Execution version

Trust Deed

relating to the Contango Convertible Note Trust (2014)

Contango MicroCap Limited (**Issuer**)

Equity Trustees Limited (**Trustee**)

MinterEllison
LAWYERS

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Trust Deed relating to the Contango Convertible Note Trust

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Details

Date

Parties

Name	**Contango MicroCap Limited**
ACN	107 617 381
Short form name	**Issuer**
Notice details	Level 27, 35 Collins Street, Melbourne, Victoria, 3000 Facsimile: +61 3 9222 2345 Email: gfowles@contango.com.au Attention: Company Secretary

Name	**Equity Trustees Limited**
ABN	46 004 031 298
Short form name	**Trustee**
Notice details	Level 2, 575 Bourke Street, Melbourne, Victoria 3000 Facsimile: +61 3 8623 5395 Email: ssilavecky@eqt.com.au Attention: Manager Structured Finance, Fund Services

Background

A The Issuer wishes to issue redeemable, unsecured, convertible notes (**Notes**) under this Deed.

B The Trustee has agreed, on the terms and conditions contained in this Deed, to act as trustee under this Deed for the benefit of the Holders of the Notes.

C The Issuer may, subject to the Terms, issue other unsecured convertible notes (including more than one Series of the Notes) under this Deed.

Agreed terms

1. Defined terms and interpretation

1.1 Schedule 1

Capitalised terms defined in the Schedule 1 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.

Business Day has the meaning given to that term in 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 19.

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 $100 per Note or such other amount for the face value of the Note as may be specified in the Terms.

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;

Holder means a person whose name is for the time being registered in the Register as the holder of a Note from time to time and for the purpose of this Deed, excluding the Terms, includes a former Holder.

Holders' Resolution means a resolution passed at a meeting duly called and held (or by postal ballot) in accordance with the Meeting Provisions and:

(a) carried by a majority consisting of greater than 50% of the persons voting at the meeting on a show of hands;

(b) if a poll is duly demanded, by a majority of the votes cast by the Holders (or Holders of a Series) present at the meeting in person, by attorney, by proxy or by representative and entitled to vote; or

(c) if the meeting is by postal ballot, by a majority consisting of the Holders representing greater than 50% of the Face Value of all of the Notes or, in the case of a ballot of the Holders of a Series, all of the Notes in that Series.

Jurisdiction means the State of Victoria.

Issue Date means, in respect of a Series, the date of issue of any Note in that Series.

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 Holders contained in Schedule 2.

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

Moneys Owing 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 Holder or the Trustee on a Holder'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 Holders under or pursuant to this Deed (and the 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 Holder means that portion of moneys which is owing to or in relation to that Holder. Where the Issuer would be liable but for an Insolvency Event, it will be taken to still be liable.

Notes means one or more (as the context requires) redeemable, unsecured, 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 Note holders established and maintained as provided in clause 16.

Registrar means Computershare Investor Services Pty Ltd, Yarra Falls, 452 Johnston Street, Abbotsford Victoria 3067 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.

Series means a series of Notes issued under this Deed.

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 Holders of a Series or of all the Holders (as the case may be) 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 written resolution, then by Holders 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 Victoria, Australia in relation to the Trustee's role under this Deed or the Notes.

Terms means the 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.

Transaction Document means:

(a) this Deed; and

(b) each Note.

Trust means the 'Contango Convertible Note Trust' established under this Deed.

Trust Deed or **Deed** means this deed relating to the Contango Convertible Note Trust.

Trust Fund means all the assets and income which are subject to the Trust.

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 Terms is to the correspondingly numbered term and a reference in the 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', 'AUS$', 'A$' or '$' is a reference to the lawful currency of Australia;

(g) a reference to time is to Melbourne 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, governmental or local authority or 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;

(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 10, 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 Terms otherwise provide, if there is any inconsistency between the provisions of the 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 Terms or both:

(a) any matter or thing done or to be done by the Issuer under this Deed or the 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 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 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 Holders to the Issuer, the same will be deemed not to have been produced, surrendered, lodged, delivered or given to the Issuer by any Holder 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

2.1 Issue

The Issuer may:

(a) issue Notes to any person on the terms of this Deed and the Terms by registering the person as the Holder of the Notes; and

(b) designate Notes issued at different times (whether or not on the Terms set out in Schedule 1) as different Series or as part of a Series already on issue.

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 Terms);

(c) are direct, redeemable, unsecured and unsubordinated obligations of the Issuer;

(d) are convertible into Shares on and in accordance with terms of this Deed (including the Terms); and

(e) rank equally and without any preference amongst themselves as described in the Terms.

2.3 Interest payment dates

Each Series of Notes issued will have common Interest payment dates.

2.4 Register

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

2.5 Deed and Terms are binding

(a) Holders are deemed to have notice of, and be bound by, this Deed and the Terms.

(b) This Deed and the Terms are binding on the Issuer and the Trustee.

(c) It is a condition of a Holder receiving any of the rights or benefits in connection with this Deed or the Notes that the Holder performs all of the obligations and complies with all restrictions and limitations applicable to it under this Deed and the Terms.

2.6 Binding nature of relationship

Each Holder is taken to have agreed:

(a) to be bound by anything properly done or properly not done by the Trustee in accordance with this Deed, whether or not the Trustee is acting on the instructions of the Holders given by a Special Resolution and whether or not the Holders gave an instruction by way of a Special Resolution or approved of the thing done or not done; and

(b) at the Trustee's request, to ratify anything properly done or properly not done by the Trustee in accordance with this Deed.

2.7 Limit on Holders' rights

All of the rights against the Issuer in connection with the Notes are held by the Trustee for the Holders. Accordingly, subject to clause 2.8:

(a) no Holder is entitled to directly enforce any rights, powers or remedies in connection with the Notes under this Deed directly against the Issuer; and

(b) the rights, powers and remedies of the Trustee under and in respect of this Deed are exercisable and enforceable by the Trustee only. No Holder may exercise any of them (whether in its own name or the Trustee's name).

2.8 Holder's right to take action

No Holder is entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of the Notes unless the Trustee, having become bound to proceed in accordance with this Deed, fails to do so within a reasonable period and such failure is continuing.

2.9 Individual responsibility of Holders

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

(a) made and will continue to make its own independent investigation of the financial condition and affairs of the Issuer based on documents and information which it considers appropriate;

(b) made its own appraisal of the creditworthiness of the Issuer; and

(c) made its own assessment and approval of the rate of interest, risks associated with repayment of principal and other returns in relation to the Notes,

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

2.10 Knowledge of the Trustee

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

2.11 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.

3. Covenant to pay

3.1 Covenant to pay

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

(a) Subject to paragraph (b), 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 Terms and any payment so made will be a good discharge to the Issuer and/or the Trustee, as the case may be.

(b) Any money payable on or in respect of a Note must be paid in Australian dollars only:

(i) by cheque sent by prepaid post on the payment date, at the risk of the registered Holder, to the Holder (or to the first named joint holder of the Note) at its address appearing in the Register at the close of business on the Record Date;

(ii) by any method of direct credit determined by the Issuer, to such bank account as may be nominated by the Holder Register; or

(iii) by any other method of transferring money approved and agreed by the Issuer and the Trustee from time to time.

(c) Every cheque referred to in clause 3.2(b) is sent at the risk of the person entitled to the money represented by the cheque.

(d) Payment is treated as made when the cheque is posted or the deposit is made in accordance with this clause 3.2.

4. Trustee

4.1 Appointment

The Trustee is appointed as the trustee for the Holders 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 agrees to hold in trust for the benefit of Holders:

(a) the right to enforce the Issuer's duty to pay the Moneys Owing on the Notes on the due date for payment and to repay the Face Value on each Note in accordance with the Terms;

(b) any charge or security for repayment (if applicable);

(c) the right to enforce any other duties that the Issuer has under the Terms, this Deed or Chapter 2L of the Corporations Act; and

(d) all other property acquired by the Trustee and intended to be held for the benefit of Holders on the trust in this Deed.

4.4 Duration

The Trust commences on the date of this Deed and ends on payment in full of all Moneys Owing.

4.5 Name of Trust

The Trust will be known as the 'Contango Convertible Note Trust'.

4.6 Beneficiaries

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

5. Payment of commission, brokerage etc.

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.

6. Representations and warranties

6.1 Representations and warranties by the Issuer

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

(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 Governmental 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.

6.2 Issuer's representations and warranties repeated

Each representation and warranty in clause 6.1 is deemed to be repeated by the Issuer on each Issue Date by reference to the facts and circumstances existing on that date.

6.3 Representations and warranties by the Trustee

The Trustee makes the following representations and warranties to the Issuer on the date of this Deed as follows.

(a) (**Status**) The Trustee is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

(b) (**Power, authority and due authorisation**) The Trustee:

(i) has the power and authority to own its assets and to carry on its business as, and in such place or places as, it is now being conducted;

(ii) has the power to enter into, and exercise its rights and perform and comply with its obligations (if any) under this Deed;

(iii) has taken or will take all necessary action to authorise the entry into this Deed and the performance of all its obligations under it; and

(iv) meets the requirements of a trustee as provided in sections 283AC(1) and 283AC(2) of the Corporations Act.

(c) (**Binding obligations**) The obligations assumed by it in this Deed are legal, valid, binding and enforceable under their terms, subject to any necessary stamping and registration and subject to principles of equity and laws affecting creditors rights generally and legal reservations in any legal opinions delivered in connection with the issue of the Notes.

7. Issuer's covenants

7.1 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 Terms and the Meeting Provisions;

(d) comply with its reporting and other obligations to the Trustee, ASIC, ASX and to the Holders 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 Holders 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 7, 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 7, 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 Holders at the same time any such document or notice is given to the Holders;

(viii) any information which the Trustee may reasonably require for the purposes of this Deed or for compliance with the Corporations Act;

(ix) notice in writing of the occurrence of any Event of Default, which notice must provide details of the nature and circumstances of the default; and

(x) any other information reasonably required by the Trustee for the purposes of this Deed;

(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 and its obligations under this Deed and the Terms;

(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; and

(l) adequately insure or cause to be insured its assets against all material risks properly insurable against the standard of a prudent business person.

8. Reports

(a) The Issuer must comply with its reporting obligations to the Trustee, ASIC and to the Holders 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 an encumbrance over any of the Issuer's assets 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.

9. Default

9.1 Enforcement of Transaction Documents

Despite any other provision of this Deed but subject to clause 9.2 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 Holders' interests);

(b) may decide whether or not to take action to enforce the Transaction Documents 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 to recover the same;

(ii) exercise any powers, rights or privileges conferred by law or equity under any Transaction Document 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 requiring that the default be remedied to the satisfaction of the Trustee; and

(v) take such other action as the Holders deem appropriate to recover the Moneys Owing;

(c) may in its absolute discretion not inform Holders 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 Holders' 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 (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 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 Holders in accordance with clause 17.

9.2 Enforcement at the direction of Holders

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 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 Holders of the Notes or by Holders representing greater than 75% of the aggregate Face Value of all Notes then outstanding;

(b) its liability is limited in a manner consistent with clauses 13.2 and 14.1; and

(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 13.2 and 14.1.

9.3 Enforcement by Holders

(a) A Holder, or Holders, may only take action or proceedings against the Issuer or to enforce any provision of a Transaction Document following the making of a request in accordance with clause 9.2(a) if 30 Business Days have lapsed since the date on which the Holder, or Holders, 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 Holder, or Holders, made in accordance with clause 9.2(a).

(b) The Holder, or Holders, must provide to the Issuer a copy of the notice referred to in clause 9.3(a) as soon as reasonably practicable.

9.4 Application of money received by the Trustee

(a) All money received by the Trustee in respect of amounts payable under this Deed 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 this Deed (including all remuneration payable to the Trustee); and

(ii) secondly – in or towards payment to Holders 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 9.4(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.

10. Trustee's powers and duties

10.1 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.

10.2 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 Terms)) the rights of the Holders as a whole and without regard to any interests arising from the taxation or other circumstances of particular Holders.

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

10.3 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 10.3(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 10.3(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).

10.4 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 Holders, pursuant to the terms of this Deed to enforce the same. For the avoidance of doubt, nothing in this clause restricts or precludes the Trustee's rights to remuneration in clause 11 or the Trustee's right of indemnity in clause 13.

10.5 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 Holder.

10.6 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 10.3(c), the Trustee will have no liability for having acted in accordance with such advice, opinion or information.

10.7 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 Holders, 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 Holders, 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 Holders.

10.8 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 Holders, may:

(a) hold Notes, or any other Marketable Securities in or of the Issuer;

(b) represent or act for, or contract with, individual Holders;

(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 Holder.

10.9 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 this Deed (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 Holder 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 this Deed 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 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.

10.10 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 this Deed, expressly waived and negatived by the Holders and the Issuer.

11. 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.

12. Fees and expenses

12.1 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 this Deed. Fees payable by the Issuer to the Trustee are exclusive of GST.

(b) If the Trustee takes any enforcement action in relation to this Deed, 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 12.1(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 12.1(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.

12.2 Expenses

The Issuer must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed, the Terms and the Prospectus and 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 and executing this Deed, the Terms and the Prospectus and any subsequent consent, agreement, approval, waiver or amendment relating to this Deed, the Terms or the Prospectus; and

(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 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 this Deed, the Terms or the Prospectus.

12.3 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 under this clause 12, must be paid in priority to any claim by any Holder 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 Holder all such amounts out of any moneys for the time being in its hands upon the trusts of this Deed.

12.4 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.

12.5 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 12.4, 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.

12.6 Dispute

The Trustee and Issuer agree that any dispute arising out of clause 12.1(d) will be submitted to arbitration in accordance with the Institute of Arbitrators and Mediators of Australia Rules for the Conduct of Commercial Arbitrations.

13. Trustee's indemnity

13.1 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.

13.2 Indemnity

The Trustee, its officers, directors, employees and attorneys (together included in the defined term, **'Trustee'** for the purposes of this clause 13.2) 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 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 Holder to incur an expense or make a payment before enforcing a right of indemnity under this Deed.

13.3 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 13.2.

14. Trustee's liability and obligations

14.1 Limitation

(a) The Trustee will have no liability under or in connection with this Deed or any other Transaction Document (whether to any Holders, 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 by 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.

(b) The Issuer and the Holders 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 14.1(a), the Issuer and the Holders 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 Terms for performing various obligations under this Deed and the 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 14.1(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 10.3 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 10.3 which is a Related Body Corporate of the Trustee).

14.2 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 14.1(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 14.1(a).

14.3 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 14.

14.4 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 Holders 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.

14.5 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).

14.6 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 14.6(d) the Trustee is not liable

to the Issuer, the Holders 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 Holders are owed to Holders only in their capacity as Holders.

(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) is not personal;

(ii) is at all times limited to the property of the Trust; and

(iii) does not extend beyond money received by the Trustee for or on behalf of the Holders 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 Holders 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 Holders acknowledge that:

(i) the whole of this Deed and each other Transaction Document is subject to this clause 14; 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 14, 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.

14.7 Paramount

The provisions of this clause 14:

(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.

14.8 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 Holders 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; and

(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.

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.

14.9 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 Holders.

14.10 Trustee not bound to give notice

The Trustee is not bound to give notice to any person of the execution of this Deed 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.

14.11 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 the Trustee has no obligation to monitor compliance

by the Issuer of its covenants and obligations under this Deed or any other activities or status of the Issuer.

14.12 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 Holders, creditors or any other person for failure to take any action where clause 14.12(a) has not been satisfied in respect of the relevant act.

15. Retirement and removal of Trustee

15.1 Notice by Trustee

Subject to clause 15.4 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.

15.2 New appointment by Issuer

Subject to clause 15.3, the power to appoint a new Trustee (which new Trustee must be a Trustee Company) is vested in the Issuer.

15.3 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 Holders 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 Holders' Resolution, a person nominated either by the Trustee or by any Holder as the new trustee.

15.4 Effect

Despite anything contained in this clause, the Trustee covenants that the retirement of the Trustee pursuant to this clause 15 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 Holders.

15.5 Removal for breach or by Holders' 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 Holders may by a Holders' Resolution and 60 days' notice to the Trustee,

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

15.6 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.

15.7 Discharge of obligations

By force of this clause 15.7, 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.

15.8 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.

16. Registers

16.1 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.

16.2 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.

16.3 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.

16.4 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 Terms); and

(c) an entitlement to the other benefits given to the Holders under the Terms and the Deed in respect of the Note.

16.5 Particulars

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

16.6 Inspection

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

16.7 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.

16.8 Change of details

Any change of the name or address of a Holder must be notified immediately by the Holder 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.

16.9 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.

16.10 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.

16.11 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.

16.12 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.

16.13 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.

16.14 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 16.

16.15 Clearing System Holder

If the operator of a Clearing System is registered in the Register as the holder of Notes, the Holder or Holders, 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 Holders will be taken to be the Holder in relation to that number of the Notes to which they are entitled by the Clearing Systems rules or regulations.

17. Meetings of Holders

17.1 Meeting Provisions

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

17.2 Directions to Trustee

(a) Except as expressly stated in this Deed, by a Holders' Resolution and subject to any applicable law, Holders 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, Holders 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; and

(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.

18. Changing the Deed

18.1 Amendment without the approval of the Holders

At any time, and from time to time, but subject to clause 18.4, the Deed (which, for the avoidance of doubt includes this clause, the Terms (including in relation to existing Notes or any Series) 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 Holders, 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 or any Series 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 18.1(a)(i) to 18.1(a)(iv) above - the Issuer and the Trustee have jointly obtained a legal opinion from legal advisers of recognised standing in Victoria, 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 18.1(a)(i) to 18.1(a)(iv); and

(B) not materially prejudicial to the interests of Holders of the Notes or any Series (taken as a whole); or

(ii) clause 18.1(a)(v) above - the Issuer and the Trustee have jointly obtained an opinion from an accountancy or taxation adviser of recognised standing in Victoria, 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 18.1(a)(v); and

(B) not materially prejudicial to the interests of Holders of the Notes or any Series (taken as a whole).

18.2 Amendment with the approval of the Holders

(a) At any time, and from time to time, but subject to clauses 18.2(b), 18.2(c), 18.3 and 18.4, the Deed (which, for the avoidance of doubt includes this clause, the Terms (including in relation to existing Notes or any Series) and any one or more of the schedules to this Deed) may be Modified if such Modification is authorised by a Holders' Resolution passed at a meeting (including a meeting held by way of postal ballot) of all Holders (or the Holders in a Series) held pursuant to the Meeting Provisions.

(b) If the Trustee reasonably considers the Modification will materially and adversely affect the rights of all Holders (or the Holders in a Series) then the Modification must be authorised by

a Special Resolution passed at a meeting (including a meeting held by way of postal ballot) of all Holders (or the Holders in that Series) held pursuant to the Meeting Provisions.

(c) If a clause in the Terms of a Note provides for Holders 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 passed at a meeting (including a meeting held by way of postal ballot) of all Holders (or the Holders in that Series) held pursuant to the Meeting Provisions .

18.3 Amendment with the approval of the Holders but not the Trustee

If a Modification to all or any of this Deed (which, for the avoidance of doubt includes this clause, the Terms (including in relation to existing Notes or any Series) and any one or more of the schedules to this Deed) is proposed by the Issuer under clause 18.2 and the Trustee will not consent to the Modification, subject to compliance with clause 18.4 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 Holders held pursuant to the Meeting Provisions.

18.4 Effecting a change

(a) A Modification to this Deed (which, for the avoidance of doubt, includes this clause, the Terms (including in relation to the Notes or any Series existing at that time) and any one or more of the Schedules to this Deed) may only be made by supplemental deed Modifying this Deed, the Terms (including in relation to existing Notes or any Series) 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 18.1(a), the other party must use all reasonable endeavours within its own capacity to ensure that the requisite opinion required under either clause 18.1(b)(i) or 18.1(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 18.1(a) (and the requisite opinion under either clause 18.1(b)(i) or 18.1(b)(ii) (as the case requires) has been obtained); or

(ii) authorised by a Special Resolution of Holders under clause 18.3,

then, subject to clause 18.4(d), the Trustee must not unreasonably refuse to execute, or delay the execution of, the supplemental deed Modifying this Deed, the Terms (including in relation to existing Notes or any Series) 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 Terms (including in relation to Notes or any Series existing at that time) 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.

19. Confidentiality

19.1 Financial information of Issuer

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

19.2 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.

19.3 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 19.2(a) or 19.2(b)) gives and performs obligations under a confidentiality undertaking in the same terms as this clause.

20. Validity

20.1 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 Holder and the Issuer;

(b) the relevant Holder and the Trustee;

(c) the relevant Holder and any receiver, trustee or liquidator of the Issuer; and

(d) the relevant Holder and all other Holders,

be deemed to have been validly issued under this Deed.

20.2 Continuing obligations

Nothing in this clause 20 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.

21. Discharge and release

21.1 Release

(a) By force of this clause 21, but subject to clause 21.2, 21.4 and 27.6, the Issuer will immediately be discharged and released from its respective liabilities, obligations and covenants under this Deed:

(i) subject to clause 22, 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 21.1(a), the Trustee will (subject to being indemnified in accordance with clause 13.2) distribute the balance of the capital and income (if any) of the Trust (including, without limitation, cash) at the direction of the Issuer.

21.2 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 21.2(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 Holder to restore to the Trustee or that Holder (as the case may be) the rights under this Deed (and the Terms) held by them immediately before the payment, conveyance, transfer or transaction. This clause 21.2 applies whether or not the Trustee or the Holder (as the case may be) knew, or ought to have known, of anything referred to in this clause.

21.3 Confirmation

Upon the happening of the events in clause 21.1, but subject to clause 21.2, 21.4 and 27.6, 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.

21.4 Termination

On the Trust being terminated under this clause 21:

(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.

22. Untraceable Holders

(a) Subject to applicable law and the ASX Listing Rules:

(i) where the Issuer has made reasonable efforts to locate a Holder but is unable to do so; and

(ii) moneys payable to the Holder have not been claimed by the Holder or any legal personal representative of the Holder 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 Holder 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 Holder for any moneys paid to the Issuer in accordance with this clause.

23. Notices

23.1 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.

23.2 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.

23.3 Holders

All notices and other communications by either the Issuer or the Trustee to a Holder under this Deed may be sent by fax or prepaid post (airmail if appropriate) to or left at the address of the Holder (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 Holders.

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.

23.4 Joint Holders

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

23.5 Effective on receipt

A Notice given in accordance with clause 23.1 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.

24. 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 23.

25. Invalid or unenforceable provisions

Any provision of this Deed or the 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.

26. Applicable law

This Deed is governed by, and is to be construed in accordance with, the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and Courts entitled to hear appeals from these Courts. The Issuer and each Holder 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.

27. General provisions

27.1 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.

27.2 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 27.2(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.

27.3 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.

27.4 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.

27.5 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.

27.6 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.

27.7 Remedies

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

28. Inspection of this Deed and copies of this Deed

The Holders 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 Holders 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.

29. Further action

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

Schedule 1 – Terms of Notes

Final

Note Terms

Contango MicroCap Limited

ACN 107 617 381

Unsecured Convertible Notes

MinterEllison
LAWYERS

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Agreed terms

1. Form of Notes

1.1 Form

The Notes are redeemable, unsecured convertible notes of the Issuer issued under the Trust Deed. Holders are entitled to the benefit of and are bound by the provisions of the Trust Deed and these Terms.

1.2 Face Value and Issue Price

(a) The Notes are each issued fully paid with a Face Value of $100 (**Face Value**).

(b) Each Note will be issued by the Issuer at an issue price of $100 or such other amount as set out in or determined in accordance with the relevant offer document (**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 Holders 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 Holder:

(a) to become a member of the Issuer;

(b) to vote at any meeting of members of the Issuer;

(c) to subscribe for or participate in any new issue of securities by the Issuer; or

(d) to participate otherwise in the profits or property of the Issuer or any other member of the Contango Group, except as set out in these Terms or the Trust Deed.

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:

$$\textbf{Interest payable} = \frac{\textbf{Interest Rate x \$100 x N}}{\textbf{365}}$$

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 Terms on or before the due date, interest accrues on the unpaid amount at 7.5% per annum from, and including, the due date to, but excluding, the date on which payment is made to the Holder 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 Terms is, in the absence of manifest or proven error, final and binding on the Issuer, the Trustee and each Holder.

3.5 Calculations

For the purposes of any calculations required under these 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 Terms, the Holder has a 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 Holder's election

(a) Subject to paragraph 4.2(b) and 4.3, a Holder 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 $1,000 or the balance of the Holder'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 Holder or an authorised representative or officer of the Holder.

(b) Once a Conversion Notice has been given:

(i) the notice cannot be withdrawn without the written consent of the Issuer;

(ii) the Holder must not deal with, transfer, dispose or otherwise encumber any Notes the subject of the Conversion Notice; and

(iii) the Holder 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 Holder of an Early Redemption Notice, a Holder 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.

(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 Holder's Note will be taken to have been Redeemed, and the Holder 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 Holder, and must register the Holder as the holder of, the Conversion Shares;

(c) the Holder 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 Holder (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 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 to Conversion Price for Pro-rata Issues

(a) Subject to clause 4.7(b), if the Issuer makes a pro-rata issue (except a bonus issue) of Shares to holders of Shares generally, the Conversion Price will be adjusted immediately under the following formula:

$$CP = CPo - \frac{E \times (P - [S + D])}{N + 1}$$

where:

CP means the Conversion Price applying immediately after the application of this formula;

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

E means the number of Shares into which one Note may be converted;

P means the VWAP during the period from (and including) the first Business Day after the announcement of the pro-rata issue to ASX up to (and including) the last Business Day of trading before the ex rights date (or ex entitlements date) (or if

there is no period of rights trading, an amount reasonably determined by the Directors as representing the value of a Share cum the rights entitlements);

S means the subscription price per Share under the pro-rata issue;

D means the dividend, if any, due but not yet paid on the existing Shares (not including those to be issued the pro-rata offer); and

N means the number of Shares that must be held to entitle the Holder to one new Share under the pro-rata issue.

(b) For the purpose of this clause 4.7(a), an issue will be regarded as a pro rata issue notwithstanding that the Issuer does not make offers to some or all Shareholders with registered addresses outside Australia, provided that in so doing the Issuer is not in contravention of ASX Listing Rules.

(c) If the Issuer makes a bonus issue of Shares, despite the Conversion Price not being adjusted, the number of Shares to be issued on the exercise of a Note will be increased by the number of Shares the Holder would have received if the Note had been converted prior to the record date for the bonus issue.

4.8 Adjustments to Conversion Price for Off Market Buy-Backs

(a) Subject to paragraph 4.8(b), if the Issuer undertakes an off market buy-back under a buy-back scheme which but for any applicable restrictions on transfer would be generally available to holders of Shares (or otherwise cancels Shares for consideration), the Conversion Price will be adjusted immediately using the following formula:

$$CP = CPo \times \frac{1}{P} \times \frac{(BD \times P) - (BN \times A)}{(BD - BN)}$$

where:

CP means the Conversion Price applying immediately after the application of this formula;

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

P means the VWAP during the 20 Business Days before the announcement to ASX of the buy-back (or cancellation);

BD means the number of Ordinary Shares on issue immediately before the buy-back (or cancellation);

BN means the number of Ordinary Shares bought back (or cancelled); and

A means the buy-back (or cancellation) price per Share.

(b) No adjustment to the Conversion Price will occur if P exceeds A.

4.9 Adjustment to Conversion Price for Issues at Less than Current Market Price

If and whenever the Issuer shall issue (otherwise than as mentioned in 4.7 or 4.10) any Shares (other than Shares issued on conversion of the convertible notes or on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, Shares) wholly for cash or for no consideration at a price per Share which is less than 90% of the VWAP during the five Business Days immediately preceding the date of the first public announcement of the terms of such issue or grant, the Conversion Price will be adjusted immediately using the following formula:

$$CP = CPo \times \frac{1}{P} \times \frac{(RD \times P) + (RN \times A)}{(RD + RN)}$$

where:

CP means the Conversion Price applying immediately after the application of this formula;

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

P means the VWAP during the five consecutive Business Days up to the announcement of the terms of such issue or grant to ASX;

RD means the number of Shares on issue immediately before the issue of new Shares under the rights or bonus issue;

RN means the number of Shares issued at a price per Share which is less than 90 per cent of the VWAP during the five Business Days immediately preceding the date of the first public announcement of the terms of such issue or grant; and

A means the subscription price per Share for the issue.

4.10 Adjustment to Conversion Price for Issues Under a Share Purchase Plan or Dividend Reimbursement Plan at a Discount

If and whenever the Issuer shall issue any new Shares under a share purchase plan or dividend reinvestment plan where the pricing of new Shares under that plan is expressly calculated as a discount to a market price and that discount is greater than 10 per cent, the Conversion Price will be adjusted immediately using the following formula:

$$CP = CPo \times \frac{RD + ((1-D) \times RN)}{(RD + RN)}$$

where:

CP means the Conversion Price applying immediately after the application of this formula;

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

RD means the number of Shares on issue immediately before the issue of new Shares under the share purchase plan or dividend reinvestment plan;

RN means the number of Shares issued under the plan; and

D means the discount at which new Shares are issued under the plan.

4.11 Adjustment to Conversion Price for Return of Capital

If the Issuer makes a pro rata return of capital to holders of Shares without cancellation of any Shares, the Conversion Price will be adjusted under the following formula:

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

where:

CP means the Conversion Price applying immediately after the application of this formula;

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

P means the VWAP during the period from (and including) the first Business Day after the announcement to ASX of the return of capital up to and including the last Business Day of trading cum the return of capital (or if there is no period of cum return of capital, an amount reasonably determined by the Directors as representing the value of a Share cum the return of capital); and

C means with respect to a return of capital, the amount of the cash and/or the value (as reasonably determined by the Directors) of any other property distributed to holders of Shares per Share (or such lesser amount such that the difference between P and C is greater than zero).

4.12 Other Adjustments to Conversion Price

If the Issuer (after consultation with the Trustee) determines that an adjustment should be made to the Conversion Price where the effect of any of the adjustment provisions set out in clauses 4.7 to 4.11 is not appropriate in any particular circumstances, the Issuer shall, at its own expense and acting reasonably, request a Financial Adviser to determine as soon as practicable what adjustment (if any) to the Conversion Price is fair and reasonable to take account thereof and the date on which such adjustment should take effect and, on finalisation of that determination, such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this clause 4.12 if such Financial Adviser is so requested to make such a determination not more than 21 days after the date on which the relevant circumstance arises and if the adjustment would result in a reduction to the Conversion Price.

4.13 Deemed Amendment

Any adjustment of the Conversion Price under this clause 4 will be taken to be an amendment to these Terms and will be binding on the Issuer and all Holders and effective on delivery of the instrument of amendment to the Trustee and these Terms will be construed accordingly. Any such adjustment will be notified promptly to the Holders and to ASX (and any other stock exchange or other relevant authority on which the Notes are quoted).

4.14 On Market Buy-Backs

No adjustment to the Conversion Price shall occur as a result of an on market buy-back of Shares.

5. Redemption and purchase

5.1 Scheduled redemption

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) lf a Regulatory Event, Minimum Holding Event or Change of Control Event occurs, the Issuer may Redeem all (but not some) of the Notes in whole before their Maturity Date at their Face Value together with any Interest accrued on those Notes to (but excluding) the applicable Redemption Date.

(b) The Issuer may exercise its right under clause 5.2(a) to Redeem the Notes if, and only if:

(i) the Issuer has given not less than 10 Business Days' notice in writing to the Trustee, the Holders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted) of the occurrence of a Regulatory Event, Minimum Holding Event or Change of Control Event and of the intention of the Issuer to Redeem the Notes (**Early Redemption Notice**); and

(ii) not less than 5 Business Days before the Issuer gives the Early Redemption Notice under clause 5.2(b)(i), the Trustee has received from the Issuer:

(A) a certificate signed by two Directors or a Director and a secretary of the Issuer confirming that a Regulatory Event, Minimum Holding Event or Change of Control Event has occurred; and

(B) in the case of a Regulatory Event, an opinion addressed to or endorsed for use by the Trustee of a qualified legal or taxation adviser (such legal or taxation adviser to be acceptable to the Trustee, acting reasonably) that a Regulatory Event has occurred in respect of the Notes.

(c) If an Early Redemption Notice is given by the Issuer under clause 5.2(b)(i), the notice will be effective (and Redemption will occur) on such date as specified by the Issuer in the Early Redemption Notice.

(d) If, prior to Redemption of the Notes taking place pursuant to an Early Redemption Notice, a Holder 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 by the Holders

(a) If a Change of Control Event or Delisting Event occurs, the Holder of any Notes may require the Issuer to Redeem all (but not some) of the Notes held by that Holder at their Face Value together with any Interest accrued on the Notes to (but excluding) the applicable Redemption Date.

(b) As soon as practicable after the occurrence of a Change of Control Event or a Delisting Event, the Issuer must give notice in writing to the Trustee, the Holders and ASX (and any other stock exchange or other relevant authority on which the Notes are quoted):

(i) specifying the occurrence of a Change of Control Event and/or Delisting Event (as the case may be);

(ii) specifying the date on which the Change of Control Event and/or Delisting Event occurred;

(iii) informing the Holders of their right under clause 5.3(a) to require the Issuer to Redeem all (but not some) of their Notes;

(iv) enclosing the form of the notice required to be given by a Holder if it elects to exercise its right to Redeem its Notes (**Holder Redemption Notice**); and

(v) such other information relating to the Change of Control Event or Delisting Event as the Trustee may reasonably require be given to the Holders.

(c) A Holder may exercise its right under clause 5.3(a) to Redeem its Notes by delivery to the Registrar (as agent for the Issuer) of a duly completed and signed Holder Redemption Notice, which notice must be delivered to the Issuer not later than 10 Business Days after the date of receipt by the Holder of the notice given by the Issuer to the Holder under clause 5.3(b).

(d) Subject to the right of the Issuer to Redeem the Holder's Notes at an earlier date, if a Holder Redemption Notice is given by the Holder under clause 5.3(c):

(i) not less than 10 Business Days before an Interest Payment Date, the notice will be effective (and Redemption will occur) on the immediately following Interest Payment Date; and

(ii) less than 10 Business Days before an Interest Payment Date, the notice will not be effective for that Interest Payment Date and Redemption will not occur until the following Interest Payment Date.

5.4 Effect of Holder Redemption Notice

(a) Once given by a Holder, a Holder Redemption Notice cannot be withdrawn without the written consent of the Issuer.

(b) An Holder 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 Holder must not deal with, transfer, dispose of or encumber any Notes the subject of a Holder 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 Holders 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 and ranking

6.1 Status

The Notes at all times constitute direct and unsecured obligations of the Issuer.

6.2 Ranking of Notes

(a) The Notes are direct, unsecured and unsubordinated debt obligations of the Issuer and rank equally without any preference or priority among themselves and at least equally with all other present and future unsubordinated and unsecured debt obligations of the Issuer (subject to the laws and principles of equity affecting creditors' rights or obligations preferred by mandatory provisions of applicable law).

(b) The ranking of Notes is not affected by the date of registration of any Holder in the Register.

7. Financial covenants and Undertaking

7.1 Gearing

For so long as any of the Notes remain outstanding, the Issuer covenants for the benefit of the Holders that, on 30 June and 31 December of each year, the Consolidated Interest Bearing Liabilities divided by the Total Equity (expressed as a percentage) will be less than 25%.

7.2 Negative pledge

(a) Subject to clause 7.2(b), for so long as any of the Notes remain outstanding, the Issuer must not create or allow to exist, and must procure that no other member of the Contango Group creates or allows to exist, any prior ranking Security Interest over any assets of Contango Group, other than a Permitted Security Interest, without also according to the Notes either the same security, security that is in substance equal ranking security or such other security as is approved by the Trustee (securing the Issuer's obligations to the Holders under the Notes and the Trust Deed).

(b) From time-to-time, the Issuer may lodge securities as collateral for options positions.

8. Events of Default

8.1 Events of Default

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

(a) (**non-payment**) the Issuer fails to pay any amount payable by it under the 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;

(b) (**breach of other obligations**) the Issuer fails to comply with any of its other obligations under the Terms or the Trust Deed and such failure remains unremedied for a period of 20 Business Days after the Issuer has received written notice from the Trustee in respect of the failure;

(c) (**insolvency**) an Insolvency Event occurs in respect of the Issuer;

(d) (**cessation of business**) the Issuer ceases or suspends the conduct of all of its business;

(e) (**unlawfulness**) at any time, it is unlawful for the Issuer to perform any of its payment obligations under the Notes.

(f) (**non-issue of Shares**) the Issuer fails to issue Shares on Conversion in accordance with these Terms within 10 Business Days after the date on which such issue is to be made;

(g) (**cross default**) any debt of the Issuer greater than $1,000,000 (or its equivalent in any other currencies) becomes due and payable before its stated maturity due to the occurrence of a default event under the terms of that debt;

(h) (**vitiation**) all or any rights or obligations of the Issuer, Holders or the Trustee under the Trust Deed or the 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, notify the Trustee of the occurrence of the Event of Default (specifying details of it) and use its reasonable endeavours to promptly notify the Holders 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.

8.3 Consequences of an Event of Default

(a) If any Event of Default occurs and is continuing in relation to the Notes, the Trustee may declare by notice to the Issuer (with a copy to the Holders 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.

(b) The Trustee shall not be bound to take any of the actions 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 Trust Deed, the Terms or the Notes unless:

(i) it shall have been so directed by a Special Resolution of the Holders of the relevant Notes or so requested in writing by the Holders representing greater than 75% of the aggregate Face Value of all Notes outstanding;

(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 Terms 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 Holders

Unless the Trustee, having become obliged to take action to enforce the rights of the Holders under the Trust Deed and these Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing, the rights of each Holder to enforce the obligations of the Issuer under 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 Holders under the Trust Deed and these Terms, fails to do so within 20 Business Days of being obliged to do so and such failure is continuing, no Holder 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 Holder to pay principal, interest and any other amount in accordance with these Terms; and

(b) an entitlement to the other benefits given to Holders under these Terms and the Trust Deed in respect of the Note.

For the avoidance of doubt, an entry in the Register does not make the Holder a member of the Issuer or confer rights on a Holder to become a member of the Issuer or 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 Holder 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 Holder 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 Holder, 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 Regulation or the 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 Holder until registration

A transferor of a Note remains the Holder 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 Trust Deed and the 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 Holder or of a vesting order or a person administering the estate of a Holder 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 Holder is not entitled to any additional payment in respect of that delay.

10.5 Payments to accounts

Moneys payable by the Issuer to a Holder may be paid in any manner the Issuer decides, including by direct credit into a nominated account of the Holder 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 Holder (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 Holder will be at the risk of the registered Holder and will be taken to have been received by the Holder on the payment date and, no further amount will be payable by the Issuer in respect of the Notes as a result of the Holder 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 Holder by a method of direct credit and the Holder has not nominated an account to which amounts are to be paid by that method;

(b) attempts to pay an amount to a Holder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful;

(c) has made reasonable efforts to locate a Holder 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 Holder and will not bear Interest; and

(f) the amount will be held by the Issuer for the Holder in a non-interest bearing deposit with a bank selected by the Issuer until the Holder (or any legal personal representative of the Holder) 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 Holders

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

10.9 Fractions

For the purposes of making any payment to a Holder in respect of its aggregate holding of Notes, any fraction of a cent will be disregarded.

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 Holder 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 Holder, deliver to that Holder 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 Holder in respect of any Tax, the Issuer will have no obligation to pay any additional amount to the Holder such that the Holder, 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 Terms

12.1 Amendment without the approval of the Holders

At any time, and from time to time, but subject to clause 18.4 of the Trust Deed, the 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 Holders, 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 Victoria, 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 12.1(a)(i) to 12.1(a)(iv); and

(B) not materially prejudicial to the interests of Holders 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 Victoria, 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 12.1(a)(v); and

(B) not materially prejudicial to the interests of Holders of the Notes (taken as a whole).

12.2 Amendment with the approval of the Holders

(a) At any time, and from time to time, but subject to clauses 12.2(b), 12.2(c) and 12.3 of the Terms and clause 18.4 of the Trust Deed, the Terms (which, for the avoidance of doubt includes this clause) may be Modified if such Modification is authorised by a Holders Resolution passed at a meeting (including a meeting held by way of postal ballot) of all Holders held pursuant to the Meeting Provisions.

(b) If the Trustee reasonably considers the Modification will materially and adversely affect the rights of all Holders, then the Modification must be authorised by a Special Resolution passed at a meeting (including a meeting held by way of postal ballot) of all Holders held pursuant to the Meeting Provisions.

(c) If a clause in the Terms provides for Holders 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 passed at a meeting (including a

meeting held by way of postal ballot) of all Holders held pursuant to the Meeting Provisions .

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

If a Modification to the 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 18.4 of the Trust Deed, the Terms 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 Holders held pursuant to the Meeting Provisions.

13. General

13.1 Reporting

In addition to any requirements of the Corporations Act and the ASX Listing Rules, each Holder (if requested by that Holder) 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 Holders to consider any matter affecting their interests including certain variations of these Terms which require the consent of the Holders.

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 Holders, 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 Holders give a direction to the Trustee by a Special Resolution passed in favour of such execution to do so).

13.6 Further issues

The Issuer may from time to time, without the consent of the Holders, issue further notes having the same Terms as the Notes in all respects (or in all respects except for the Issue Date and the first payment of interest for such new notes) so as to form part of the same series or issue any other notes, shares or any other form or type of securities, or incur or guarantee any indebtedness upon such terms as it may think fit in its sole discretion.

13.7 Governing law and jurisdiction

(a) These Terms and the Notes are governed by the laws of Victoria.

(b) The Issuer and each Holder submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria in connection with matters concerning the Notes or these Terms.

(c) The Issuer and each Holder 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 Terms, except where the context otherwise requires:

(a) if there is inconsistency between the Terms and the Trust Deed, then, to the maximum extent permitted by law, the Terms will prevail;

(b) the Directors may exercise all powers of the Issuer under these 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) if a calculation is required under these Terms, unless the contrary intention is expressed, the calculation will be rounded to four decimal places;

(d) calculations, elections and determinations made by the Issuer under these Terms are binding on Holders in the absence of manifest error;

(e) if an event under these 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;

(f) the singular includes the plural and vice versa, and a gender includes other genders;

(g) another grammatical form of a defined word or expression has a corresponding meaning;

(h) a reference to a document includes all schedules or annexes to it;

(i) a reference to a clause or paragraph is to a clause or paragraph of these Terms;

(j) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(k) a reference to '$', 'Australian dollars', 'A$', 'AUS' or 'Australian cent' is a reference to the lawful currency of Australia;

(l) a reference to time is to Melbourne time;

(m) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;

(n) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(o) 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;

(p) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(q) an Event of Default is subsisting if it has not been remedied or waived in writing; and

(r) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Terms.

14.2 Definitions

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

Applicable Regulation 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 Tax Act means the *Income Tax Assessment Act 1936* (Cth) and, where applicable, the *Income Tax Assessment Act 1997* (Cth).

Balance Sheet means the balance sheet of the consolidated Contango Group shown in the latest audited financial statements or half year financial statements of the Issuer.

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.

Consolidated Interest Bearing Liabilities means the aggregate sum (without double counting) of all interest bearing liabilities of the Contango Group (on a consolidated basis) as set out in the latest Balance Sheet and of the Contango Guarantees.

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

Contango Group means the Issuer and its Subsidiaries but excludes any Subsidiary in its capacity as trustee or responsible entity of a Relevant Trust or Scheme.

Contango Guarantees means, on a consolidated basis for the Contango Group, all actual or contingent debt or other monetary liabilities (including by way of counter-indemnity) of or incurred by a member of the Contango Group in respect of (but only to the extent of the outstanding available or undrawn amounts under) any bank guarantee, standby letter of credit or other Guarantee issued or granted by a financial institution at the request of a member of the Contango Group for the payment of a debt.

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 Terms) on which Shares will be issued to the Holder 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 $1.30, or such other lower price as determined in accordance with clauses 4.7 to 4.14.

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

Costs includes costs, charges and expenses.

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).

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

Face Value means the nominal principal amount of each Note, being $100.

Financial Adviser means an independent financial adviser, holding a relevant Australian Financial Services Licence, appointed by the Issuer and approved in writing by the Trustee or, if the Issuer fails to make such appointment and such failure continues for a reasonable period (as determined by the Trustee), appointed by the Trustee following notification to the Issuer.

Financial Indebtedness means any actual or contingent debt or other monetary liability arising in respect of money borrowed or raised or any financial accommodation provided, including in respect of any:

(a) bill of exchange, bond, debenture, note or similar instrument;

(b) acceptance, endorsement or discounting arrangement;

(c) Guarantee granted by a financial institution guaranteeing the payment of a debt (the guaranteed debt), in which case the guaranteed debt will not be included;

(d) finance lease;

(e) obligation to deliver goods or provide services paid for in advance by any financier or in relation to any other financing transaction;

(f) cash advance; or

(g) deferred purchase price (for more than 90 days) of an asset or service,

but excluding (for the avoidance of doubt) in respect of any operating lease. Where these Terms require the amount of any Financial Indebtedness to be determined or calculated, for Financial Indebtedness comprising a swap, option, hedge, forward, futures or similar transaction which is subject to netting, the net (and not the gross) amount payable by the relevant party will be counted.

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

Guarantee means a guarantee, indemnity, letter of credit, letter of comfort having binding effect or any other obligation or irrevocable offer:

(a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;

(b) to indemnify any person against the consequences of default in the payment of; or

(c) to be responsible for,

an obligation or monetary liability of another person, distribution, or the solvency or financial condition of another person.

Holder 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.

Holders Resolution means a resolution passed at a meeting duly called and held (or by postal ballot) in accordance with the Meeting Provisions and:

(a) carried by a majority consisting of greater than 50% of the persons voting at the meeting on a show of hands;

(b) if a poll is duly demanded, by a majority of the votes cast by the Holders present at the meeting in person, by attorney, by proxy or by representative and entitled to vote; or

(c) if the meeting is by postal ballot, by a majority consisting of the Holders representing greater than 50% of the Face Value of all of the Notes.

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

(d) 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

(e) 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

(f) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or

(g) it is otherwise unable to pay its debts when they fall due; or

(h) 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 31 March and 30 September during the term of the Note, with the first Interest Payment Date being 31 March 2015;

(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, 5.5% per annum

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

Issuer means Contango MicroCap Limited ABN 47 107 617 381.

Limited Recourse Debt means Financial Indebtedness incurred or owed by one or more entities (including a trust) for or in respect of the purchase, construction, development or operation of an asset or assets where the financier's recourse is limited to those assets (or the income or cashflow from those assets) or shares or units issued by that entity or those entities and the financier otherwise has no Guarantee from any other member of the Contango Group or any security over any other assets of the Contango Group.

Maturity Date means 31 March 2020.

Meeting Provisions means the rules relating to meetings of Holders 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.

Minimum Holding Event means, in respect of the Notes, that, at any time, the aggregate Face Value of the Notes that have not been Redeemed or subject to a Conversion Notice is less than 10% of the aggregate Face Value of the Notes originally issued on the Issue Date.

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.

Permitted Security Interest means, in relation to a member of the Contango Group, as the case may be, any of the following:

(a) liens, rights of retention and statutory charges arising by operation of law in the ordinary course of business where the related indebtedness is not more than 60 days overdue or is being contested in good faith and appropriately provisioned;

(b) any Security Interest over the assets of a member of the Contango Group where:

(i) such member became a Subsidiary of the Issuer after the date of the Trust Deed and such Security Interest was not created in contemplation of that member becoming a Subsidiary of the Issuer; and

(ii) the money secured by that Security Interest is paid or repaid either in accordance with the terms applicable to such payment as those terms were in effect at the time the member of the Contango Group became a Subsidiary of the Issuer or at such earlier time as that member elects;

(c) any Security Interest for Limited Recourse Debt; and

(d) any other Security Interest not referred to in sub-paragraphs (a) to (d) above provided the aggregate value of assets subject to such Security Interests is not more than 10% of the Total Equity.

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 e**ight calend**ar 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 Holders (established and maintained under clause 16 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 Computershare Investor Services Pty Ltd ACN 078 279 277 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.

Regulatory Event means, in the opinion of the Directors (having obtained an opinion from a reputable legal or accounting adviser):

(a) there is more than an insubstantial risk that the Issuer will be exposed to additional costs or the imposition of additional requirements which the Directors determine at their sole discretion to be unacceptable, as a result of the occurrence of any of the following on or after the Issue Date:

(i) the introduction, enactment, amendment, change, repeal, replacement or revocation of an applicable standard or regulation affecting the accounting treatment of the Notes;

(ii) the introduction, enactment, amendment, change, repeal, replacement or revocation of any law or regulation affecting the Notes or any action required to be taken by the Issuer under these Terms or the Trust Deed; or

(iii) any pronouncement, action or decision of a Governmental Agency or ASX interpreting or applying any law or regulation or the ASX Listing Rules; or

(b) there is more than an insubstantial risk that the Issuer would be exposed to more than a de minimis increase in its costs (including, but not limited to, increased taxes, duties or other governmental charges or civil liabilities and/or the loss or reduction of any tax deduction available to the Company in connection with the payment of Interest on the Convertible Notes) as a result of the occurrence on or after the Issue Date of:

(i) any amendment to, clarification of, or change (including any announced prospective change), in the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;

(ii) any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (Administrative Action); or

(iii) any amendment to, clarification of, or change in the pronouncement that provides for a position with respect to an Administrative Action that differs from the current generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known.

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

Relevant Trust or Scheme means a trust, managed investment scheme or other comparable arrangement in respect of which moneys have been raised from the public or that has otherwise been established bona fide for or with a view to, and in which there are, investors, beneficiaries, objects of trust or other scheme participants external to the Contango Group (including any sub-trust or other Subsidiary of such a trust, managed investment scheme or other comparable arrangement), other than a trust, managed investment scheme or other comparable arrangement in which an entity of the Contango Group (that is not a Relevant Trust or Scheme or acting in the capacity of trustee or responsible entity of a Relevant Trust or Scheme) has a Controlling Interest of more than 50%.

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 Holders.

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 Holders;

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 Holders 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 written resolution by Holders 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.

For the avoidance of doubt, no Relevant Trust or Scheme is or will be deemed to be a Subsidiary of a member of the Contango Group.

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

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);

Total Equity means the total member equity from time to time of the Contango Group on a consolidated basis (as set out in the latest Balance Sheet);

Trustee means the person from time to time acting as the trustee of the trust constituted by th**e Trust** Deed (acting in that capacity), initially being Equity Trustees Limited ACN 004 031 298;

Trust Deed means the trust deed entitled 'Trust Deed for the Contango Note Trust' between the Issuer and the Trustee and dated on or about 27 November 2014.

VWAP means the average of the daily volume weighted average sale prices of the Shares sold on ASX during the period specified in these 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 Holder, 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 Holders

1. Power to call meetings

1.1 Ability to convene meetings

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

1.2 Issuer's duty to call meeting

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

(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 Holders or the Holders of the relevant Series, as the case may be, 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 Holders or Holders of a Series:

(a) each Holder or Holder of the Series (as the case may be) 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 Holder 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 Holders or Holders of a Series 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 Holders and Holders of a Series 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 Holders (or two Holders of the relevant Series, as the case may be) 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 (or of all Notes in the relevant Series) 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 Holders present and entitled to vote, or if only one Holder, that Holder, whatever the value of the Notes (or the Notes in the relevant Series) 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 Holder 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 Holders present may choose one of their number to be Chairperson.

3.4 Adjournment

The Chairperson may, with the consent of a Holder'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 Holder'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 Holders or of Holders of a Series must be made and duly entered in books to be provided from time to time for that purpose by the Issuer.

(a) 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 Holders (or at least five Holders of the relevant Series) present in person or by proxy or attorney or by one or more Holders (or Holders of the relevant Series) present in person or by proxy or attorney and holding or representing 5% of the Face Value of all Notes (or of all Notes in the relevant Series) 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 Holder (or Holder of the relevant Series) 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 Holder (or Holder of the relevant Series) 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 Holder (or Holder of the relevant Series) 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 Holders

In the case of joint Holders, the joint Holder first named in the Register (or if that person does not vote, the next named joint Holder, 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 Holder has the same rights as the Holder to speak at the meeting and to vote (but only to the extent allowed by the appointment).

5.3 Proxy need not be Holder

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

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 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. Holders bound

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

7. Interpretation

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

(b) Where a meeting of Holders in a Series only is to be held, the references in this Schedule 2 to 'Holder' or 'Holders' is to a Holder or Holders in that Series only.

Signing page

EXECUTED in Melbourne, Victoria as a deed.

Executed by **CONTANGO MICROCAP LIMITED** by:

David Stevens

Signature of director

DAVID STEVENS

Name of director (print)

Signature of director/~~company secretary~~
(Please delete as applicable)

GLENN FOWLES

Name of director/~~company secretary~~ (print)

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

EQUITY TRUSTEES LIMITED ACN 004 031 298 Common Seal

Signature of authorised person

HARVEY HILLARY KALMAN
Executive General Manager
Corporate Trustee Services
Authorised Signatory to the Common Seal

Office held

Name of authorised person (print)

Signature of authorised person

Terry Ryan

Office held Company Secretary

Name of authorised person (print)