



# Trust Deed

for the Hillgrove Resources Note Trust

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Hillgrove Resources Limited (**Issuer**)

Australian Executor Trustees Limited (**Trustee**)

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MinterEllison

# Trust Deed for the Hillgrove Resources Note Trust

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# Details

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Date 22 November 2016

## Parties

Name **Hillgrove Resources Limited**  
ACN 004 297 116  
Short form name **Issuer**  
Notice details 5-7 King William Road,  
Unley, South Australia 5064  
Facsimile: (08) 8538 5255  
Email: Paul.Kiley@hillgroveresources.com.au  
Attention: Company Secretary

Name **Australian Executor Trustees Limited**  
ABN 84 007 869 794  
Short form name **Trustee**  
Notice details Level 22, 207 Kent Street, Sydney 2000  
Facsimile: (02) 9028 5942  
Email: corptrustnotes@aetlimited.com.au  
Attention: Corporate Trust

## Background

- A The Issuer wishes to issue redeemable, secured, convertible notes (**Notes**) under this Deed.
- B The Trustee has agreed, on the Note Terms and conditions contained in this Deed, to:
- (i) act as trustee under this Deed for the benefit of the Noteholders of the Notes; and
  - (ii) hold the Trust Fund for the Noteholders.
- C Pursuant to the Subsidiaries' Guarantee, each of the Australian Subsidiaries has agreed to guarantee to the Trustee the Issuer's obligations under this Deed and the Note Terms in respect of the Notes.
- D All Notes issued under this Deed are secured by the Security Interests granted by each of the Issuer and its Australian Subsidiaries in favour of the Trustee pursuant to the General Security Deeds. The Trustee holds the Security Interests granted pursuant to the General Security Deeds on behalf of, and for the benefit of, the Noteholders, as part of the Trust Fund.

# Agreed terms

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## 1. Defined terms and interpretation

### 1.1 Defined terms from Note Terms

Terms defined in the Note Terms have the same meaning when used in this Deed, unless this Deed provides otherwise.

### 1.2 Definitions

In this Deed, and all documents issued under this Deed, unless the context otherwise requires:

**Accounts** means, in respect of any period, the audited or auditor reviewed (as applicable):

- (a) statement of financial position or balance sheet as at the end of that period;
- (b) statement of financial performance or profit and loss statement for that period; and
- (c) cash flow statement for that period,

of the Issuer provided, or to be provided, to the Trustee under this Deed together with any statements, reports (including any directors' and auditors' reports) and notes attached to or intended to be read with any of them.

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

**Australian Subsidiaries** means each of:

- (a) Kanmantoo Properties Pty Ltd ACN 123 070 646;
- (b) Hillgrove Copper Pty Ltd ACN 105 074;
- (c) Hillgrove Resources Limited ACN 004 297 116;
- (d) Hillgrove Copper Holdings Pty Ltd ACN 146 034 988;
- (e) Hillgrove Wheel Ellen Pty Ltd ACN 117 871 093;
- (f) Hillgrove Exploration Pty Ltd ACN 111 066 267;
- (g) Hillgrove Operations Pty Ltd ACN 105 935 126;
- (h) Mt Torrens Properties Pty Ltd ACN 127 768 816;
- (i) SA Mining Resources Pty Ltd ACN 103 777 368; and
- (j) Hillgrove Indonesia Pty Ltd ACN 130 752 411.

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

**Business Hours** means between 9.00am and 5.00pm on a Business Day.

**Confidential Information** means all information and other material provided to or obtained by the Trustee, a delegate or any officer, employee, professional adviser or other consultant of the Trustee under, in connection with or related to this Deed or any obligation, duty or power of the Trustee under this Deed, but excludes any information or other material obtained independently by the Trustee or that is already public knowledge other than as a result of a breach of clause 18.

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

**Expert** means any appropriately qualified barrister, solicitor, accountant or other expert appointed by the Issuer, the identity of which is approved by the Trustee (such approval not to be unreasonably withheld or delayed).

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

**General Security Deeds** means the general security deeds, dated on or about 22 November 2016 between the Trustee and each of the Issuer and its Australian Subsidiaries.

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

**GST** means GST as defined in the GST Act.

**GST Act** means *A New Tax System (Goods & Services Tax) Act 1999* (Cth), as amended.

**Guarantee** means a guarantee, indemnity, letter of credit, letter of comfort or any other obligation or irrevocable offer (whatever it is called and whatever its nature) to be responsible for an obligation or monetary liability of another person, a dividend, distribution, capital or premium on shares, stock or other interests, or the solvency or financial condition of another person.

**Jurisdiction** means the state of South Australia or New South Wales.

**Issue Date** means, in respect of a Note, the date on which that Note is issued.

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

**Marketable Securities** has the same meaning as the expression 'marketable securities' in section 9 of the Corporations Act.

**Material Adverse Effect** means a material adverse effect on the ability of the Issuer to perform its obligations under any Transaction Document.

**Meeting Provisions** means the rules relating to meetings of Noteholders contained in Schedule 2.

**Modification** mean a modification, alteration, cancellation, amendment or addition and the words **Modify** and **Modified** bear their corresponding meanings.

**Moneys Owning** means all money which the Issuer (whether alone or not) owes or is at any time liable to pay to or for the account of the Trustee, a Noteholder or the Trustee on a Noteholder's behalf (whether alone or not) for any reason whatsoever under or in connection with any Transaction Document. It includes:

- (a) the aggregate of the Face Value of all Notes and any Interest payable on the Notes and any other moneys payable to the Noteholders under or pursuant to this Deed (and the Note Terms); and
- (a) money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with any Transaction Document, or as a result of a breach of or default under or in connection with any Transaction Document,

and in relation to a Noteholder means that portion of moneys which is owing to or in relation to that Noteholder. Where the Issuer would be liable but for an Insolvency Event, it will be taken to still be liable.

**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 and for the purpose of this Deed, excluding the Note Terms, includes a former Noteholder.

**Noteholders' 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);
  - (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.

**Note Terms** means the Note Terms and conditions set out in Schedule 1 or any other conditions, as the case may be, under which Notes are issued from time to time pursuant to this Deed.

**Notes** means one or more (as the context requires) redeemable, secured, convertible notes issued by the Issuer pursuant to this Deed.

**Officer's Certificate** means a certificate signed by a director of the Issuer.

**Prospectus** means a prospectus under which Notes are offered for issue as supplemented from time to time and includes any replacement prospectus in respect of such prospectus.

**Register** means the Register of Noteholders established and maintained as provided in clause 15.

**Registrar** means Boardroom Pty Limited, Level 12, 225 George Street, Sydney, New South Wales 2000 or any replacement registrar that may be appointed by the Issuer.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Security** means:

- (a) the General Security Deeds;
- (b) the Subsidiaries' Guarantee;
- (c) any other Security Interest or Guarantee given to the Trustee as security for the payment of the Moneys Owning;
- (d) any other Security Interest which the Trustee is given as trustee of the Trust; or
- (e) any document which the Issuer and the Trustee agree is a Security.

**Security Interest** means a mortgage, charge, lien, pledge, hypothecation, assignment or trust of, over or in respect of an asset or any other right by way of security (including, without limitation, under any agency, hire purchase, title retention, sale and repurchase or flawed asset arrangement) of a creditor to have its claims satisfied prior to other creditors with or from the proceeds of any asset or any encumbrance and includes any agreement, arrangement or document conferring such a right.

**Share** means an ordinary share in the capital of the Issuer and **Shareholder** means a holder of one or more Shares.

**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 outstanding of all of the Notes.

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

**Subsidiaries' Guarantee** means the deed of guarantee dated on or about 22 November 2016 between each of the Australian Subsidiaries and the Trustee in respect of the Issuer's obligations under this Deed and the Note Terms.

**Transaction Document** means:

- (a) this Deed (including the Note Terms);
- (b) each Note;
- (c) the Subsidiaries' Guarantee; and
- (d) the General Security Deeds.

**Trust** means the 'Hillgrove Resources Note Trust' established under this Deed.

**Trust Deed** or **Deed** means this deed relating to the Hillgrove Resources Note Trust.

**Trust Fund** means:

- (b) the amount held by the Trustee under clause 4.3;
- (c) each Security; and
- (d) any other property acquired or held by the Trustee as trustee of the Trust, including:
  - (i) the benefit of any representation, warranty, undertaking or covenant;
  - (ii) any property representing the proceeds of sale or enforcement of any property forming part of the Trust Fund;
  - (iii) any property representing the proceeds of any insurance claims payable to the Trustee in that capacity; and
  - (iv) any property into which any other property forming part of the Trust Fund is converted or invested and the property representing the proceeds of any such property.

**Trustee Company** means a body corporate eligible to be trustee under section 283AC of the Corporations Act.

**Trustee Related Company** means a Related Body Corporate of the Trustee.

### 1.3 Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a document (including this Deed) includes all schedules or annexes to it;
- (d) a reference to a clause or paragraph is to a clause or paragraph of this Deed provided that a reference to a clause in the Note Terms is to the correspondingly numbered term and a reference in the Note Terms to the 'Trust Deed' is to this Deed;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to '\$', 'Australian dollars', 'A\$', 'AUS' or 'Australian cent' is a reference to the lawful currency of Australia;
- (g) a reference to time is to Adelaide, South Australia time;
- (h) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, Government Agency or other entity;
- (j) a reference to a statute, ordinance, code, rule, directive or law (however described) includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or other similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) an Event of Default is subsisting if it has not been remedied or waived in writing by the Trustee;
- (n) headings (including those in brackets at the beginning of paragraphs) and footnotes are for convenience only and do not affect the interpretation of this Deed;
- (o) use of a term (including **Moneys Owing**) denoting subject matter which comprises more than one part or aspect includes a reference to each or any part or aspect of the subject matter; and
- (p) terms used in the Corporations Act have the same respective meanings when used in this Deed.

#### 1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the succeeding Business Day.

#### 1.5 References to statutory provisions

A reference to a statute or statutory provision includes:

- (a) a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision;
- (b) a statute or statutory provision which has been amended, extended, consolidated or replaced by the statute or statutory provision; and
- (c) subordinate legislation made under the statute or statutory provision including an order, regulation, or instrument.

## 1.6 General compliance provision

- (a) A provision of this Deed which is inconsistent with a Statutory Obligation (including a provision of the Corporations Act) does not operate to the extent of that inconsistency.
- (b) Clause 1.6 is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Deed.
- (c) Without limiting the generality of clause 1.6 or clause 9, to the extent a provision of this Deed breaches or contravenes, or if complied with would result in a breach or contravention of:
  - (i) a Statutory Obligation of the Trustee or any other party; or
  - (ii) a right, power, authority, discretion or remedy conferred on the Trustee by law,this Deed is taken not to contain that provision.
- (d) This clause 1.6 prevails over all other provisions of this Deed including any that are expressed to prevail over it.

## 1.7 Inconsistency with ASX Listing Rules

- (a) Despite anything to the contrary in this clause 1.7, this clause 1.7 has effect subject to clause 1.6.
- (b) This Deed is to be interpreted subject to the ASX Listing Rules and the ASX Settlement Operating Rules and accordingly, if the Notes are quoted on ASX, the following clauses apply:
  - (i) despite anything contained in this Deed, if the ASX Listing Rules prohibit an act being done, the act shall not be done;
  - (ii) nothing contained in this Deed prevents an act being done that the ASX Listing Rules require to be done;
  - (iii) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the ASX Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
  - (v) if the ASX Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision; and
  - (vi) if any provision of this Deed is or becomes inconsistent with the ASX Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.
- (c) The obligations imposed by this clause are additional to those imposed by any other clause of this Deed.

## 1.8 Inconsistency with Terms

Unless the Note Terms otherwise provide, if there is any inconsistency between the provisions of the Note Terms and this Deed, then, to the maximum extent permitted by law, the provisions of this Deed will prevail.

## 1.9 Places of action

Despite any provision of this Deed or the Note Terms or both:

- (a) any matter or thing done or to be done by the Issuer under this Deed or the Note Terms or both (whether the exercise of a power or discretion, the performance of a function, the

observance or performance of a covenant, liability or obligation, or otherwise) must be done by or on behalf of the Issuer in the Jurisdiction;

- (b) any matter or thing done or to be done by the Trustee under this Deed or the Note Terms or both (whether the exercise of a power or discretion, the performance of a function, the observance or performance of a covenant, liability or obligation, or otherwise) must be done by or on behalf of the Trustee in the Jurisdiction;
- (c) no matter or thing done or to be done by the Issuer or the Trustee (or either of them) under this Deed or the Note Terms (or both) which is in fact done by or on behalf of (including anything done by a Trustee Related Company on behalf of, or as agent of the Trustee) the Issuer or the Trustee (or either of them) in Australia but out of the Jurisdiction will by reason solely of that fact, be invalid, ineffective, void or voidable at the option of any person; and
- (d) where in this Deed provision is made for or reference is made to the production, surrender, lodgement or delivery of instruments of transfer or transmission of Notes or other documents or the giving of notice in each case by Noteholders to the Issuer, the same will be deemed not to have been produced, surrendered, lodged, delivered or given to the Issuer by any Noteholder unless and until it is actually received by the Trustee, on behalf of the Issuer, at the Trustee's office in the Jurisdiction or such other place as the Issuer and the Trustee may reasonably nominate for the purposes of this clause.

## **2. Issue of Notes**

### **2.1 Issue of Notes**

The Issuer may issue Notes to any person on the Terms of this Deed and the Note Terms by entering the person in the Register as the Noteholder of the Notes.

### **2.2 General issue terms**

The Notes:

- (a) constitute separate and independent acknowledgments of the indebtedness of the Issuer;
- (b) are subject to the terms of this Deed (including the Note Terms);
- (c) are direct, redeemable, secured obligations of the Issuer;
- (d) are convertible into Shares on and in accordance with the terms of this Deed (including the Note Terms); and
- (e) rank equally and without any preference amongst themselves as described in the Note Terms.

### **2.3 Register**

Entitlement to a Note is determined by inscription in the Register and on such inscription, a Note will be deemed to be issued.

### **2.4 Deed and Terms are binding**

- (a) Noteholders are deemed to have notice of, and be bound by, this Deed and the Note Terms.
- (b) This Deed and the Note Terms are binding on the Issuer and the Trustee.
- (c) It is a condition of a Noteholder receiving any of the rights or benefits in connection with this Deed or the Notes that the Noteholder performs all of the obligations and complies with all restrictions and limitations applicable to it under this Deed and the Note Terms.

### **2.5 Binding nature of relationship**

Each Noteholder is taken to have agreed:

- (a) to be bound by anything properly done or properly not done by the Trustee in accordance with the Transaction Documents, whether or not the Trustee is acting on the instructions of the Noteholders given by a Special Resolution and whether or not the Noteholders gave an instruction by way of a Special Resolution or approved of the thing done or not done; and
- (b) at the Trustee's request, to ratify anything properly done or properly not done by the Trustee in accordance with the Transaction Documents.

## **2.6 Limit on Noteholders' rights**

All of the rights against the Issuer in connection with the Notes are held by the Trustee for the Noteholders. Accordingly, subject to clause 2.7:

- (a) no Noteholder is entitled to directly enforce any rights, powers or remedies in connection with the Notes under the Transaction Documents or a Security directly against the Issuer or the Australian Subsidiaries; and
- (b) the rights, powers and remedies of the Trustee under and in respect of the Transaction Documents and any Security 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).

## **2.7 Noteholder's right to take action**

No Noteholder is entitled to proceed directly against the Issuer or the Australian Subsidiaries to enforce any right or remedy under or in respect of the Notes unless the Trustee, having become bound to proceed in accordance with the Transaction Documents or a Security, fails to do so within 30 Business Days of being obliged to do so and such failure is continuing.

## **2.8 Individual responsibility of Noteholders**

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

- (a) made and will continue to make its own independent investigation of the financial condition and affairs of the Issuer and the Australian Subsidiaries based on documents and information which it considers appropriate;
- (b) made its own appraisal of the creditworthiness of the Issuer and the Australian Subsidiaries;
- (c) made its own assessment and approval of the rate of interest, risks associated with repayment of principal and other returns in relation to the Notes; and
- (d) made its own assessment of the General Security Deeds and the Subsidiaries' Guarantee, without relying on the Trustee (in that capacity) or any representation made by it.

## **2.9 Knowledge of the Trustee**

In relation to the Trust, the Trustee will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trust.

## **2.10 Issuer dealing with Notes**

The Issuer may purchase or otherwise deal with any Notes. All un-matured Notes purchased by the Issuer may be cancelled or resold despite any rule of law or equity to the contrary. All liabilities and obligations of the Issuer in connection with any Notes which are repurchased and cancelled by the Issuer, are discharged.

## **2.11 Payment of commission**

The Issuer may pay a commission, procuration fee, brokerage or any other fees to any person for applying or underwriting applications for or obtaining applications for Notes.

## **3. Covenant to pay**

### **3.1 Covenant to pay**

The Issuer covenants to pay to the Trustee on behalf of Noteholders the Moneys Owing from time to time as and when due, in accordance with the Note Terms or otherwise as required in this Deed. The Trustee hereby directs the Issuer to pay the Moneys Owing directly to the Noteholders, unless:

- (a) the Issuer is in Liquidation; or
- (b) the Issuer is directed by the Trustee by the giving of notice to that effect not less than 5 Business Days' prior to the scheduled date for the making of the payment,

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

### **3.2 Method of payment**

Any payment to be made in respect of the Notes by the Issuer or the Trustee may be made in the manner provided in the Note Terms and any payment so made will be a good discharge to the Issuer and/or the Trustee, as the case may be.

## **4. Trustee**

### **4.1 Appointment**

The Trustee is appointed as the trustee for the Noteholders in respect of the trusts established under this clause 4.

### **4.2 Constitution of Trust**

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

### **4.3 Declaration of trust**

The Trustee declares that it holds the sum of \$10 and will hold the Trust Fund and:

- (a) the right to enforce the Issuer's duty to pay the Moneys Owing on the Notes on the due date for payment in accordance with the Note Terms;
- (b) the right to enforce any Security granted by the Issuer and/or the Australian Subsidiaries as security for repayment of the Moneys Owing on the Notes (including pursuant to the General Security Deeds); and
- (c) the right to enforce any other duties that the Issuer or the Australian Subsidiaries has under the Transaction Documents, a Security or Chapter 2L of the Corporations Act,

on trust for the Noteholders on the terms of this Deed.

### **4.4 Duration**

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

- (a) payment in full of all Moneys Owing; and
- (b) the day immediately before the date which is 80 years from the date of this Deed.

### **4.5 Name of Trust**

The Trust will be known as the 'Hillgrove Resources Note Trust'.

## 4.6 Beneficiaries

Subject to the rights of the Trustee, the Noteholders are the persons beneficially entitled to the Trust Fund from time to time and at all times on the terms of this Deed.

## 5. Representations and warranties

### 5.1 Representations and warranties by the Issuer

The Issuer makes the following representations and warranties in favour of the Trustee and each Noteholder:

- (a) **(Validity)**: the Issuer is a corporation validly existing under the Corporations Act.
- (b) **(Power)**: the Issuer has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
- (c) **(Corporate authority)**: the Issuer has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (d) **(Legally binding obligations)**: each Transaction Document to which the Issuer is expressed to be a party constitutes a valid and legally binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (e) **(Execution and performance)**: the execution and performance by the Issuer of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents do not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement which is binding on it or its assets.
- (f) **(Prospectus)**: that as far as the Issuer is aware (having made all reasonable enquiries):
  - (i) the information contained in the Prospectus is true and complete in all material respects and is not misleading or deceptive, or likely to mislead or deceive, in any material respect; and
  - (ii) no act, matter or thing has occurred since the date of the Prospectus that renders such information misleading or deceptive or likely to mislead or deceive in any material respect and which has not, within a reasonable time after that occurrence, been the subject of a supplementary or replacement prospectus.
- (g) **(No taxes payable)**: no ad valorem stamp, transaction, registration or similar taxes are payable in connection with the execution, delivery, performance or enforcement of the Transaction Documents or the transactions contemplated by them (other than any duty that may be payable in relation to the issue of the Notes themselves).
- (h) **(Immunity)**: the Issuer does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

- (i) **(Approvals)**: each consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption of, from or required by, a Government Agency or required by law which is required in relation to:
  - (i) the execution, delivery, issue and performance by the Issuer of the Transaction Documents and the transactions contemplated by those documents; or
  - (ii) the validity and enforceability of those documents,
 has been obtained or effected, is in full force and effect, and that it has complied with, and paid all applicable fees for, each of them.
- (j) **(No misrepresentation)**: all information (other than any assumptions, estimates or forecasts) provided by the Issuer to the Trustee is true in all material respects at the date of this Deed and the Issue Date for any Note or, if later, when provided and that neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by this Deed or the Note, was or is misleading, by omission or otherwise.
- (k) **(Law)**: the Issuer has complied with all applicable laws where a failure to comply would have, or would be likely to have, a Material Adverse Effect.
- (l) **(No Event of Default)**: no event has occurred which constitutes an Event of Default.
- (m) **(Solvency)**: there are no reasonable grounds to suspect that the Issuer is insolvent or unable to pay its debts as and when they become due and payable.

## 5.2 Issuer's representations and warranties repeated

Each representation and warranty in clause 5.1 is deemed to be repeated by the Issuer on each Issue Date by reference to the facts and circumstances existing on that date.

## 5.3 Representations and warranties by the Trustee

The Trustee makes the following representations and warranties in favour of the Issuer on the date of this Deed:

- (a) **(Status)**: the Trustee is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) **(Corporation Act requirements)** The Trustee meets the requirements of a trustee as provided in sections 283AC(1) and 283AC(2) of the Corporations Act.
- (c) **(Power)**: the Trustee has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
- (d) **(Corporate authority)**: the Trustee has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (e) **(Execution and performance)**: the execution and performance by the Trustee of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents do not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it;

- (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement which is binding on it or its assets.
- (f) **(Approvals)**: each consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption of, from or required by, a Government Agency or required by law which is required in relation to:
- (i) the execution, delivery, issue and performance by the Trustee of the Transaction Documents and the transactions contemplated by those documents; or
  - (ii) the validity and enforceability of those documents,
- has been obtained or effected, is in full force and effect, and that it has complied with, and paid all applicable fees for, each of them.

## 6. Issuer's covenants

### 6.1 Covenants

The Issuer covenants with the Trustee that it will:

- (a) keep proper books of account and enter into those books particulars of all dealings and transactions in relation to its business;
- (b) so long as any of the Notes remain outstanding, promptly notify the Trustee after it becomes aware that any material condition of this Deed cannot be fulfilled or after it becomes aware of any Material Adverse Effect or the occurrence of any Event of Default, such notice to be given as soon as practicable and in any event, within 5 Business Days of the Issuer becoming so aware;
- (c) comply with this Deed, including the Note Terms and the Meeting Provisions, and any Security (including the General Security Deed to which it is a party);
- (d) comply with its reporting and other obligations to the Trustee, ASIC, ASX and to the Noteholders under the Corporations Act, the ASX Listing Rules and the ASX Settlement Operating Rules;
- (e) use all reasonable endeavours to ensure that the Notes are, within a reasonable time after their issue, quoted on the ASX and that such quotation is maintained (including paying all necessary listing fees), and it will provide to the ASX such information as the ASX may require in accordance with the ASX Listing Rules and any other ASX requirements (including providing the ASX with a copy of this Deed);
- (f) comply with all laws which may be binding on it with respect to the Notes, including the Corporations Act, the ASX Listing Rules and the ASX Settlement Operating Rules (if applicable), and do anything reasonably requested by the Trustee to enable the Trustee to comply with the Corporations Act (or any other laws binding on the Trustee with respect to the Trust or the Notes), the ASX Listing Rules and the ASX Settlement Operating Rules (if applicable);
- (g) provide the Trustee (at the Issuer's own cost) with a valuation of its assets and business conducted on a 'going concern' basis, as and when requested by the Trustee for the purpose of ensuring that the Trustee can comply with Chapter 2L of the Corporations Act;
- (h) provide or cause to be provided (within the required time or, in all other cases, promptly) to the Trustee:

- (i) within 120 days after the close of each of the Issuer's financial years, a copy of the Issuer's audited Accounts in respect of that financial year;
  - (ii) within 90 days after the first half of each of the Issuer's financial years, a copy of the Issuer's unaudited Accounts in respect of that half year, which have been reviewed by the Issuer's auditor in accordance with section 309(4) of the Corporations Act;
  - (iii) by the time required under section 318 of the Corporations Act, any reports required to be given to the Trustee or Noteholders under that section;
  - (iv) by the time required under section 283BF of the Corporations Act, any reports required to be given to the Trustee under that section;
  - (v) to the extent not already provided under this clause 6, within 7 days of issue, copies of all reports and releases made by the Issuer to the ASX (if any);
  - (vi) to the extent not already provided under this clause 6, copies of any document, form or report which are lodged with ASIC and which are material to the Trustee's role as trustee of the Trust at the same time any such document, form or report is given to ASIC;
  - (vii) copies of all documents and notices given to Noteholders at the same time any such document or notice is given to the Noteholders and copies of all material documents and notices received by the Issuer from any Noteholder;
  - (viii) any information which the Trustee may reasonably require for the purposes of this Deed or for compliance with the Corporations Act;
  - (ix) any other information reasonably required by the Trustee for the purposes of this Deed; and
  - (x) where there exists any recurring obligation on the Issuer or the Trustee or both to furnish certain information on the basis of which stamp duty will be payable in any State or Territory or other place, provide such information as is required by the Trustee to properly complete any return required to be lodged under the provisions of any stamp duty legislation which are applicable to this document or any of the Notes or otherwise to enable the Trustee to comply with its obligations with respect to any undertaking given pursuant to any such legislation, such information to be provided to the Trustee not less than 14 days before the time such return is required to be lodged.
- (i) ensure that any Accounts provided to the Trustee:
    - (i) comply with the requirements of the Corporations Act;
    - (ii) comply with current accounting practice except to the extent disclosed in them and with all applicable laws; and
    - (iii) give a true and fair view of the matters with which they deal;
  - (j) comply with all statutory and regulatory requirements applicable to it;
  - (k) carry on and conduct the business of the Issuer 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;
  - (l) adequately insure or cause to be insured its assets against all material risks properly insurable against the standard of a prudent business person;

- (m) make all financial and other records of the Issuer and its subsidiaries available for inspection by:
  - (i) the Trustee;
  - (ii) any auditor appointed by the Trustee;
  - (iii) any officer or employee of the Trustee authorised by the Trustee to carry out the inspection, and
  - (iv) give them any information, explanations or other assistance that they reasonably require about matters relating to those records;
- (n) notify the Trustee promptly of any appointment, retirement, resignation or removal of an auditor of the Issuer;
- (o) if required by the Trustee (acting reasonably), procure that its auditors conduct an audit of, and certify to the Trustee, the calculation by the Issuer of the aggregate amount of Moneys Owing under or in respect of this Deed or Note to each Noteholder;
- (p) promptly after redeeming any Notes, confirm details of that redemption to the Trustee, by certificate signed by any two directors of the Issuer; and
- (q) not transfer its or its Australian Subsidiaries' jurisdiction or incorporation or enter into any insolvent merger or consolidation.

## 7. Reports

- (a) The Issuer must comply with its reporting obligations to the Trustee, ASIC and to the Noteholders under the Corporations Act and the ASX Listing Rules.
- (b) In addition to its reporting obligations under the Corporations Act, within one month of the end of each Interest Period until and including the Maturity Date, the Issuer must give the Trustee an Officer's Certificate certifying the following:
  - (i) full particulars of the Moneys Owing as at the relevant Interest Payment Date including details of the:
    - (A) Face Value; and
    - (B) Interest Rate;
  - (ii) full particulars of and the Face Value of all Notes Redeemed for which a Delisting Notice (as defined in clause 4.7 of Schedule 1) has been given in that Interest Period;
  - (iii) full particulars of and the Face Value of all Notes Converted in that Interest Period;
  - (iv) whether all amounts which have become due and payable on or prior to that Interest Payment Date have been duly paid in respect of all Notes;
  - (v) whether all amounts which are secured by a Security and which have become due and payable on or prior to that Interest Payment Date have been duly paid; and
  - (vi) as at the date of the Officer's Certificate, that the net assets of the Issuer would be sufficient to pay all Moneys Owing.

## 8. Default

### 8.1 Enforcement of Transaction Documents

Despite any other provision of this Deed but subject to clause 8.2 and to the Corporations Act, the Trustee, despite knowledge of any breach (whether anticipatory or actual) or default under a Transaction Document (and whether of or in relation to any covenant, obligation, condition or other provision of a Transaction Document) or the occurrence of an Event of Default:

- (a) may in its absolute discretion waive or excuse on any terms or conditions, or without imposing any terms and conditions, that breach or default (if the Trustee is reasonably satisfied that the default, including any Event of Default, will not materially prejudice the Noteholders' interests);
- (b) may decide whether or not to take action to enforce the Transaction Documents or any Security (including the General Security Deeds and/or the Subsidiaries' Guarantee) as it sees fit in its absolute discretion including without limitation:
  - (i) demand and require immediate payment of the Moneys Owing and to commence legal proceedings against the Issuer and/or the Australian Subsidiaries to recover the same;
  - (ii) exercise any powers, rights or privileges conferred by law or equity under any Transaction Document, Security or any other collateral deed or security;
  - (iii) exercise any of its powers under the Corporations Act;
  - (iv) issue a default notice to the Issuer or the Australian Subsidiaries requiring that the default be remedied to the satisfaction of the Trustee; and
  - (v) take such other action as the Noteholders deem appropriate to recover the Moneys Owing;
- (c) may in its absolute discretion not inform Noteholders of any breach or default (including any Event of Default if the Trustee is reasonably satisfied that the Event of Default will not materially prejudice the Noteholders' interests);
- (d) may in its absolute discretion, despite the knowledge of the Trustee of any breach or default, not take any action or proceeding against the Issuer to enforce the observance or performance of any such covenant, obligation, condition or provision (including enforcement of the payment of the Notes and recovery of any other Moneys Owing under this Deed), unless in any such case, the Trustee is indemnified to its satisfaction against all liabilities, proceedings, claims and demands to which the Trustee may become liable as a result of such direction and all costs, charges and expenses (including rights of remuneration under this Deed) which may be incurred by the Trustee in connection with such direction, action or proceedings;
- (e) must not take any action in relation to any breach or default by the Issuer and/or the Australian Subsidiaries (including the issuing of any notice under this Deed) unless it has actual knowledge of the breach or default or is advised by another person of the breach or default, and until such a time the Trustee can assume that no such breach or default by the Issuer and/or the Australian Subsidiaries has occurred (and will incur no liability of any kind as the result of such assumption); and
- (f) may do such things as are necessary or appropriate to convene a meeting of Noteholders in accordance with clause 16.

## 8.2 Enforcement at the direction of Noteholders

Provided the Trustee is first placed in funds to cover the costs associated with taking the action required, the Trustee must take action to enforce the Transaction Documents or a Security where all of the following conditions are satisfied:

- (a) it is directed as to the manner in which to take action by a Special Resolution of the Noteholders;
- (b) its liability is limited in a manner consistent with clauses 12.2 and 13.1;
- (c) it is indemnified to its satisfaction against all actions, proceedings, claims and demands to which the Trustee may render itself liable and any and all additional costs, charges and expenses which the Trustee may incur in accordance with clauses 12.2 and 13.1; and
- (d) the Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

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

## 8.3 Enforcement by Noteholders

- (a) A Noteholder, or Noteholders, may only take action or proceedings against the Issuer and/or the Australian Subsidiaries or to enforce any provision of a Transaction Document or a Security following the making of a request in accordance with clause 8.2(a) if 30 Business Days have lapsed since the date on which the Noteholder, or Noteholders, gave notice to the Trustee that it, or they, intended to commence such action or proceedings (with such notice to specify the details of its claim and the basis of its claim) and the Trustee has not commenced such action or proceedings as a result of the request of the Noteholder, or Noteholders, made in accordance with clause 8.2(a).
- (b) The Noteholder, or Noteholders, must provide to the Issuer and/or the Australian Subsidiaries a copy of the notice referred to in clause 8.3(a) as soon as reasonably practicable.

## 8.4 Application of money received by the Trustee

- (a) All money received by the Trustee in respect of amounts payable under the Transaction Documents (including from the enforcement of a Security or from the Issuer under a Security) must be held by the Trustee upon trust to apply the same for the following purposes in the following order:
  - (i) first – in payment of all costs, charges and expenses incurred and payments made by the Trustee under or in connection with the Transaction Documents (including all remuneration payable to the Trustee); and
  - (ii) secondly – in or towards payment to Noteholders *pari passu* and rateably of all Moneys Owing in respect of the Notes; and
  - (iii) the balance (if any) to the Issuer.
- (b) In making any payments in accordance with clause 8.4(a)(ii), the Trustee shall have discretion to first pay either the Face Value or Interest owing on the Notes in such order as the Trustee sees fit.

## **8.5 Knowledge of an Event of Default**

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 Issuer or a Noteholder stating that an Event of Default has occurred and describing it.

## **9. Trustee's powers and duties**

### **9.1 Power**

Subject to this Deed, in connection with the discharge of its duties and obligations under this Deed, the Trustee has within and outside Australia all the powers in relation to the Trust that it is legally possible for a natural person or corporation to have.

### **9.2 Duties**

The Trustee must:

- (a) comply with its duties under the Corporations Act; and
- (b) act in accordance with this Deed, having regard to (subject to this Deed (including the Note Terms)) the rights of the Noteholders as a whole and without regard to any interests arising from the taxation or other circumstances of particular Noteholders.

The provisions contained in this clause are for the benefit of Noteholders.

### **9.3 Delegation**

- (a) The Trustee, by power of attorney or otherwise, may authorise and delegate to one or more persons being:
  - (i) a Related Body Corporate; or
  - (ii) to any other person whether or not being the Issuer or persons related to or associated with the Issuer,to do anything that the Trustee may lawfully delegate, including holding any trust property and executing documents on its behalf, and delegating any trusts, powers or discretions vested in the Trustee under this Deed on such terms and conditions (including power to sub-delegate) as the Trustee may think fit.
- (b) Any person dealing with the Trustee or any delegate appointed under clause 9.3(a), is entitled to assume without further enquiry that such delegate has been duly appointed and such appointment remains in full force and effect.
- (c) The Trustee may act on the opinion, certificate, advice of or information obtained from any agent or delegate appointed under clause 9.3(a). The Trustee is not liable for any loss arising due to the acts or omissions of any delegate, attorney or agent (other than a Related Body Corporate).

### **9.4 Trustee not to interfere**

Subject to this Deed, its general duties as trustee under statute (including the Corporations Act) and at general law, the Trustee must not interfere with the conduct of the ordinary business of the Issuer unless and until the Moneys Owing have become immediately due and payable as a result of a breach or default under this Deed (including an Event of Default) and the Trustee has become entitled, or has been duly directed by Noteholders, pursuant to the Note Terms of the Transaction Documents or a Security to enforce the same. For the avoidance of doubt, nothing in this clause restricts or precludes the Trustee's rights to remuneration in clause 10 or the Trustee's right of indemnity in clause 12.

## 9.5 Directions

The Trustee may apply to any court of competent jurisdiction for directions in relation to any question and assent to and approve or oppose any application to any court made by or at the instance of any Noteholder.

## 9.6 Experts

The Trustee may act, in accordance with the terms of this Deed, on the advice or opinion or any information obtained from any barrister, solicitor, accountant, valuer, surveyor, broker, auctioneer or other expert whether obtained by the Issuer or by the Trustee and whether or not addressed to the Trustee or expressed to be for the benefit of the Trustee. Other than in accordance with clause 9.3(c), the Trustee will have no liability for having acted in accordance with such advice, opinion or information.

## 9.7 Trustee's discretion

Except where otherwise expressly provided for in this Deed, the Trustee may determine:

- (a) whether to exercise and the manner, mode and time of exercise of its powers, authorities and discretions in its absolute discretion;
- (b) as between itself and the Noteholders, all questions and matters of doubt arising in relation to this Deed and every such determination made in good faith whether upon a question actually raised or implied in the acts or proceedings of the Trustee shall be conclusive and shall bind all Noteholders, unless a court of competent jurisdiction otherwise orders; and
- (c) without limiting paragraphs (a) and (b), whether to give any instructions, directions or consents on such terms as it thinks fit and whether to agree to any amendments to or waivers of any of those documents or any agreements referred to in those documents on such terms as it thinks fit, in any case without the approval of the Noteholders.

## 9.8 Independent rights

The Trustee and any Related Body Corporate or associate of the Trustee, subject to the Corporations Act and to always acting in good faith to Noteholders, may:

- (a) hold Notes, or any other Marketable Securities in or of the Issuer;
- (b) represent or act for, or contract with, individual Noteholders;
- (c) deal in any capacity with the Issuer or with any Related Body Corporate or associate of the Issuer;
- (d) commence, prosecute, vary, discontinue, abandon, waive or compromise any action, proceeding or claim on any terms or conditions as it thinks fit;
- (e) contract or enter into arrangements with itself acting in any capacity other than as Trustee; or
- (f) act in any capacity in relation to any other trusts,

without in any such case being liable to account to any trust, the Issuer or to any Noteholder.

## 9.9 No monitoring

- (a) The Trustee is not required to:
  - (i) keep itself informed as to the performance or observance by the Issuer of its obligations under the Transaction Documents (or any other document to which the Issuer is a party). This includes no requirement to inspect the books or review

the credit worthiness of the Issuer or investigate whether a default has occurred;  
or

- (ii) except as specifically required under this Deed, furnish any notices, information, reports or accounts to a Noteholder but may in its discretion do so.
- (b) If any monitoring obligations of any kind are imposed on the Trustee under applicable law or by way of ASIC instrument in relation to the Transaction Documents or any Note (**Obligations**), any performance by the Trustee of those Obligations will, if permitted by law or by ASIC, be deferred for a period of 30 days, during which period:
- (i) the Trustee may seek any further information or advice (including without limitation legal advice) before performing the Obligations;
  - (ii) the Issuer will assist the Trustee with any further information or advice requested by the Trustee under sub-paragraph (i); and
  - (iii) the Trustee and the Issuer will negotiate and agree in writing upon the Note Terms and conditions of the Trustee's performance of the Obligations (including in respect of additional new fees to be paid by the Issuer to the Trustee commensurate with the Obligations (**Additional Fees**)) and any assistance to be provided by the Issuer under sub-paragraph (ii),
- unless the Issuer certifies in writing to the Trustee (or ASIC directs the Trustee in accordance with law) that the Obligations must be performed by the Trustee immediately so as to ensure:
- (iv) that the Issuer is not in breach of, or does not fail to comply with, any applicable law or ASIC instrument relating to the Notes; or
  - (v) the discharge by the Issuer of its duties and obligations in relation to the Notes, in which case:
    - (vi) the Trustee may lawfully undertake the Obligations; and
    - (vii) the Trustee will be paid by the Issuer as soon as possible an amount for the performance of the Obligations that is regarded by the Trustee (acting reasonably) as reasonable for the period the Trustee performs the Obligations until such time as the Trustee and the Issuer agree on the Additional Fees.

## 9.10 Exclusion

All liabilities and responsibilities which may from time to time be imposed on the Trustee at law or in equity are, to the extent permitted at law or in equity and except to the extent expressly provided to the contrary in the Transaction Documents, expressly waived and negated by the Noteholders and the Issuer.

## 10. Trustee's undertakings

The Trustee must:

- (a) act honestly and in good faith and comply with all applicable laws in performing its duties and in the exercise of its discretions under this Deed;
- (b) if and to the extent the Trustee holds Trust assets, keep accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee under this Deed; and

- (c) if and to the extent the Trustee holds Trust assets, keep the assets of the Trust separate from all other assets of the Trustee which are held in a capacity other than as trustee under this Deed.

## 11. Fees and expenses

### 11.1 Fee

- (a) The Issuer must pay to the Trustee a fee as agreed from time to time between the parties in respect of the Trustee's services including any services performed by it in relation to any default or restructure of the arrangements under the Transaction Documents. Fees payable by the Issuer to the Trustee are exclusive of GST.
- (b) If the Trustee takes any enforcement action in relation to the Transaction Documents or a Security, the Issuer must pay to the Trustee, on demand from the Trustee, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such enforcement action, as shall from time to time be agreed between the Issuer and the Trustee.
- (c) In the absence of agreement in relation to the additional remuneration referred to in clause 11.1(b), the Trustee shall be entitled to charge the Issuer reasonable hourly rates for time spent by the Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall:
  - (i) reflect the level of expertise required to perform the work; and
  - (ii) be commensurate with and referable to the hourly rate charged at the relevant time by members of the Insolvency Practitioners Association of Australia for work of the kind being performed by the Trustee's officers and employees.
- (d) If the Trustee takes any action not covered by clause 11.1(b) and which is (in the Trustee's reasonable opinion) beyond the scope of work that a trustee of the Trust would ordinarily be expected to perform (having regard to the terms of this Deed), the Issuer must pay to the Trustee such additional remuneration as is commensurate with such additional duties and responsibilities as shall from time to time be agreed between the Issuer and the Trustee.

### 11.2 Expenses

The Issuer must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Transaction Documents and the Prospectus and, without prejudice to any other right of indemnity given by law to trustees, must reimburse the Trustee on demand for, and indemnifies the Trustee against:

- (a) all expenses (including legal fees, costs and disbursements) of the Trustee or that any delegate of the Trustee reasonably incurs or incurred in connection with negotiating, performing and executing the Transaction Documents and the Prospectus and any subsequent consent, agreement, approval, waiver or amendment relating to the Transaction Documents or the Prospectus;
- (b) all expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment, or similar process) the Trustee or any delegate of the Trustee reasonably incurs or incurred in connection with the Trustee or any delegate of the Trustee exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under the Transaction Documents, a Security or the Prospectus; and
- (c) all expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment, or similar

process) the Trustee or any delegate of the Trustee reasonably incurs or incurred in connection with:

- (i) any breach or default in the observance or performance by the Issuer of any of its obligations under this Deed or any other Transaction Document;
- (ii) the convening and holding of any meeting of Noteholders or the carrying out of any directions or resolutions of any such meeting;
- (iii) all actions take under this Deed in relation to complying with any notice, request or requirement of any Government Agency and any investigation by an Government Agency into the affairs of the Issuer.

### **11.3 Priority**

All amounts payable to the Trustee, including all costs, charges, expenses and liabilities incurred and payments made in or about the execution, administration or enforcement of the trusts of this Deed, the Transaction Documents or any Security under this clause 11, must 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 course of administration by or under the order of any court. The Trustee may retain and pay to itself in priority to any claim by any Noteholder all such amounts out of any moneys for the time being in its hands upon the trusts of this Deed.

### **11.4 Goods and Services Tax**

If any party:

- (a) reasonably decides that it is liable to pay GST on a supply that is made in connection with this Deed; and
  - (b) certifies to the recipient of the supply that it has not priced the supply to include GST,
- then the recipient of the supply agrees to pay that party an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

### **11.5 Refund**

If the actual amount of GST paid or payable by the supplier on a supply made in connection with this Deed is less than the amount paid by the recipient of the supply under clause 11.4, then the supplier agrees to refund the difference to the recipient of the supply. The supplier agrees to make the refund promptly after the actual amount of GST on the supply is paid or can be fully ascertained by the supplier.

### **11.6 Dispute**

The Trustee and Issuer agree that any dispute arising out of clause 11.1(d) will be submitted to arbitration in accordance with the Institute of Arbitrators and Mediators of Australia Rules for the Conduct of Commercial Arbitrations.

### **11.7 Liquidation**

If the Issuer or any of its assets are placed in Liquidation, the Trustee is entitled to claim and receive from any receiver, receiver and trustee, official trustee, liquidator, administrator or other similar official appointed to the Issuer or its assets, amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as trustee of the Trust.

## 12. Trustee's indemnity

### 12.1 Corporations Act

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

### 12.2 Indemnity

The Trustee, its officers, directors, employees and attorneys (together included in the defined term, '**Trustee**' for the purposes of this clause 12.2) will be indemnified by the Issuer in respect of all fees, costs, losses, liabilities, and expenses incurred by it in the execution of the trusts of this Deed, the performance of any Transaction Document or the exercise of any of the powers, authorities or discretions vested in the Trustee under this Deed, but this indemnity does not extend to:

- (a) such cost, loss, liability or expense that arises out of the Trustee's fraud, gross negligence, breach of trust or breach of section 283DA of the Corporations Act (where the Trustee fails to show the degree of care and diligence required of it as Trustee); or
- (b) any Taxes (excluding any GST) imposed on the Trustee's remuneration for its services as trustee.

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 trustees. The indemnity under this Deed is a continuing obligation, independent of the Issuer's other obligations under this Deed and continues after the Deed ends. It is not necessary for the Issuer, the Trustee or a Noteholder to incur an expense or make a payment before enforcing a right of indemnity under this Deed.

### 12.3 Retention of money

The Trustee may retain and pay out of any moneys in its hands arising from this Deed all sums necessary to give effect to the Trustee's right of indemnity under clause 12.2.

## 13. Trustee's liability and obligations

### 13.1 Limitation

- (a) The Trustee will have no liability under or in connection with this Deed or any other Transaction Document (whether to any Noteholders, creditors or any other person) other than to the extent to which the liability is able to be satisfied out of that part of the Trust Fund from which the Trustee is entitled to be, and is in fact, indemnified for the liability. This limitation will not apply to a liability of the Trustee to the extent that it is not satisfied because, under this Deed or by operation of law, there is a reduction in the extent of the Trustee's indemnification as a result of the Trustee's fraud, gross negligence, breach of trust or breach of section 283DA of the Corporations Act. This limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- (b) The Issuer and the Noteholders may not sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any other similar person to the Trustee or prove in liquidation of or affecting the Trustee (except in relation to the property of the Trust). The parties other than the Trustee acknowledge that the Trustee incurs any obligations or liabilities under or in respect of this Deed (**Obligations**) solely in its capacity as trustee of the Trust and that the Trustee will cease to have any Obligation under this Deed if the Trustee ceases for any reason to be trustee of the Trust.

- (c) To the maximum extent permitted by law, without limiting clause 13.1(a), the Issuer and the Noteholders waive their rights and release the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its Obligations or a breach by the Trustee of any of its Obligations, which cannot be paid or satisfied out of any property held by the Trustee as trustee of the Trust.
- (d) The Issuer acknowledges that it is responsible under this Deed and the Note Terms for performing various obligations under this Deed and the Note Terms. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed) will be considered fraud, gross negligence, breach of trust or breach of section 283DA of the Corporations Act for the purposes of clause 13.1(a) to the extent to which the act or omission was caused or contributed to by any failure of the Issuer or any other person (other than a delegate of the Trustee appointed under clause 9.3 which is a Related Body Corporate of the Trustee) to fulfil its obligations relating to the Trust or by any other act or omission of the Issuer or any other person (other than a delegate of the Trustee appointed under clause 9.3 which is a Related Body Corporate of the Trustee).

### **13.2 Acts of attorneys, agents etc**

No attorney, agent, receiver or receiver and manager appointed in accordance with any Transaction Document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any liability in excess of that contemplated in clause 13.1(a) and no act or omission of any such person will be considered fraud, gross negligence, breach of trust or breach of section 283DA of the Corporations Act of the Trustee for the purpose of clause 13.1(a).

### **13.3 Obligations**

The Trustee is not obliged to do or refrain from doing anything under any Transaction Document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in this clause 13.

### **13.4 Consents**

The Trustee is not obliged to give any consent, approval or authorisation under this Deed or make any request of, or give a direction to, another party to this Deed unless the Trustee is satisfied that it is, or will be, in fact indemnified either by the Noteholders or from the Trust Fund against any loss or liability that it may incur as a result or, at the election of the Trustee, it is first placed in funds sufficient to cover the costs that it may incur as a result.

### **13.5 Knowledge of Trustee**

The Trustee will only be considered to have knowledge or awareness of, or notice of, any thing, or grounds to believe any thing, by virtue of the officers of the Trustee having day to day responsibility for the administration or management of the Trustee's obligations under the Transaction Documents having actual knowledge, actual awareness or actual notice of that thing, or 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 (howsoever described) means notice, knowledge or awareness of the occurrence of the events or circumstances constituting that default (as the case may be).

### **13.6 Trustee capacity**

- (a) In a Transaction Document, except where expressly provided to the contrary:
  - (i) a reference to the Trustee is a reference to the Trustee in its capacity as trustee of the Trust only, and in no other capacity. Subject to clause 13.6(d) the Trustee is not liable to the Issuer, the Noteholders or any other person in any capacity other than as trustee of the Trust; and

- (ii) a reference to the undertaking, assets, business, money or any other thing of or in relation to the Trustee is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustee only in its capacity as trustee of the Trust, and in no other capacity.
- (b) The Trustee's duties and obligations to Noteholders are owed to Noteholders only in their capacity as Noteholders.
- (c) The Trustee has entered into this Deed and has undertaken or will undertake all covenants, terms and conditions on its part to be observed and performed in this Deed only in its capacity as trustee of the Trust and in no other capacity.
- (d) Any liability or right of indemnity in respect of any matter, thing, act or omission arising from this Deed actual, contingent or of some other kind (in this clause, **liability**) on the part of the Trustee:
  - (i) arises in its capacity as trustee of the Trust;
  - (ii) is not personal;
  - (iii) is at all times limited to the property of the Trust; and
  - (iv) does not extend beyond money received by the Trustee for or on behalf of the Noteholders subject always to such payments, deductions or withholdings by the Trustee as authorised by this Deed,

except to the extent that such liability arises from the Trustee's fraud, gross negligence, breach of trust or breach of section 283DA of the Corporations Act.
- (e) If the Issuer or any of the Noteholders do not recover all money owing to any of them as a result of the non-performance of any of the Trustee's obligations under this Deed or any Transaction Document, they may not seek to recover the shortfall by:
  - (i) bringing proceedings against the Trustee in its personal capacity; or
  - (ii) applying to have the Trustee put into administration or wound up or applying to have a receiver or similar person appointed to the Trustee or proving in the administration or winding up of the Trustee.
- (f) The Issuer and the Noteholders acknowledge that:
  - (i) the whole of this Deed and each other Transaction Document is subject to this clause 13; and
  - (ii) the Trustee will in no circumstances be required to satisfy any liability of the Trustee arising under, or for non-performance or breach of any obligations under this Deed or any Transaction Document out of any funds, property or assets other than the property of the Trust under the Trustee's control and in its possession as and when they are available to the Trustee to be applied in exoneration for such liability; and
  - (iii) if any liability of the Trustee is not fully satisfied out of the property of the Trust as referred to in this clause 13, the Trustee will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability to the extent, if any, that the property of the Trust has been reduced by reasons of fraud, gross negligence or breach of Trust by the Trustee in the performance of the Trustee's duties as trustee of the Trust.
- (g) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under this Deed or by operation of law there is a

reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, gross negligence or breach of trust.

### **13.7 Paramount**

The provisions of this clause 13:

- (a) are paramount and apply regardless of any other provision of this Deed or any other instrument, even a provision which seeks to apply regardless of any other provision;
- (b) survive and endure beyond any termination of any Transaction Document for any reason;
- (c) are not severable from any Transaction Document; and
- (d) do not limit or adversely affect the powers of the Trustee, any receiver or attorney in respect of the Trust Fund.

### **13.8 Certificate by Issuer**

The Trustee is entitled to:

- (a) accept and rely upon an Officer's Certificate as to any fact or matter as conclusive evidence of it and a like certificate to the effect that any particular dealing or transaction or step or thing is in the opinion of the person so certifying commercially desirable and not detrimental to the interests of the Noteholders as conclusive evidence that it is so;
- (b) accept, rely upon and act upon any information, statement, certificate, report, balance sheet or account supplied by the Issuer or any duly authorised officer of the Issuer;
- (c) accept, rely upon and act upon the statements and opinions contained in any statement, certificate, report, balance sheet or account given pursuant to the provisions of this Deed as conclusive evidence of the contents of it; and
- (d) assume, without investigation, that any other deed or information provided to it is genuine and accurate if it believes in good faith that this is the case.

The Trustee is not bound to call for further evidence other than such certificate, statement, report, balance sheet or account nor to enquire as to the accuracy thereof and is not responsible for any loss or damage that may be occasioned by its relying thereon.

### **13.9 Evidence of claims**

The Trustee will be entitled and is authorised by the Issuer to call for (and will be entitled to accept as conclusive evidence thereof) a certificate from any receiver, trustee or liquidator of the Issuer as to:

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

Any such certificate given by any such receiver, trustee or liquidator of the Issuer will be conclusive and binding on the Trustee and all Noteholders.

### **13.10 Trustee not bound to give notice**

The Trustee is not bound to give notice to any person of the execution of this Deed, the occurrence of any breach of this Deed or an Event of Default, and the Trustee is not bound to take any steps to ascertain whether any event has happened (despite the Trustee's knowledge of such event) upon the happening of which the Notes become immediately payable.

### **13.11 No monitoring obligation**

Notwithstanding any other provision of the Deed, but subject to the Trustee's obligations under the Corporations Act, the Issuer acknowledges that:

- (a) the Trustee has no obligation to monitor compliance by the Issuer of its covenants and obligations under this Deed or any other activities, financial condition or status of the Issuer or provide to any person (including a Noteholder) any information with respect to the Issuer (whenever coming into its possession); and
- (b) the Trustee need not take any steps to ascertain whether there has occurred (any will not be deemed to have knowledge that such has occurred until it has received written notice from the Issuer or a Noteholder in relation to such) any Event of Default or event which constitutes or which would, with the giving of notice or the lapse of time or the issue of a certificate, constitute an Event of Default.

### **13.12 No Obligation to Act Until Receipt of Funds**

- (a) The Trustee is not obliged to carry out any act under this Deed or any other Transaction Document until such time as it is placed in funds and is indemnified to its reasonable satisfaction.
- (b) The Trustee will not be liable to any Noteholders, creditors or any other person for failure to take any action where clause 13.12(a) has not been satisfied in respect of the relevant act.

### **13.13 Change in law**

If, following a Change in Law, a Statutory Obligation is imposed on the Trustee, then:

- (a) the Trustee may seek any further information or advice (including, without limitation, legal advice) that it may reasonably require with respect to the performance of such Statutory Obligations;
- (b) the Issuer will take reasonable steps to assist the Trustee in connection with the obtaining of further information or advice in connection with such Statutory Obligations; and
- (c) the Trustee and the Issuer will, as soon as is reasonably practicable after the Trustee becomes aware of the Statutory Obligations enter into negotiations with respect to such changes to the terms of this Deed (including in respect of any additional remuneration that may be reasonably required in light of any such Statutory Obligations) as may be reasonably necessary to reflect the Statutory Obligations,
- (d) however the parties agree that this clause 13.13, does not operate to exempt or excuse the Trustee from any obligation to perform the Statutory Obligations.

For the purposes of this clause 13.13, 'Change in Law' means any change in law, practice, regulation, ruling, confirmation, advice or action that represents the official requirements of any Government Agency, ASIC or ASX.

## **14. Retirement and removal of Trustee**

### **14.1 Notice by Trustee**

Subject to clause 14.4 and compliance with the relevant statutory requirements for the time being, the Trustee may retire (without giving any reason for its retirement) at any time upon giving at least 60 days' notice (or such other period as the Trustee and the Issuer may agree) in writing to the Issuer of its intention to do so.

## **14.2 New appointment by Issuer**

Subject to clause 14.3, the power to appoint a new Trustee (which new Trustee must be a Trustee Company) is vested in the Issuer.

## **14.3 Retiring Trustee to appoint**

Subject to the Corporations Act, if, 60 days (or such other period as the Trustee and the Issuer may agree) after the Trustee has given notice in writing to the Issuer of its desire to retire, a new trustee has not been appointed, the retiring Trustee may appoint a Trustee Company as the new trustee (or apply to a court of competent jurisdiction for the appointment of a new trustee) and any such appointment will be effective without the approval of the Issuer or the Noteholders being required but the Trustee may, in lieu of exercising the power conferred by this clause, call a meeting for the purpose of appointing, by the passing of a Noteholders' Resolution, a person nominated either by the Trustee or by any Noteholder as the new trustee.

## **14.4 Effect**

Despite anything contained in this clause, the Trustee covenants that the retirement of the Trustee pursuant to this clause 14 will not take effect unless and until:

- (a) a new trustee (being a Trustee Company) has been appointed, and
- (b) the new trustee has executed a deed under which it agrees to perform the obligations of the Trustee under this Deed,

and the Trustee hereby declares that this covenant is intended for the benefit of the Noteholders.

## **14.5 Removal for breach or by Noteholders' Resolution**

Subject to compliance with the relevant statutory requirements for the time being:

- (a) where the Issuer reasonably forms the view that the Trustee has not performed its obligations under this Deed or has acted negligently or fraudulently in relation to any matter under this Deed, the Issuer may by 30 days' notice to the Trustee;
- (b) where the Trustee becomes subject to any winding up, liquidation, administration, dissolution, deregistration, scheme of arrangement or other arrangement or compromise with creditors or similar proceedings, other than for the purposes of a solvent reconstruction or amalgamation, the Issuer may immediately;
- (c) the Noteholders may by a Noteholders' Resolution and 60 days' notice to the Trustee,

remove the Trustee and appoint a new trustee in accordance with the provisions of this Deed.

## **14.6 Removal under statutory provisions**

The Issuer must take all reasonable steps to replace the Trustee under section 283AE of Corporations Act as soon as practicable after the Issuer becomes aware that the Trustee:

- (a) has ceased to exist;
- (b) has not been validly appointed;
- (c) cannot be a Trustee Company; or
- (d) has failed or refused to act as trustee in accordance with the provisions of this Deed.

## **14.7 Discharge of obligations**

By force of this clause 14.7, when the Trustee retires or is removed, the Trustee is, to the extent permitted by law, discharged and released from its obligations, covenants and liabilities under this Deed arising after the date it retires or is removed. The Issuer must then, if required by the Trustee, execute a confirmation of release in favour of the Trustee in a form and substance acceptable to the

Trustee (including that the provisions in this Deed in relation to the indemnity given by the Issuer to the Trustee for any cost, charge, expense, loss and liability will apply even after the date of release if the action, omission or event giving rise to such cost, charge, expense, loss or liability occurred prior to the date of release, but only to the extent that such cost, charge, expense, loss and liability is not attributable to the Trustee's fraud, negligence, breach of trust or breach of section 283DA of the Corporations Act). This does not affect any of the Trustee's rights accrued before such retirement or removal.

#### **14.8 Notice to ASIC**

The Issuer must advise ASIC of the name of the Trustee within 14 days after the Trustee (or any new trustee) is appointed and confirm to the Trustee in writing that it has done so.

### **15. Registers**

#### **15.1 Register**

On issue of the Notes, the Issuer will establish and maintain, or cause to be established and maintained, in the Jurisdiction a Register. The Issuer may delegate to attorneys or agents such powers, authorities and discretions in relation to the Register as it may properly so delegate.

#### **15.2 Registered owners**

The persons whose names are inscribed in the Register as the registered owners of the Notes from time to time will be treated by the Issuer and the Trustee as the absolute owners of such Notes for all purposes.

#### **15.3 No notice of any trust**

Except as provided by statute or as required by an order of a court of competent jurisdiction, no notice of any trust (whether express, implied or constructive or otherwise) may be entered in the Register in respect of a Note and neither the Issuer nor the Trustee is obliged to recognise any such trust.

#### **15.4 Inscription conclusive**

Subject only to correction for fraud or manifest error, each inscription in the Register in respect of a Note constitutes:

- (a) sufficient and conclusive evidence to all persons and for all purposes that the person whose name is so inscribed, is the absolute owner of the Note;
- (b) an unconditional and irrevocable undertaking and promise by the Issuer to the person whose name is so inscribed that, for value received, the Issuer will make all payments of Moneys Owing in respect of the Note in accordance with the Deed (and the Note Terms); and
- (c) an entitlement to the other benefits given to the Noteholders under the Note Terms and the Deed in respect of the Note.

#### **15.5 Particulars**

In the Register there will be entered the names and addresses of Noteholders, the number of the Notes held by each Noteholder and such other particulars as the Issuer thinks fit and are required by the Corporations Act.

#### **15.6 Inspection**

The Register will be open at all reasonable times during Business Hours for the inspection of the Trustee and the Noteholders, and of any persons authorised in writing by the Trustee or the Noteholders.

## **15.7 Closure of Register**

Subject to the ASX Listing Rules, the Issuer may from time to time close any relevant Register for any period or periods not exceeding in total in any one year:

- (a) the maximum period for the time being permitted by law; or
- (b) 30 days,

whichever is the lesser period.

## **15.8 Change of details**

Any change of the name or address of a Noteholder must be notified immediately by the Noteholder in writing to the Issuer accompanied, in the case of a change of name, by any evidence the Issuer requires and the Register will be altered accordingly.

## **15.9 Situs**

The property in the Notes will for all purposes be regarded as situated at the place where the Register is situated and not elsewhere.

## **15.10 Copy to the Trustee**

The Issuer will give, or cause to be given, to the Trustee a complete copy of the Register within three Business Days after the Trustee so requests.

## **15.11 Issuer not liable for mistakes**

The Issuer is not liable for any mistake in a Register, or in any purported copy of a Register, except to the extent that the mistake is attributable to the Issuer's own fraud, negligence or wilful default.

## **15.12 Manifest error**

The making of, or giving effect to, a manifest error in an inscription in the Register will not avoid the constitution, issue or transfer of a Note. The Issuer must correct, or cause to be corrected, any manifest error of which it becomes aware.

## **15.13 No certificate**

- (a) No certificate or other evidence of title will be issued by or on behalf of the Issuer to evidence title to a Note unless the Issuer determines that certificates should be made available or that it is required to do so pursuant to any applicable law or regulation.
- (b) The Issuer may issue, to any person who is issued one or more Notes, a Note Certificate.

## **15.14 Clearing System Sub-register**

If the Notes are lodged or approved for entry on a Clearing System which involves the maintenance of a sub-register, then the rules and regulations of that Clearing System with respect to that sub-register prevail to the extent of any inconsistency with this clause 15.

## **15.15 Clearing System Noteholder**

If the operator of a Clearing System is registered in the Register as the holder of Notes, the Noteholder or Noteholders, as the case may be, of the Notes will be the member or members of the Clearing System who, by its rules or regulations, is or are entitled to the relevant Notes. If more than one, those Noteholders will be taken to be the Noteholder in relation to that number of the Notes to which they are entitled by the Clearing Systems rules or regulations.

## 16. Meetings of Noteholders

### 16.1 Meeting Provisions

The Trustee or the Issuer may call a meeting of Noteholders in the manner as provided in the Meeting Provisions. Meetings of Noteholders must be conducted in accordance with the Meeting Provisions.

### 16.2 Directions to Trustee

- (a) Except as expressly stated in this Deed, by a Noteholders' Resolution and subject to any applicable law, Noteholders may:
  - (i) give directions to the Trustee as to; or
  - (ii) authorise, ratify or confirm anything done or not done by the Trustee in respect of, the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to this Deed or the Notes, or any other instrument to which the Trustee is or becomes a party in the capacity of Trustee under this Deed.
- (b) Notwithstanding any other term of this Deed, Noteholders are able to, by Special Resolution:
  - (i) approve the release of the Trustee from liability for something done or omitted to be done by the Trustee or any other person before the release is given;
  - (ii) give the Trustee directions as to the manner in which to take action to enforce the Transaction Documents or a Security;
  - (iii) give the Trustee directions as to how to vote on any resolution of a meeting of the Trustee and creditors of the Issuer which requires a Special Resolution; and
  - (iv) give the Trustee directions to release or discharge a Security.

## 17. Changing the Deed

### 17.1 Amendment without the approval of the Noteholders

At any time, and from time to time, but subject to clause 17.4, the Deed (which, for the avoidance of doubt includes this clause, the Note Terms and any one or more of the schedules to this Deed) may be modified, altered, cancelled, amended or added to (collectively **Modified**), without the consent of the Noteholders, if:

- (a) such modification, alteration, cancellation, amendment or addition (collectively **Modification**) is:
  - (i) of a formal or technical nature or made to cure any ambiguity or correct any manifest error;
  - (ii) 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 Issuer may propose to seek a listing of the Notes;
  - (iii) 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;
  - (iv) necessary or expedient to comply with the provisions of any law or regulation or the requirements of any statutory authority; or
  - (v) 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

- (b) in respect of a Modification sought by a party in reliance on:
- (i) any one of clauses 17.1(a)(i) to 17.1(a)(iv) above - the Issuer and the Trustee have jointly obtained a legal opinion from legal advisers of recognised standing in South Australia, which opinion is in a form satisfactory to the Issuer and the Trustee (each acting reasonably) and is addressed to or is otherwise able to be relied on by each of the Issuer and the Trustee, 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 paragraphs 17.1(a)(i) to 17.1(a)(iv); and
    - (B) not materially prejudicial to the interests of Noteholders (taken as a whole); or
  - (ii) clause 17.1(a)(v) above - the Issuer and the Trustee have jointly obtained an opinion from an accountancy or taxation adviser of recognised standing in South Australia, which opinion is in a form satisfactory to the Issuer and the Trustee (each acting reasonably) and is addressed to or is otherwise able to be relied on by each of the Issuer and the Trustee, 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 paragraph 17.1(a)(v); and
    - (B) not materially prejudicial to the interests of Noteholders (taken as a whole).

## **17.2 Amendment with the approval of the Noteholders**

- (a) At any time, and from time to time, but subject to clauses 17.2(b), 17.3 and 17.4, the Deed (which, for the avoidance of doubt includes this clause, the Note Terms and any one or more of the schedules to this Deed) may be Modified if such Modification is authorised by a Noteholders' Resolution.
- (b) If a clause in the Note Terms of a Note provides for Noteholders of those Notes to give a direction to the Trustee by a Special Resolution, then that clause may only be Modified if such Modification is authorised by a Special Resolution.

## **17.3 Amendment with the approval of the Noteholders but not the Trustee**

If a Modification to all or any of this Deed (which, for the avoidance of doubt includes this clause, the Note Terms and any one or more of the schedules to this Deed) is proposed by the Issuer under clause 17.2 and the Trustee will not consent to the Modification, subject to compliance with clause 17.4 of this Deed, the Deed may be Modified in the manner proposed by the Issuer if such Modification is authorised by a Special Resolution passed at a meeting (including a meeting held by way of postal ballot) of all Noteholders held pursuant to the Meeting Provisions.

## **17.4 Effecting a change**

- (a) A Modification to this Deed (which, for the avoidance of doubt, includes this clause, the Note Terms and any one or more of the Schedules to this Deed) may only be made by supplemental deed Modifying this Deed, the Note Terms or any one or more of the Schedules to this Deed.

- (b) If a Modification is proposed by either the Issuer or the Trustee under clause 17.1(a), the other party must use all reasonable endeavours within its own capacity to ensure that the requisite opinion required under either clause 17.1(b)(i) or 17.1(b)(ii) (as the case may be) is obtained as soon as reasonably practicable after the Modification is proposed.
- (c) If a Modification is:
  - (i) proposed by the Issuer under clause 17.1(a) (and the requisite opinion under either clause 17.1(b)(i) or 17.1(b)(ii) (as the case requires) has been obtained); or
  - (ii) authorised by a Special Resolution of Noteholders under clause 17.3,
 then, subject to clause 17.4(d), the Trustee must not unreasonably refuse to execute, or delay the execution of, the supplemental deed Modifying this Deed, the Note Terms or any one or more of the Schedules to this Deed.
- (d) The Trustee is not obliged to consent to any Modification to this Deed (which, for the avoidance of doubt, includes this clause, the Note Terms and any one or more of the Schedules to this Deed) or execute a supplemental deed Modifying this Deed if, in its reasonable opinion, such alteration would have the effect of:
  - (i) increasing any liability of the Trustee in its personal capacity; or
  - (ii) derogating from any of its rights under any of those documents.

## 18. Confidentiality

### 18.1 Financial information of Issuer

The Trustee has no duty or obligation to provide any Noteholder with any financial information relating to the Issuer.

### 18.2 Confidential Information

The Trustee must keep confidential all Confidential Information of the Issuer except:

- (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;
- (b) as (but only to the extent) required by law or any judicial or regulatory authority or body;
- (c) to those officers, employees, delegates and professional advisers of the Trustee to whom it is absolutely necessary to reveal the information or any part of it; or
- (d) to a person approved in writing by the Issuer, such approval to be given or withheld in the Issuer's absolute discretion and, if given, may be given by the Issuer on such conditions as it deems fit.

### 18.3 Confidentiality undertaking

The Trustee agrees to use its best endeavours to ensure that every person to whom it provides Confidential Information under this clause (except clauses 18.2(a) or 18.2(b)) gives and performs obligations under a confidentiality undertaking in the same terms as this clause except professional advisers who owe a professional duty of confidentiality to the Trustee in connection with the Confidential Information.

## 19. Validity

### 19.1 Validity of Notes issued

Despite any breach of, or non-compliance by the Issuer, of the provisions of this Deed, all Notes issued under this Deed will, as between:

- (a) the relevant Noteholder and the Issuer;
- (b) the relevant Noteholder and the Trustee;
- (c) the relevant Noteholder and any receiver, trustee or liquidator of the Issuer; and
- (d) the relevant Noteholder and all other Noteholders,

be deemed to have been validly issued under this Deed.

## 19.2 Continuing obligations

Nothing in this clause 19 will exonerate or relieve, or be deemed to exonerate or relieve, the Issuer or the Trustee from any of their respective covenants, liabilities and obligations under this Deed.

## 20. Discharge and release

### 20.1 Release

- (a) By force of this clause 20, but subject to clause 20.2, 20.4 and 26.6, the Issuer will immediately be discharged and released from its respective liabilities, obligations and covenants under this Deed:
  - (i) subject to clause 21, on the payment in full of all Moneys Owing (as to which the Trustee may accept as conclusive an Officer's Certificate); and
  - (ii) on the Issuer procuring the Registrar to give written notice to the Trustee that all Notes have been Converted, Redeemed or are no longer subject to this Deed; and
  - (iii) on the Issuer furnishing to the Trustee a statement in writing that it does not intend to, and will not, create any Notes in the future under this Deed; and
  - (iv) on the Issuer furnishing to the Trustee an auditor's certificate that all Moneys Owing have been paid in full; and
  - (v) on payment of all fees, costs, charges and expenses properly incurred by the Trustee; and
  - (vi) where the Trustee is satisfied in its reasonable opinion that the Issuer has fulfilled all of its obligations under this Deed.
- (b) If this Deed is terminated in accordance with clause 20.1(a), the Trustee will (subject to being indemnified in accordance with clause 12.2) distribute the balance of the capital and income (if any) of the Trust (including, without limitation, cash) at the direction of the Issuer.

### 20.2 Non-avoidance

If any payment, conveyance, transfer or other transaction relating to or affecting any money payable by the Issuer under this Deed is:

- (a) void, voidable or unenforceable in whole or in part; or
- (b) claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part,

the liability of the Issuer under this Deed is the same as if:

- (c) that payment, conveyance, transfer or transaction (or the void, voidable or unenforceable part of it); and
- (d) any release, settlement or discharge made in reliance on any thing referred to in clause 20.2(c),

had not been made, and the Issuer must immediately take all action and sign all documents necessary or required by the Trustee or a Noteholder to restore to the Trustee or that Noteholder (as the case may be) the rights under this Deed (and the Note Terms) held by them immediately before the payment, conveyance, transfer or transaction. This clause 20.2 applies whether or not the Trustee or the Noteholder (as the case may be) knew, or ought to have known, of anything referred to in this clause.

### 20.3 Confirmation

Upon the happening of the events in clause 20.1, but subject to clause 20.2, 20.4 and 26.6, the Trustee must, if required by the Issuer, execute a confirmation of release in favour of the Issuer and terminate the Trust and the Trust will terminate on such a release being given.

### 20.4 Termination

On the Trust being terminated under this clause 20:

- (a) the Trustee will be released from any liability arising under or in connection with this Deed; and
- (b) the Trustee will be indemnified by the Issuer in respect of all fees, costs, losses, liabilities and expenses (each, a cost) reasonably and properly incurred by it in respect of an event which occurred prior to the date of termination (other than such cost to the extent that it arises out of the Trustee's negligence, fraud or breach of trust) and the Issuer must pay the Trustee any such cost within 5 Business Days of written notice of such cost from the Trustee.

## 21. Untraceable Noteholders

- (a) Subject to applicable law and the ASX Listing Rules:
  - (i) where the Issuer has made reasonable efforts to locate a Noteholder but is unable to do so; and
  - (ii) moneys payable to the Noteholder have not been claimed by the Noteholder or any legal personal representative of the Noteholder for a period of 12 months after first becoming payable,

those moneys must be paid by the Trustee to the Issuer, if the Trustee has actual possession and control of such moneys, and must be held by the Issuer on trust for the Noteholder until such time as the moneys are dealt with in accordance with the applicable legislation relating to unclaimed moneys..

- (b) The Trustee is not liable to any Noteholder for any moneys paid to the Issuer in accordance with this clause.

## 22. Notices

### 22.1 Service of notices

A notice, demand, consent, approval or communication under this Deed (**Notice**) must be in writing, in English and, if required under the provision of the Deed under which the Notice is given, signed by a person duly authorised by the sender.

### 22.2 Service of notices on the Issuer and the Trustee

All notices and other communications between the Issuer and the Trustee under this Deed may be hand delivered or sent by prepaid post, facsimile or email to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

### 22.3 Noteholders

All notices and other communications by either the Issuer or the Trustee to a Noteholder under this Deed may be sent by fax or prepaid post (airmail if appropriate) to or left at the address of the Noteholder (as shown in the Register at the close of business on the day which is two Business Days before the date of the notice or communication) and may also be given:

- (a) by an advertisement published in The Australian Financial Review, The Australian or any other newspaper of national circulation in Australia;
- (b) if delivered to a Clearing System for communication by them to the persons shown in their respective records as having interests therein;
- (c) by the Issuer posting, at the request of the Trustee, the notice or communication on its internet website; or
- (d) subject to applicable law and the ASX Listing Rules, by any other means that the Issuer and the Trustee agree in writing and notify to the Noteholders.

If any notice is published by the Issuer in accordance with any of paragraphs (a) or (d) above, the Issuer must promptly provide a copy to the Trustee.

### 22.4 Joint Noteholders

A notice given to any one of any joint Noteholders is sufficient notice to all of those joint Noteholders.

### 22.5 Effective on receipt

A Notice given in accordance with clause 22.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, when the sender's email system generates a delivery confirmation message confirming successful transmission of the email Notice to the recipient's email address unless, within eight Business Hours after the email transmission, the recipient informs the sender that it has not received the email; or
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt, delivery confirmation or transmission message is not on a Business Day or is after 4.00pm on a Business Day, the Notice is taken to be delivered or received at 9.00am on the next Business Day.

## 23. Service of process

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 22.

## 24. Invalid or unenforceable provisions

Any provision of this Deed or the Note Terms which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction only, be read down or severed to the extent of that invalidity or

unenforceability provided that the remaining provisions of this Deed are properly and effectively self-sustaining and capable of separate enforcement without regard to the read down or severed provision in that jurisdiction. Such remaining provisions continue to be valid and enforceable in accordance with their terms.

## **25. Applicable law**

This Deed is governed by, and is to be construed in accordance with, the laws of South Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and Courts entitled to hear appeals from these Courts. The Issuer and each Noteholder waives any right they have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.

## **26. General provisions**

### **26.1 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### **26.2 Stamp duty**

The Issuer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Deed and the performance of this Deed;
- (b) indemnifies the Trustee against any liability arising from failure to comply with clause 26.2(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

### **26.3 Consents**

A consent required under this Deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

### **26.4 Counterparts**

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

### **26.5 Indemnities**

- (a) Each indemnity given by the Issuer in this Deed is a continuing obligation, separate and independent from the other obligations of the Issuer or from any other liability of the Issuer under this Deed or any other agreement, and survives termination, completion or expiration of this Deed.

- (b) It is not necessary for the Trustee to incur any cost, liability, loss or expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

## 26.6 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or deed executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any deed for the purposes of, and continues after, performance of this Deed.

## 26.7 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

## 27. Inspection of this Deed and copies of this Deed

The Noteholders may inspect a copy of this Deed during normal Business Hours at such place as may be notified by the Issuer to the Trustee from time to time. The Noteholders will be entitled to a copy of this Deed as required by the Corporations Act and otherwise on payment of the prescribed fee within 21 days of receipt by the Issuer of such payment.

## 28. Further action

Each party must do all things necessary to give full effect to this Deed.

## 29. Liquidation

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

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

## 30. Privacy

The Issuer must take all action necessary to comply, and to enable the Trustee to comply, with the Privacy Act, 1988 (Cth) and all regulations passed pursuant to that Act. Without limiting this clause, the Issuer agrees to obtain sufficient authorisations from people providing personal information to the Issuer to enable the Issuer to:

- (a) transfer that personal information to the Trustee; and
- (b) permit the Trustee and its agents to collect, use, handle and disclose that personal information for the purposes of carrying out the Trustee's obligations under this Deed.

## 31. FATCA

- (a) The Issuer must take all action required by it to comply with the Tax Laws Amendment (implementation of the FATCA Agreement) Act 2014 (Cth) (**FATCA Act**) and any other regulations or rules passed in relation to the Foreign Account Tax Compliance Act (US) (**FATCA**), the FATCA Act or any other requirements under FATCA or by the Inland Revenue Service of the federal government of the United States of America in connection

with the Issuer's performance of its obligations under this Deed (together the **FATCA Requirements**).

- (b) The Issuer must promptly provide to the Trustee all information and documents reasonably required by the Trustee to comply with any FATCA Requirements applicable to the Trustee in connection with the performance of its role and obligations under this document.
- (c) The Issuer acknowledges that the Trustee will not collect or hold any information about the domicile or residence of any Noteholder or any other connection of any Noteholder with the United States of America, and that it is the responsibility of the Issuer to do so.

# Schedule 1 – Terms of Notes

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## 1. Form of Notes

### 1.1 Form

The Notes are redeemable, convertible notes of the Issuer 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 Issuer 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 Clearing System

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 Clearing System.

### 1.5 No certificates

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

### 1.6 ASX quotation of Notes

The Issuer 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.

### 1.7 No other rights

The Notes confer no rights on a Noteholder:

- (a) to vote at any meeting of members of the Issuer;
- (b) to subscribe for or participate in any new issue of securities by the Issuer; or
- (c) to otherwise participate in the profits or property of the Issuer, except as set out in these Note Terms or the Transaction Documents.

## 2. Interest

### 2.1 Interest

- (a) Each Note bears interest on its Face Value from (and including) its Issue Date to (but excluding) its Maturity Date, Conversion Date or Redemption Date at the Interest Rate.
- (b) Interest is payable in arrears on each Interest Payment Date.

## 3. General provisions applicable to Interest

### 3.1 Calculation of Interest Rate and Interest payable

- (a) The Issuer must, as soon as practicable in each Interest Period, calculate the amount of interest payable for that Interest Period in respect of the Face Value of each Note.
- (b) The amount of interest payable on each Note for an Interest Period is calculated according to the following formula:

$$\text{Interest payable} = \text{Interest Rate} \times \$1.00 \times N$$

Where:

N means, in respect of:

- (i) the first Interest Payment Date in respect of a Note, the number of days from (and including) its Issue Date to (but excluding) that first Interest Payment Date; and
- (ii) each subsequent Interest Payment Date, the number of days from (and including) the preceding Interest Payment Date to (but excluding) that Interest Payment Date or, in the case of the last Interest Period, the Maturity Date, Conversion Date or Redemption Date.

### 3.2 Notification of Interest Rate, Interest payable and other items

- (a) The Issuer must notify the Trustee and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of:
  - (i) for each Interest Period, the amount of interest payable; and
  - (ii) any amendment to the amount referred to in sub-paragraph (i) arising from any extension or reduction in any Interest Period or calculation period.
- (b) The Issuer must give notice under this clause 3.2 of the amount of interest on each Note for the Interest Period by no later than the fifth Business Day of that Interest Period.
- (c) The Issuer may amend its calculation or determination of any amount, item or date (or make appropriate alternative arrangements by way of adjustment) as a result of the extension or reduction of the Interest Period or calculation period without prior notice but must notify the Trustee and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) promptly after doing so.

### 3.3 Default Interest

If an amount is not paid under these Note Terms on or before the due date, interest accrues on the unpaid amount at 8% per annum from (and including) the due date to (but excluding) the date on which payment is made to the Noteholder of the full unpaid amount.

### 3.4 Determination final

The determination by the Issuer of all amounts, rates and dates falling to be calculated or determined by it under these Note Terms is, in the absence of manifest or proven error, final and binding on the Issuer, the Trustee and each Noteholder.

### 3.5 Calculations

For the purposes of any calculations required under these Note Terms:

- (a) all figures must be rounded to three decimal places (with 0.0005 being rounded up to 0.001); and
- (b) all amounts that are due and payable must be rounded to the nearest one Australian cent (with 0.5 of a cent being rounded up to 1 cent).

## 4. Conversion

### 4.1 Notes are Convertible

Subject to these Note Terms, the Noteholder has the right (**Conversion Right**), in accordance with this clause 4, to convert some or all of its Notes into a number of Shares determined by application of the following formula:

$$\frac{A}{B}$$

where:

A = the Conversion Amount;

and B = the Conversion Price.

### 4.2 Conversion at the Noteholder's election

- (a) Subject to paragraphs 4.2(b) and 4.3, a Noteholder may elect in its absolute discretion to convert some or all of its Notes into Shares by giving the Registrar notice in writing of its intention to convert some or all of its Notes (**Conversion Notice**).
- (b) The Face Value of the Notes the subject of a Conversion Right must be at least the lesser of \$2,000 or the balance of the Noteholder's holding of Notes.

### 4.3 Conversion Notice

- (a) A Conversion Notice must:
  - (i) be in writing (in such form as the Issuer may accept 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 Issuer;
  - (ii) the Noteholder must not deal with, transfer, dispose 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 Issuer and the Registrar.
- (c) Despite receipt by a Noteholder of an Early Redemption Notice under clause 5.2 or Change of Control Notice under clause 5.3, a Noteholder may still give a Conversion Notice (for some or all of its Notes) provided the notice is given not less than 5 Business Days before the Redemption Date specified in the Early Redemption Notice or Change of Control Notice (as applicable).
- (d) A Conversion Notice given to the Issuer 10 or more Business Days before an Interest Payment Date will be effective on such date as may be determined by the Issuer (in its absolute discretion), provided that date is not later than the next Interest Payment Date.
- (e) If a Conversion Notice is given to the Issuer less than 10 Business Days before an Interest Payment Date (**Date 1**), the Conversion Notice will be effective on such date as may be determined by the Issuer (in its absolute discretion), provided that date is not later than the next Interest Payment Date following Date 1.
- (f) A Conversion Notice will not be effective if it is given less than 10 Business Days before the Maturity Date.

#### **4.4 Effect of Conversion**

On the Conversion Date:

- (a) the Noteholder's Note will be taken to have been Redeemed, and the Noteholder will be taken to have agreed to pay the Conversion Amount to the Issuer by way of subscription for new Shares (**Conversion Shares**) at an issue price per Conversion Share that is equal to the Conversion Price;
- (b) the Issuer will be taken to have issued to the Noteholder, and must register the Noteholder as the holder of, the Conversion Shares;
- (c) the Noteholder agrees to be registered as the holder of the Conversion Shares in the register of Members;
- (d) a holding notice in respect of the Conversion Shares is to be sent to the Noteholder at its registered address in respect of the relevant Notes;
- (e) the Issuer must use all reasonable endeavours to procure and maintain quotation of Conversion Shares on ASX; and
- (f) upon issue of the Conversion Shares, all other rights conferred or restrictions imposed by the Note under these Note Terms will no longer have effect.

#### **4.5 Ranking of Shares**

Shares issued on conversion of the Notes will be fully paid and will in all respects rank *pari passu* 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.

#### **4.6 No fractional shares**

No fractional Shares will be issued on conversion of a Note. If the calculation under this clause results in an entitlement to a number of Shares which includes a fraction of a Share, the fraction will be disregarded.

#### 4.7 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 Issuer, the basis for conversion of the Notes will be reconstructed in the same proportion as the issued capital of the Issuer is reconstructed and in a manner which will not result in any additional benefits being conferred on the Noteholders which are not conferred on Shareholders (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.

### 5. Redemption

#### 5.1 Scheduled redemption on Maturity Date

Each Note is Redeemable by the Issuer on the Maturity Date at its Face Value unless:

- (a) the Note has been previously Converted;
- (b) the Note has been previously Redeemed; or
- (c) the Note has been purchased by the Issuer and cancelled.

#### 5.2 Early Redemption by the Issuer

- (a) Subject to clause 5.3(c), compliance with any applicable law and the ASX Listing Rules, the Issuer may Redeem all (but not some) of the Notes in whole before their Maturity Date at their Face Value plus the Early Redemption Premium, together with any Interest accrued on those Notes to (but excluding) the applicable Redemption Date, provided that the Issuer 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 Issuer to Redeem the Notes (**Early Redemption Notice**).
- (b) Subject to clause 5.3(c), if an Early Redemption Notice is given by the Issuer under clause 5.2(a), the notice will be effective (and Redemption will occur) on the Redemption Date as specified by the Issuer in the Early Redemption Notice (which must be no 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.

#### 5.3 Early Redemption – Change of Control Event

- (a) As soon as practicable after the occurrence of a Change of Control Event, the Issuer must give 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) (**Change of Control Notice**):
  - (i) specifying the occurrence of a Change of Control Event;
  - (ii) specifying the date on which the Change of Control Event occurred;
  - (iii) notifying each Noteholder that the Issuer will Redeem all of the Noteholder's Notes on the Redemption Date specified in the Change of Control Notice (which date must be at least 20 Business Days after the date of the Change of Control Notice), at the Face Value of those Notes plus the Early Redemption Premium, together with any Interest accrued on those Notes to (but excluding) the specified Redemption Date, unless within 15 Business Days after the date of the Change of Control Notice, the Noteholder:
    - (A) exercises its Conversion Right by delivering a Conversion Notice for some or all of its Notes in accordance with clause 4.2; or
    - (B) notifies the Issuer that it does not wish to have its Notes redeemed on the Redemption Date specified in the Change of Control Notice; and
  - (iv) enclosing the form of the notice required to be given by a Noteholder if it elects to notify the Issuer that it does not wish to have its Notes redeemed on the Redemption Date specified in the Change of Control Notice (**Retention Notice**); and
  - (v) such other information relating to the Change of Control Event as the Trustee may reasonably require be given to the Noteholders.
- (b) Subject to clause 5.3(c), if a Change of Control Notice is given by the Issuer under clause 5.3(a), the notice will be effective (and Redemption will occur) on the Redemption Date as specified by the Issuer in the Change of Control Notice (which must be no less than 20 Business Days after the date of the Change of Control Notice) in respect of any Notes that are not the subject of a Conversion Notice given under clause 5.3(a)(iii)(A) or a Retention Notice given under clause 5.3(a)(iii)(B).

- (c) If, no later than 5 Business Days prior to the Redemption Date specified in the Change of Control Notice, a Noteholder delivers:
  - (i) 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; or
  - (ii) a Retention Notice for some or all of its Notes, the Retention Notice will prevail for the Notes that are the subject of the Retention Notice and those Notes will not be redeemed by the Issuer on the Redemption Date.

#### **5.4 Effect of Noteholder Redemption Notice**

- (a) Once given by a Noteholder, a Noteholder Redemption Notice cannot be withdrawn without the written consent of the Issuer.
- (b) A Noteholder Redemption Notice must be accompanied by evidence of title for the Notes the subject of the Notice as may reasonably be required by the Issuer and the Registrar.
- (c) A Noteholder must not deal with, transfer, dispose of or encumber any Notes the subject of a Noteholder Redemption Notice once that Notice has been given.

#### **5.5 Purchase**

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

- (a) the Issuer and any of its Related Bodies Corporate (or any third party nominated by the Issuer) 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 Issuer or any of its Related Bodies Corporate, tenders must be available to all Noteholders alike; and
- (c) Notes purchased under this clause 5.5 may be held, resold or cancelled at the discretion of the purchaser (and, if the Notes are to be cancelled, the Issuer).

### **6. Status, security and ranking**

#### **6.1 Status**

- (a) The Notes at all times constitute direct and secured debt obligations of the Issuer.
- (b) Pursuant to the Guarantee, each of the Australian Subsidiaries has agreed to guarantee to the Trustee the Issuer's obligations under the Trust Deed and the Note Terms in respect of the Notes.

#### **6.2 Security**

- (a) The Notes are secured by the security interests granted by the Issuer and its Australian Subsidiaries to the Trustee under the General Security Deeds.
- (b) The Trustee holds the rights under the General Security Deeds on trust for the benefit of the Noteholders in accordance with the terms of the Transaction Documents.

#### **6.3 Ranking of Notes**

- (a) Each Note ranks for payment in a Winding Up of the Issuer:
  - (i) after all Existing 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 Issuer (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) In order to give effect to the ranking specified in clause 6.3(a), in any Winding Up of the Issuer, the claims of Noteholders are limited to the extent necessary to ensure that:
  - (i) all holders of Existing Senior Debt Obligations of the Issuer 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) Neither the Trustee nor any Noteholder has any right to prove in a Winding Up of the Issuer in respect of the Notes, except on the basis set out in clauses 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 Issuer to defeat the subordination in this clause.
- (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 Issuer must not and must procure that the Australian Subsidiaries must not, without the approval of a Noteholders Resolution:

- (a) **(sale of assets)** conduct or agree to conduct (including by entering into an indicative term sheet) any transaction or series of related transactions in which an entity in the Group sells significant assets or assets worth more than 10% of the Group's gross assets;
- (b) **(dividends)** declare or pay any dividends to Shareholders;
- (c) **(issue securities)** issue any further notes, shares or any other form or type of securities, other than the Permitted Issues;
- (d) **(capital reduction)** other than in respect of the Notes, redeem, purchase, cancel, reduce, return capital on or otherwise acquire any share or other securities issued by a member of the Group for repayment or return of capital in a winding-up;
- (e) **(new debt)** incur any indebtedness for moneys borrowed or raised pursuant to any financial accommodation or agree to do so (including by entering into an indicative term sheet), except:
  - (i) pursuant to the Existing Senior Debt Obligations;
  - (ii) any indebtedness incurred or guaranteed after the Issue Date for the purpose of replacing, refinancing or extending the maturity of the Existing Senior Debt Obligations; or
  - (iii) any Permitted New Debt;
- (f) **(Security Interests)** other than in the ordinary course of business and the terms of which are commercial, arm's length terms and do not contain any unusual or onerous terms, 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:
  - (i) to secure the Existing Senior Debt Obligations;
  - (ii) to secure any indebtedness incurred after the Issue Date for the purpose of replacing, refinancing or extending the maturity of the Existing Senior Debt Obligations;
  - (iii) to secure any Permitted New Debt; or
  - (iv) if the creation of a Security Interest cannot by law be restricted, the Issuer may create such a Security Interest over any of its assets provided that the holder of the Security Interest first enters into a deed of priority in form and substance acceptable to the Trustee.

## 8. Events of Default

### 8.1 Events of Default

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

- (a) **(non-issue of Shares)** the Issuer fails to issue Shares on Conversion in accordance with these Note Terms within 10 Business Days after the date on which such issue is to be made;
- (b) **(non-payment)** the Issuer fails to pay any amount payable by it under the Note Terms within 10 Business Days after the date on which it is due and, where the sole reason for the default is a technical or administrative difficulty within the banking system being used to effect payment, such default is not remedied within 5 Business Days;
- (c) **(breach of Negative Covenants)** a member of the Group fails to comply with clause 7 and such failure remains unremedied for a period of 10 Business Days;
- (d) **(breach of other obligations)** the Issuer fails to comply with any of its other obligations under the Note Terms or the Transaction Documents and such failure remains unremedied for a period of 10 Business Days after the earlier of (A) the Issuer receiving written notice from the Trustee in respect of the failure to comply and (B) the Issuer becoming aware of the failure to comply;
- (e) **(insolvency)** an Insolvency Event occurs in respect of a member of the Group;
- (f) **(sale of business or main undertaking)** there is a sale of the business or the main undertaking of the Issuer that would require approval of the Shareholders in accordance with ASX Listing Rule 11.2;
- (g) **(delisting)** a Delisting Event occurs in respect of the Issuer;
- (h) **(Security Interest)** any Security Interest over an asset of a Group member with a value greater than \$500,000 is enforced or becomes enforceable;
- (i) **(cessation of business)** a member of the Group ceases or suspends (or threatens to cease or suspend) the conduct of all of its business or a substantial part of its business;

- (j) **(unlawfulness)** at any time, it is unlawful for the Issuer to perform any of its payment obligations under the Notes;
- (k) **(creditor balance)** the Group's aggregate outstanding creditor liabilities exceeds \$25 million at any date after 1 March 2017, except where the deferred amount of \$5,293,046.38 payable by Hillgrove Copper Pty Ltd ACN 105 074 762 to Andy's Earthmovers under the Rental Agreement becomes due and payable, in which case, the Group's aggregate outstanding creditor liabilities exceeds \$30 million at any date after 1 March 2017;
- (l) **(Government Agency)** all or substantially all of the assets of the Group is resumed or compulsory acquired by any Government Agency; or
- (m) **(vitiating)** all or any rights or obligations of the Issuer, 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.

## 8.2 Notification

If an Event of Default occurs, the Issuer must, promptly after becoming aware of it but in any event no later than two 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 ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the occurrence of the Event of Default. 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 Issuer or a Noteholder stating that an Event of Default has occurred and describing it. Nothing contained in the Trust Deed imposes on the Trustee an obligation to inform any Noteholder of any breach by the Issuer 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 Issuer (with a copy to the Noteholders and the Registrar) that all the Notes are to be Redeemed at their Face Value (together with any accrued Interest) immediately (but not earlier than 5 Business Days after the date the Trustee gives notice under this clause) or on such other date specified in that notice; and
  - (ii) take enforcement action against the Issuer and the relevant Group member (as applicable) in relation to the Event of Default in accordance with the Transaction Documents.
- (b) The Trustee shall not be bound to take the action referred to in paragraph (a) above to enforce the obligations of the Issuer in respect of the Notes or any other proceedings or action pursuant to or in connection with the Transaction Documents unless:
  - (i) it shall have 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 by the Issuer 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 Issuer 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 Issuer;
- (b) obtain judgment against the Issuer; or

- (c) apply for or seek Winding Up of the Issuer.

## **9. Title and transfer of Notes**

### **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 Issuer 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 Issuer or confer rights on a Noteholder to attend or vote at meetings of Members of the Issuer.

### **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 Issuer, 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 clause 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 clause 9.7, 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 Issuer must not charge any fee on the transfer of a Note.

### **9.8 Market obligations**

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

### **9.9 Issuer may request holding lock or refuse to register transfer**

If the Notes are quoted on ASX, and if permitted to do so by the ASX Listing Rules and the Corporations Act, the Issuer may:

- (a) 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; or
- (b) refuse to register a transfer of Notes.

### **9.10 Issuer must request holding lock or refuse to register transfer**

- (a) The Issuer 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 Issuer to do so.

- (b) The Issuer 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 Issuer 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.

#### **9.11 Notice of holding lock and refusal to register transfer**

If, in the exercise of its rights under clauses 9.9 and 9.10, the Issuer 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 Issuer.

#### **9.12 Delivery of instrument**

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

#### **9.13 Refusal to register**

- (a) The Issuer may only refuse to register a transfer of any Notes if such registration would contravene or is forbidden by Applicable Regulations or the Note Terms.
- (b) If the Issuer refuses to register a transfer, the Issuer must give the lodging party notice of the refusal and the reasons for it within five Business Days after the date on which the transfer was delivered to the Registrar.

#### **9.14 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.

#### **9.15 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 clause 9.2.

#### **9.16 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.

#### **9.17 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 Face Value of all the Notes registered as having been transferred equals the aggregate of the Face Value 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 clause 10.

#### **10.2 Record Date**

All payments under or in respect of a Note will be made only to those persons registered as the holder of that Note at the nominated time on the relevant Record Date.

#### **10.3 Payments subject to law**

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

#### **10.4 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.

#### **10.5 Payments to accounts**

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

#### **10.6 Payments by cheque**

- (a) The Issuer 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 Issuer in respect of the Notes as a result of the Noteholder not receiving payment on the due date.

#### **10.7 Unsuccessful attempts to pay**

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

- (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 Issuer 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 Issuer for the Noteholder in a non-interest bearing deposit with a bank selected by the Issuer 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 Issuer according to the legislation relating to unclaimed moneys.

#### **10.8 Payment to joint Noteholders**

A payment to any one of the joint Noteholders of a Note will discharge the Issuer'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 Issuer 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 Issuer 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 Issuer.
- (c) If an amount is deducted or withheld under clause 11.2(a) from a payment to a Noteholder in respect of any Tax, the Issuer will have no obligation to pay any additional amount to the Noteholder such that the Noteholder, at the time the payment is due, receives the same amount it would have received if no deductions or withholdings had been required to be made.

## 12. Amendment of the Note Terms

### 12.1 Amendment without the approval of the Noteholders

At any time, and from time to time, but subject to clause 17.4 of the Trust Deed, the Note Terms (which, for the avoidance of doubt include this clause) may be modified, altered, cancelled, amended or added to (collectively **Modified**), without the consent of the Noteholders, if:

- (a) such modification, alteration, cancellation, amendment or addition (collectively **Modification**) is:
  - (i) of a formal or technical nature or made to cure any ambiguity or correct any manifest error;
  - (ii) 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 Issuer may propose to seek a listing of the Notes;
  - (iii) 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;
  - (iv) necessary or expedient to comply with the provisions of any law or regulation or the requirements of any statutory authority; or
  - (v) 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
- (b) in respect of a Modification sought by a party in reliance on:
  - (i) any one of clauses 12.1(a)(i) to 12.1(a)(iv) above - the Issuer and the Trustee have jointly obtained a legal opinion from legal advisers of recognised standing in New South Wales, which opinion is in a form satisfactory to the Issuer and the Trustee (each acting reasonably) and is addressed to or is otherwise able to be relied on by each of the Issuer and the Trustee, 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 clauses 12.1(a)(i) to 12.1(a)(iv); and
    - (B) not materially prejudicial to the interests of Noteholders of the Notes (taken as a whole); or
  - (ii) clause 12.1(a)(v) above - the Issuer and the Trustee have jointly 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 Issuer and the Trustee (each acting reasonably) and is addressed to or is otherwise able to be relied on by each of the Issuer and the Trustee, 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 clause 12.1(a)(v); 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 clauses 12.2(b), 12.2(c) and 12.3 of the Note Terms and clause 17.4 of the Trust Deed, the Note Terms (which, for the avoidance of doubt includes this clause) may be Modified if such Modification is authorised by a Noteholders Resolution.
- (b) If the Trustee reasonably considers the Modification will materially and adversely affect the rights of all Noteholders, then the Modification must be authorised by a Special Resolution.
- (c) If a clause in the Note Terms provides for Noteholders to give a direction to the Trustee by a Special Resolution, then that clause 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 the Note Terms (which, for the avoidance of doubt includes this clause) is proposed by the Issuer under clause 12.2 and the Trustee will not consent to the Modification, subject to compliance with clause 17.4 of the Trust Deed, the Note Terms may be Modified in the manner proposed by the Issuer if such Modification is authorised by a Special Resolution.

## **13. General**

### **13.1 Reporting**

In addition to any requirements of the Corporations Act and the ASX Listing Rules, each Noteholder (if requested by that Noteholder) will be provided with copies of all annual and half-yearly reports and financial statements provided to holders of Shares.

### **13.2 Time limit for claims**

A claim against the Issuer for a payment under a Note is void unless made within 5 years from the date on which payment first became due.

### **13.3 Voting**

The Trust Deed contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests including certain variations of these Note Terms which require the consent of the Noteholders.

### **13.4 Notices**

The Trust Deed contains provisions for the giving of notices.

### **13.5 Further documents**

The Issuer may require the Trustee to execute, on behalf of all Noteholders, such documents as the Issuer considers necessary or desirable (provided that the Trustee is indemnified to its satisfaction, acting reasonably, against any Taxes, fees, costs, charges, expenses or liabilities (including solicitor and client as well as party and party costs) which it may suffer or incur as a result of doing so, and provided that the Trustee will only be required to execute such documents if the Noteholders give a direction to the Trustee by a Special Resolution passed in favour of such execution to do so).

### **13.6 Governing law and jurisdiction**

- (a) These Terms and the Notes are governed by the laws of New South Wales.
- (b) The Issuer and each Noteholder submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales in connection with matters concerning the Notes or these Note Terms.
- (c) The Issuer and each Noteholder waives any right they have to object to an action being brought in those courts, or to claim that the action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.

## **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 a Transaction Document, then, to the maximum extent permitted by law, the Note Terms will prevail;
- (b) the Directors may exercise all powers of the Issuer under these Note Terms as are not, by the Corporations Act or by the Constitution of the Issuer required to be exercised by the Issuer in a general meeting;
- (c) calculations, elections and determinations made by the Issuer under these Note Terms are binding on Noteholders in the absence of manifest error;
- (d) 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;
- (e) the singular includes the plural and vice versa, and a gender includes other genders;
- (f) another grammatical form of a defined word or expression has a corresponding meaning;
- (g) a reference to a document includes all schedules or annexes to it;
- (h) a reference to a clause or paragraph is to a clause or paragraph of these Note Terms;
- (i) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (j) a reference to '\$', 'Australian dollars', 'A\$', 'AUS' or 'Australian cent' is a reference to the lawful currency of Australia;
- (k) a reference to time is to Adelaide, South Australia time;

- (l) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a person includes a natural person, partnership, body corporate, association, Government Agency or other entity;
- (n) a reference to a statute, ordinance, code, rule, directive or law (however described) includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (o) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (p) an Event of Default is subsisting if it has not been remedied or waived in writing; and
- (q) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Note Terms; and
- (r) terms used in the Corporations Act have the same respective meanings when used in this Deed.

## 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:

**Andy's Earthmovers** means Andy's Earthmovers (Asia Pacific) Pty Ltd ACN 146 240 511.

**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 98 003 624 691) or the securities market operated by it, as the context requires.

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

**Australian Subsidiaries** means each of:

- (a) Kanmantoo Properties Pty Ltd ACN 123 070 646;
- (b) Hillgrove Copper Pty Ltd ACN 105 074 762;
- (c) Hillgrove Copper Holdings Pty Ltd ACN 146 034 988;
- (d) Hillgrove Wheel Ellen Pty Ltd ACN 117 871 093;
- (e) Hillgrove Exploration Pty Ltd ACN 111 066 267;
- (f) Hillgrove Operations Pty Ltd ACN 105 935 126;
- (g) Mt Torrens Properties Pty Ltd ACN 127 768 816;
- (h) SA Mining Resources Pty Ltd ACN 103 777 368; and
- (i) Hillgrove Indonesia Pty Ltd ACN 130 752 411.

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

**Change of Control Event** means each of:

- (a) a takeover bid is made to acquire all of the Shares and the offer under the takeover bid is, or becomes, unconditional and:
  - (i) the bidder has acquired at any time during the offer period a relevant interest in more than 50% of the Shares on issue; or
  - (ii) the Directors of the Issuer unanimously recommend acceptance of the offer under the takeover bid, and acceptance of that offer would result in the bidder having a relevant interest in 100% of the Shares on issue; and
- (b) a court approves a proposed scheme of arrangement which, when implemented, will result in a person having a relevant interest in 100% of the Shares on issue.

**Clearing System** means the Clearing House Electronic Sub-register System operated by ASTC or any other applicable securities trading and/or clearance system.

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

**Conversion** means the conversion of a Note in accordance with clause 4 and the words **Convert**, **Convertible**, **Converting** and **Converted** bear a corresponding meaning.

**Conversion Amount** means the aggregate Face Value of the total number of Notes the subject of the relevant Conversion Notice plus, at the option of the Issuer, such amount of the Interest accrued but unpaid on those Notes (as determined by the Issuer) on the Conversion Date.

**Conversion Date** means the date (determined by the Issuer (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 clause 4.

**Conversion Notice** means a notice of conversion given in accordance with clauses 4.2 and 4.3.

**Conversion Price** means the lower of \$0.03 or the VWAP during the 30 days before the date of the relevant Conversion Notice.

**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.

**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.

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

**Early Redemption Notice** means a notice given by the Issuer to the Trustee under clause 5.2(b)(i).

**Early Redemption Premium** means, in relation to a Note, the amount equal to 20% of the Face Value of the Note.

**Emeco** means Emeco International Pty Ltd ACN 078 624 281.

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

**Existing Senior Debt Obligations** means the existing secured debt obligations of the Issuer as at the Issue Date, being:

- (a) the \$4 million facility agreement between the Issuer, the Minister for Finance and others dated 28 June 2016; and
- (b) the \$9.18 million bond in favour of the Minister for Mineral Resources and Energy, issued by the Issuer for the purposes of the section 62 of the *Mining Act 1971* (SA) pursuant to a deed poll dated 23 August 2016.

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

**General Security Deeds** means the general security deeds, dated on or about 22 November 2016 between the Trustee and each of the Issuer and its Australian Subsidiaries.

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

**Group** means the Issuer and the Australian Subsidiaries together.

**Guarantee** means the deed of guarantee dated on or about 22 November 2016 between each of the Australian Subsidiaries and the Trustee in respect of the Issuer's obligations under the Trust Deed and these Note Terms.

**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); or

- (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; or
- (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); or
- (d) an Application or order has been made (and, in the case of an Application, it is not stayed, withdrawn or dismissed within 30 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; or
- (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (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.

**Interest** means the interest payable from time to time in respect of a Note, including interest payable under in clause 3.1 and, as applicable, default interest payable under clause 3.3.

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

- (a) each 30 June and 31 December during the term of the Note, with the first Interest Payment Date being 30 June 2017;
- (b) the Conversion Date (if the Issuer 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) its Issue Date; and
- (b) the final Interest Period ends on (but excludes) the Maturity Date, Conversion Date or the Redemption Date.

**Interest Rate** means, in respect of an Interest Period for a Note, 6% per annum

**Issue Date** means, in respect of a Note, the date on which that Note is issued.

**Issuer** means Hillgrove Resources Limited ACN 004 297 116.

**Maturity Date** means the date which is the third anniversary of the Issue Date.

**Meeting Provisions** means the rules relating to meetings of Noteholders contained in Schedule 2 to the Trust Deed.

**Member** or **Shareholder** means a person entered in the register of members as a member, for the time being, of the Issuer.

**Note** means a debt obligation denominated in Australian dollars and issued, or to be issued, by the Issuer which is constituted by, and owing under, the Trust Deed, the details of which are recorded in, and evidenced by, entry in the Register.

**Note Terms** means, in relation to a Note, the terms and conditions of issue of that Note (as set out in Schedule 1 to the Trust Deed).

**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.

**Noteholders 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 Issues** means:

- (a) the issue of 10,157,905 Shares to Roc-Drill pursuant to a Memorandum of Agreement dated 21 November 2016 between the Issuer and Roc-Drill;
- (b) the issue of either:
  - (i) 9,405,467 Shares to Emeco pursuant to the rental variation agreement dated 21 November 2016 between the Issuer, Emeco and Emeco Holdings Limited; or
  - (ii) in the event that the issue of Shares to Emeco International Pty Ltd does not proceed, no more than 18,058,496 Shares to Andy's Earthmovers pursuant to any debt for equity swap arrangement that may be agreed between the Issuer and Andy's Earthmovers; and
- (c) the issue of Shares upon the vesting of any performance rights that have been granted by the Issuer as at 22 November 2016 in accordance with the provisions of the Hillgrove Resources Option and Performance Rights Plan.

**Permitted New Debt** means indebtedness for moneys borrowed or raised pursuant to any financial accommodation not exceeding an aggregate amount of \$3 million and that is in the ordinary course of business and the terms of which are commercial, arm's length terms and do not contain any unusual or onerous terms.

**Record Date** means, in relation to any payment to be made under or in respect of the Notes:

- (a) subject to sub-paragraphs (b) and (c), the date which is eight calendar days before the applicable due date for payment; or
- (b) such other date as is determined by the Issuer in its absolute discretion, and communicated to ASX not less than eight calendar days before the record date which would have been determined under paragraph (a) above; or
- (c) such other date as may be required by, or agreed with, ASX.

**Redemption** means the redemption of a Note in accordance with clause 5 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.

**Register** means the register of Noteholders (established and maintained under clause 15 of the Trust Deed) and, where appropriate, the term **Register** includes:

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

**Registrar** means Boardroom Pty Limited ACN 003 209 836 or any other person appointed by the Issuer (with such appointment notified to the Trustee) to maintain the Register and perform any payment and other duties as specified in that agreement.

**Rental Agreement** means the draft Rental Agreement between the Issuer, Hillgrove Copper Pty Ltd, Emeco and Emeco Holdings Limited documenting the terms agreed between Emeco and Hillgrove Copper Pty Ltd under the non-binding term sheet dated on or about 9 November 2016 in relation to the Supply Agreement for fully maintained mining equipment dated 16 September 2013 between Hillgrove Copper Pty Ltd and Andy's Earthmovers dated 16 September 2013.

**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 Issuer 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 Issuer and one or more Noteholders.

**Roc-Drill** means Roc-Drill Pty Ltd (ACN 155 911 667).

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset, including any retention of title other than in the ordinary course of business and any charge or lien arising by operation of law.

**Shares** means an ordinary share in the capital of the Issuer.

**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 (ii) 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.

**Subsidiary** has the meaning given in the Corporations Act, but an entity will also be taken to be a Subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**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 (including these Note Terms);
- (b) each Note;
- (c) the Guarantee; and
- (d) the General Security Deeds.

**Trustee** means the person from time to time acting as the trustee of the trust constituted by the Trust Deed (acting in that capacity), initially being Australian Executor Trustees Limited.

**Trust Deed** means the trust deed entitled 'Trust Deed for the Hillgrove Resources Note Trust' between the Issuer and the Trustee and dated on or about 22 November 2016.

**VWAP** means the average of the daily volume weighted average sale prices of the Shares sold on ASX during the period specified in these Note Terms, excluding any transaction defined in the ASX Operating Rules as 'special', crossings prior to the commencement of normal trading, crossings during the after hours adjust phase and any overseas trades or exchange traded option exercises, subject to the following adjustments:

- (a) where, on some or all of the Business Days in the relevant period, Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement which is not extended to the Noteholder, and the Notes will convert into Ordinary Shares after the date those Shares no longer carry that entitlement, then the VWAP on the Business Days on which those shares have been quoted cum dividend, or cum any other distribution or entitlement shall be reduced by an amount (**Cum Value**) equal to:
  - (i) in the case of a dividend or other distribution, the amount of that dividend or distribution (with no value included for any franking credits);
  - (ii) in the case of an entitlement which is traded on ASX on any of those Business Days, the volume weighted average price of all such entitlements sold on ASX during the relevant period on the Business Days on which those entitlements were traded; or
  - (iii) in the case of an entitlement not traded on ASX during the relevant period, the value of the entitlement as reasonably determined by the Directors; and
- (b) where, on some or all of the Business Days in the relevant period, Shares have been quoted ex dividend, ex distribution or ex entitlement, and Notes will convert into Ordinary Shares which would be entitled to receive the relevant dividend, distribution or entitlement, the VWAP on the Business Days on which those Shares have been quoted ex dividend, ex distribution or ex entitlement shall be increased by the Cum Value.

**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).

# Schedule 2– Rules relating to meetings of Noteholders

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## 1. Power to call meetings

### 1.1 Ability to convene meetings

The Trustee or the Issuer may at any time call a meeting of Noteholders.

### 1.2 Issuer's duty to call meeting

On request in writing of the Noteholders representing at least 10% of the Face Value of the Notes on issue, the Issuer must call a meeting of Noteholders:

- (a) to consider the financial statements that were laid before the last preceding annual general meeting of the Issuer; or
- (b) to give the Trustee directions in relation to the exercise of the Trustee's powers.

## 2. How to call meeting

### 2.1 Period of notice

At least 10 Business Days' notice (15 Business Days' notice for a Special Resolution) exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given, of every meeting is to be given to the Noteholders, the Trustee and the Issuer's auditors.

### 2.2 Right of attendance

The following persons have the right to attend and, if they wish, to address any meeting of Noteholders:

- (a) each Noteholder and their representative, proxy or attorney;
- (b) the Trustee, its solicitors and any other experts or advisers that the Trustee may engage;
- (c) the directors of the Issuer and the Issuer's solicitors;
- (d) the auditor of the Issuer; and
- (e) any other experts or advisers that the Issuer may engage.

### 2.3 Contents of notice

The notice must specify who called the meeting, the place, day and hour of the 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.

### 2.4 Copy of notice

A copy of the notice shall be sent by post to the Trustee (unless the meeting is called by the Trustee) and to the Issuer (unless called by the Issuer).

### 2.5 Omission to give notice

- (a) Accidental omission to give notice to, or the non-receipt of notice by, a Noteholder does not invalidate the meeting nor any resolution passed at a meeting.
- (b) Where notice of a meeting convened by the Issuer is not received by the Trustee or a notice of meeting convened by the Trustee, is not received by the Issuer, all business transacted and resolutions passed at the meeting will (unless the party who did not receive notice otherwise agrees) be void and of no effect.

## **2.6 Postal ballot**

Any meeting of Noteholders may be conducted by postal ballot in accordance with such arrangements as the Issuer may determine and the Trustee approves, which arrangements, unless the Trustee and the Issuer agree otherwise, must reflect as closely as may be practicable, the provisions of this Schedule 2.

## **2.7 Location of meetings**

All meetings of Noteholders must be held in the Jurisdiction unless the Issuer and the Trustee agree otherwise.

# **3. Proceedings at meeting**

## **3.1 Quorum**

For any meeting, two Noteholders present in person or by attorney or by proxy or being a corporation by proxy or by attorney or by duly authorised representative holding (in aggregate) Notes representing at least 5% of the Face Value of all Notes on issue when the meeting begins is a sufficient quorum. No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

## **3.2 No quorum**

If a quorum is not present within half an hour from the time appointed for the meeting, then the meeting shall stand adjourned to such day and time (not being less than 14 days thereafter) and to such place as may be appointed by the Chairperson. At such an adjourned meeting the Noteholders present and entitled to vote, or if only one Noteholder, that Noteholder, whatever the value of the Notes held by them, shall be a quorum for the transaction of business.

## **3.3 Chairperson**

The Trustee may nominate the Chairperson of any Meeting. The Chairperson need not be a Noteholder and may be the chairperson of the Issuer, any other executive officer of the Issuer or any other person whom the Trustee believes is an appropriate person to chair the meeting. If the Trustee does not nominate a Chairperson, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the holding of the meeting, the Noteholders present may choose one of their number to be Chairperson.

## **3.4 Adjournment**

The Chairperson may, with the consent of a Noteholder's Resolution of any meeting at which a quorum is present (such consent being obtained if the Chairperson so requires on a poll), and shall (if directed by a Noteholder's Resolution on a poll), adjourn the meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

## **3.5 Minutes**

- (a) Minutes of all resolutions and proceedings at every meeting of Noteholders must be made and duly entered in books to be provided from time to time for that purpose by the Issuer.
- (b) Minutes of a meeting signed by the Chairperson constitute conclusive evidence of the proceedings of the meeting, and until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made will be deemed to have been duly held and convened and all resolutions passed or proceedings taken to have been duly passed or taken.

## **4. Voting**

### **4.1 Show of hands**

At any meeting a resolution put to the vote of the meeting shall 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 Chairperson, the Trustee, at least five Noteholders present in person or by proxy or attorney or by one or more Noteholders present in person or by proxy or attorney and holding or representing 5% of the Face Value of all Notes on issue at the time of the meeting. Unless a poll is so demanded, a declaration by the Chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

### **4.2 Poll**

If a poll is duly demanded it shall be taken in such manner as the Chairperson may direct and the result of such poll shall be the resolution of the meeting at which the poll was demanded.

### **4.3 Conduct of poll**

A poll demanded on the election of a Chairperson or on a question of adjournment shall be taken at the meeting without adjournment. A poll demanded on any other question shall be taken either immediately or at such time (not being more than 5 days from the date of the meeting) and place as the Chairperson may direct. No notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

### **4.4 Number of votes**

On a show of hands every Noteholder who:

- (a) being an individual is present in person or by proxy or attorney; or
- (b) being a corporation is present by proxy or attorney or by its authorised representative,

shall have one vote and on a poll every Noteholder who is present in person or by attorney or by proxy shall have one vote for every Note with respect to which it is the registered holder. A Noteholder entitled to more than one vote need not use all its votes or cast all the votes it uses in the same way.

### **4.5 Joint Noteholders**

In the case of joint Noteholders, the joint Noteholder first named in the Register (or if that person does not vote, the next named joint Noteholder, or if that person does not vote, the next named and so forth) may exercise the voting rights of jointly held Notes.

### **4.6 Casting vote**

If the votes are equal (whether on a show of hands or a poll), the Chairperson has a casting vote in addition to the vote or votes (if any) to which the Chairperson is otherwise entitled.

## **5. Proxies**

### **5.1 Instrument appointing proxy**

An instrument appointing a proxy shall be in writing under the hand of:

- (a) the appointor;
- (b) the appointor's attorney duly authorised in writing; or
- (c) if the appointor is a corporation, either under its common seal or under the hand of an officer or attorney so authorised.

## **5.2 Rights of proxy**

A proxy appointed to attend and vote for a Noteholder has the same rights as the Noteholder to speak at the meeting and to vote (but only to the extent allowed by the appointment).

## **5.3 Proxy need not be Noteholder**

A person appointed to act as a proxy need not be a Noteholder.

## **5.4 Deposit of proxy**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a duly certified copy of such power or authority shall be deposited at such places in the Jurisdiction as the Trustee or the Issuer (with the approval of the Trustee) may in the notice convening the meeting direct (or if no such place is appointed, then at the office of the Trustee in the Jurisdiction) at least 48 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 shall not be treated as valid.

## **5.5 Form of proxy**

An instrument of proxy may be in the usual common form or in such other form as the Issuer and the Trustee shall approve. The proxy shall be deemed to include the right to demand or join in demanding a poll. Unless the contrary is stated on a proxy, a proxy shall be as valid for any adjournment of the meeting as for the meeting to which it relates and need not be witnessed.

## **5.6 Validity of vote**

A vote given in accordance with the Note Terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or 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 intimation in writing of such death, insanity, revocation or transfer shall have been received by the Issuer at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## **6. Noteholders bound**

A Noteholders' Resolution or a Special Resolution passed at a meeting of the Noteholders duly called and held (including by way of postal ballot) in accordance with this Schedule 2 will be binding upon all the Noteholders (whether or not present at the meeting) and each of the Noteholders shall be bound to give effect thereto accordingly.

## **7. Interpretation**

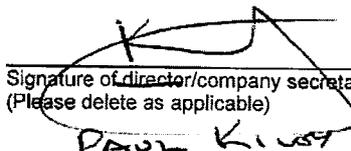
Words and expressions defined in the Deed have the same meaning in this Schedule 2, unless the context otherwise requires.

# Signing page

**EXECUTED** in Adelaide, South Australia as a deed.

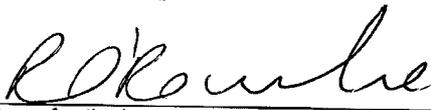
Executed by **HILGROVE RESOURCES LIMITED** pursuant to section 127 of the *Corporations Act 2001*:

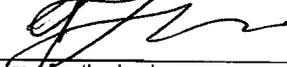
  
\_\_\_\_\_  
Signature of director  
Steven Paul McClare  
\_\_\_\_\_  
Name of director (print)

←  →  
\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)  
Paul King  
\_\_\_\_\_  
Name of director/company secretary (print)

The **COMMON SEAL** of **AUSTRALIAN EXECUTOR TRUSTEES LIMITED** is duly affixed to this document by authority of its directors in the presence of:



  
\_\_\_\_\_  
Signature of authorised person  
\_\_\_\_\_  
Authorised Officer  
Office held  
ROSE O'ROURKE  
\_\_\_\_\_  
Name of authorised person (print)

←  →  
\_\_\_\_\_  
Signature of authorised person  
\_\_\_\_\_  
Authorised Officer  
Office held  
PINA SPATHIS  
\_\_\_\_\_  
Name of authorised person (print)