Note Terms, a Noteholder is not entitled to Convert (and the Company is entitled to refuse to Convert) such number of Notes that would result in:
 - (i) a person acquiring voting Shares in the Company in breach of section 606 of the Corporations Act (or any equivalent provision) where none of the items in section 611 of the Corporations Act apply;
 - (ii) a person acquiring Shares where a notification or consent being required to be sent to, or consent is required under, any legislation by which the Company and its Related Bodies Corporate are bound has not been obtained.
- (b) If a Noteholder delivers a Conversion Notice but, in accordance with section 13.1(a), is not entitled to Convert all of the Notes the subject of the Conversion Notice:
 - (i) the Company will proceed to issue to the Noteholder the maximum number of Shares that it is permitted to issue, as calculated in accordance with section 3.4, within 10 Business Days of receipt of the Conversion Notice in accordance with 3.1(a), and will notify the Trustee accordingly; and
 - (ii) in respect of that number of Notes the subject of the Conversion Notice that the Noteholder is not entitled to Convert (**Unconverted Notes**), the Noteholder may, by giving written notice to the Company, elect to:
 - (A) subject to the Intercreditor Deed, require the Company to Redeem the Unconverted Notes at their Note Principal Amount, together with any Interest accrued on those Notes; or
 - (B) defer Conversion of the Unconverted Notes until such time as the Conversion would not result in a breach under section 13.1(a).

13.2 Statutory declaration

The Company may in its discretion require a Noteholder to provide a statutory declaration confirming that the circumstances referred to in section 13.1 do not exist in respect of any Conversion by that Noteholder.

14. INTERPRETATION AND DEFINITIONS

14.1 Interpretation

In these Note Terms, except where the context otherwise requires:

- (a) if there is inconsistency between the Note Terms and, the Trust Deed, then, to the maximum extent permitted by law, the Trust Deed will prevail;
- (b) a reference to a section is to a section of the Note Terms;
- (c) the Directors may exercise all powers of the Company under these Note Terms as are not, by the Corporations Act or by the Constitution, required to be exercised by the Company in a general meeting;
- (d) if a calculation is required under these Note Terms, unless the contrary intention is expressed, the calculation will be rounded to four decimal places;
- (e) calculations, elections and determinations made by the Company under these Note Terms are binding on Noteholders in the absence of manifest error;
- (f) if an event under these Note Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (g) the singular word includes the plural, and vice versa;
- (h) a word which suggests one gender includes the other genders;
- (i) a reference to the place or venue of a meeting shall be taken to include any applicable electronic, online or virtual platform;
- (j) a reference to the signing or execution of any document includes signing or execution by electronic means;
- (k) a reference to a document being in writing includes being in electronic form;
- (l) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- (m) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
- (n) a reference to “dollars”, or “\$” is to an amount in Australian currency; and
- (o) an Event of Default is continuing if it has not been remedied or waived.

14.2 Definitions

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

Additional Interest Rate means 6.00% per annum.

ANZ means Australia and New Zealand Banking Group Limited (ABN 11 005 357 522).

Applicable Regulations means such provisions of the ASX Listing Rules, the ASX Settlement Operating Rules, the Corporations Act and any regulations or rules pursuant under or pursuant to any such provisions as may be applicable to the transfer of a Note.

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

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

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

ASX Listing Rules means the listing rules of ASX.

Business Day means a day which is a business day within the meaning of the ASX Listing Rules.

Cash Interest Rate means 8.00% per annum.

Company means Mosaic Brands Limited (ABN 96 003 321 579).

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

Conversion means the conversion of a Note in accordance with section 3 and the words **Convert** and **Converted** bear a corresponding meaning.

Conversion Date means the date (determined by the Company (in its absolute discretion) in accordance with the Note Terms) on which Shares will be issued to the Noteholder on Conversion of the Notes under section 3.

Conversion Notice has the meaning given in section 3.1.

Conversion Period means the period commencing on 30 September 2022 and ending on the Maturity Date.

Conversion Price has the meaning given in section 3.3.

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

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

CS Facility Operator means the operator of a CS Facility.

Directors means some or all of the directors of the Company acting as a board.

Early Redemption Notice has the meaning given in section 4.1(a).

End Date means, in respect of a Note, the earliest to occur of its Maturity Date, Conversion Date or Redemption Date.

Event of Default means the happening of any event set out in section 8.

Existing Senior Debt Obligations means all debt and other obligations owing by the Company and its subsidiaries to ANZ from time to time.

Face Value means the nominal principal amount of each Note, being \$1.00.

First Interest Payment Date means 31 December 2021.

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

Insolvency Event occurs in relation to a body corporate if:

- (a) it is (or states that it is) insolvent (as defined in the Corporations Act);
- (b) it has a controller (as defined in the Corporations Act) appointed, or is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;

- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the creditors);
- (d) an Application or order has been made (and, in the case of an Application, it is not stayed, withdrawn or dismissed within 15 Business Days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken under section 459(F)(1) of the Corporations Act to have failed to comply with a statutory demand;
- (f) it is otherwise unable to pay its debts when they fall due; or
- (g) something having a substantially similar effect to (a) to (f) happens in connection with it under the law of any jurisdiction.

Intercreditor Deed means:

- (a) initially, the document to be entered into between ANZ, the Trustee, the Company and others regulating, among other things, the priority of the Transaction Security Interests and the Security Interests granted in favour of ANZ in respect of the Existing Senior Debt Obligations; and
- (b) in respect of any Refinancing Senior Debt Obligations, the document to be entered into between the Refinancing Financier, the Trustee, the Company and others among other things, the priority of the Transaction Security Interests and the Security Interests granted directly or indirectly in favour of Refinancing Financier in respect of the Refinancing Senior Debt Obligations.

Interest means the interest payable from time to time in respect of a Note, including interest payable under in section 2.

Interest Payment Date means, in respect of a Note:

- (a) 31 March, 30 June, 30 September and 31 December in each year commencing after the First Interest Payment Date until the earlier of the Conversion Date, the Maturity Date and the Redemption Date;
- (b) the Conversion Date (if the Company elects not to include the Interest accrued but unpaid on the Note in the Conversion Amount);
- (c) the Maturity Date; and
- (d) any Redemption Date.

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

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

Interest Rate means the aggregate of the Cash Interest Rate and the Additional Interest Rate.

Issue Date means, the date a Note is first issued under these Note Terms.

Maturity Date means, in respect of a Note, 30 September 2024.

Meeting Provisions means the rules relating to meetings of Noteholders contained in clause 20 to the Trust Deed.

Note means a redeemable, secured convertible note issued, or to be issued, by the Company on these Note Terms.

Note Principal Amount means, in respect of a Note, the Face Value for that Note plus all capitalised interest that has been added in accordance with section 2.3.

Note Terms means the terms and conditions of issue of the Notes.

Noteholder means, in respect of a Note, the person from time to time whose name is entered on the Register as the holder of that Note.

Notional Note Principal Amount means, in respect of a Note, the Face Value of that Note plus all Cash Interest Amounts that have capitalised and been added in accordance with section 2.3(e) but, for the avoidance of doubt, does not take into account any Additional Interest Amounts.

Ordinary Resolution means:

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

Permitted New Debt means indebtedness for moneys borrowed or raised pursuant to any financial accommodation not exceeding an aggregate amount of \$1,000,000.

PPS Law means the Personal Property Securities Act 2009 (Cth).

PPS Security Interest means a security interest as defined in the PPS Act.

Redemption means the redemption of a Note in accordance with section 4 and the words Redeem, Redeemable and Redeemed bear their corresponding meanings.

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

Refinancing Financier means any third party financier that provides financing to the Company and its subsidiaries in order to refinance the Existing Senior Debt Obligations.

Refinancing Senior Debt Obligations means all debt and other obligations owing by the Company and its subsidiaries to the Refinancing Financier from time to time.

Register means the register of Noteholders and, where appropriate, the term Register includes:

- (a) a sub-register maintained by or for the Company under the Corporations Act, the Listing Rules or ASX Settlement Operating Rules; and
- (b) any branch register.

Registrar means Computershare Investor Services Pty Limited (ABN 48 078 279 277) or any other person appointed by the Company (with such appointment notified to the Trustee) to maintain the Register.

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

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

Security Interest means a charge, mortgage, pledge, lien or other security interest securing any obligation of any person or any other agreement, notice or arrangement having a similar effect. It includes any PPS Security Interest but does not include any of the foregoing which is an interest of the kind referred to in section 12(3) of the PPS Act.

Senior Debt Obligations means the Existing Senior Debt Obligations or the Refinancing Senior Debt Obligations as applicable.

Shares means an ordinary share in the capital of the Company.

Shareholder means a holder of a Share.

Special Resolution means:

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

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

Transaction Documents means:

- (a) the Trust Deed;
- (b) the Note Terms;
- (c) the Transaction Security Interest;
- (d) the Intercreditor Deed; and
- (e) any document or agreement entered into or given under (a) to (e) above.

Transaction Security Interest means each of:

- (a) the general security deed to be entered into between the Company, each of its subsidiaries incorporated in Australia and the Trustee;
- (b) the general security deed to be entered into on or about the date of this document between Noni B Holdings NZ Limited and the Trustee; and
- (c) any other Security Interest granted to the Trustee in relation to the Secured Money.

Trustee means the person from time to time acting as the trustee of the trust constituted by the Trust Deed (acting in that capacity).

Trust Deed means the trust deed entitled 'Convertible Note Trust Deed' to be entered into between the Company and the Trustee.

VWAP has the meaning given to the term "volume weighted average market price" by chapter 19 of the ASX Listing Rules.

Winding Up means in respect of a person the appointment of a liquidator or provisional liquidator of that person (and where the appointment is made by a court, by a court of competent jurisdiction in Australia).

Executed as a deed

Company)

Executed by
Mosaic Brands Limited ACN 003 321)
579 pursuant to Section 127 of the)
Corporations Act 2001 (Cth) :)

Director

Print Name

Director/Company Secretary

Print Name

Trustee

Executed by)
Melbourne Securities Corporation Ltd)
ACN 160 326 545 pursuant to Section 127 of)
the *Corporations Act 2001* (Cth) :)

Signature of director

Signature of director/company secretary*

Name of director

Name of director/company secretary*

Annexure A – Form of Conversion Notice

To: The Directors
Mosaic Brands Limited

NOTICE OF CONVERSION OF CONVERTIBLE NOTES

I/WE _____
Name of Noteholder

of _____
Name of Noteholder

hereby request conversion of _____ Notes into fully paid ordinary shares in the capital of Mosaic Brands Limited in accordance with the terms of the Convertible Note Trust Deed dated [insert] 2021.

I/WE agree to be bound by the constitution of Mosaic Brands Limited.

DATED:

EXECUTED by [INSERT COMPANY NAME])
ACN [INSERT ACN])
in accordance with Section 127 of the)
Corporations Act 2001 (Cth):)

Signature of director

Signature of director/company secretary*

Name of director

Name of director/company secretary*

OR

SIGNED by [INSERT NAME OF INDIVIDUAL])
in the presence of:)
)

Signature of witness

Signature

Name of witness