



RELEASE TO AUSTRALIAN SECURITIES EXCHANGE (“ASX”)

MONDAY, 13 DECEMBER 2010

CONVERTIBLE NOTE ISSUE AND ALLOTMENT NOTICE

1. The Board of Directors of IMF (Australia) Ltd advises that today 23,702,415 convertible notes were allotted and issued, raising \$39,108,984.75 (excluding costs).
2. Accordingly, the issued capital of the Company is as follows:

Ordinary fully paid shares (ASX: IMF) –	121,870,342
Convertible Notes (ASX: IMFG) -	23,702,415
3. Attached is:
 - a) a list of the top 20 Convertible Noteholders:
 - b) a distribution schedule of the Convertible Notes issued; and
 - c) a copy of the Trust Deed pertaining to the Convertible Notes

A handwritten signature in black ink, appearing to read 'Diane Jones', enclosed within a large, loopy oval.

Diane Jones
Chief Operating Officer

IMF#427367

IMF (Australia) Ltd

GPO Box 5457
Sydney NSW 2001

Freecall 1800 016 464

IMF (AUSTRALIA) LTD

IMFG – CONVERTIBLE NOTES

TOP 20 NOTEHOLDERS FROM INITIAL ALLOTMENT

Holder	Units	%	Rank
HSBC Custody Nominees (Australia) Limited – GSCO ECA	2,617,862	11.04	1
Penson Australia Nominees Pty Ltd <No 3 A/C>	2,127,810	8.98	2
RBC Dexia Investor Services Australia Nominees Pty Limited <BKCUST A/C>	1,818,181	7.67	3
JP Morgan Nominees Australia Limited <Cash Income A/C>	1,257,864	5.31	4
Pan Australian Nominee Pty Limited	1,212,120	5.11	5
HSBC Custody Nominees (Australia) Limited	1,203,820	5.08	6
J P Morgan Nominees Australia Limited	960,783	4.05	7
Ruminator Pty Ltd	606,060	2.56	8
McLernon Group Superannuation Pty Ltd	485,509	2.05	9
Redsummer Pty Ltd	434,260	1.83	10
Moat Investments Pty Ltd <Moat Investment A/C>	419,888	1.77	11
RBC Dexia Investor Services Australia Nominees Pty Limited <MLCI A/C>	363,723	1.53	12
Accbell Nominees Pty Ltd	309,077	1.30	13
Sandini Pty Ltd <Karratha Rigging Unit A/C>	303,060	1.28	14
Legal Precedents Pty Limited <Walker Investment A/C>	303,030	1.28	15
Namangi Pty Limited	303,030	1.28	16
Mr Victor John Plummer	303,030	1.28	17
Henroth Pty Ltd	300,000	1.27	18
Third Exar Pty Ltd <Super Fund A/C>	300,000	1.27	19
Moore Family Nominee Pty Ltd <M F T A/C>	299,814	1.26	20
REPORT TOTAL	15,928,921	67.20	
REMAINDER	7,773,494	32.80	
GRAND TOTAL	23,702,415	100.00	

DISTRIBUTION SCHEDULE RANGE OF NOTEHOLDERS SUMMARY

	1 to 1,000	1,001 to 5,000	5,001 to 1,0000	10,001 to 100,000	100,001 to MAX	TOTAL
Holders						
Issuer	37	25	4	22	10	98
Chess	329	206	56	114	26	731
Total	366	231	60	136	36	829
Units						
Issuer	17,511	58,409	25,640	860,746	3,216,533	4,178,839
Chess	153,986	477,490	438,860	3,147,613	15,305,627	195,23,576
Total	171,497	535,899	464,500	4,008,359	18,522,160	23,702,415
Total Holders IMFG: 829						
Total Units for IMFG: 23.702.415						

IMF (AUSTRALIA) LTD
ABN 45 067 298 088
(Company)

and

AUSTRALIAN EXECUTOR TRUSTEES LIMITED
ACN 007 869 794
(Trustee)

CONVERTIBLE NOTE TRUST DEED

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THIS DEED is made the 28th day of OCTOBER

2010

BETWEEN

IMF (AUSTRALIA) LTD (ABN 45 067 298 088) of Level 5, 32 Martin Place, Sydney, New South Wales (**Company**);

AND

AUSTRALIAN EXECUTOR TRUSTEES LIMITED (ACN 007 869 794) of Level 22, 207 Kent Street, Sydney, New South Wales 2000 (**Trustee**).

RECITALS

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

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited.

ASX Listing Rules means the official ASX Listing Rules of ASX from time to time with any modification or waivers in their application to the Company which ASX may grant.

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

Business Day means a day on which banks are open for general banking business in Sydney, other than a Saturday or a Sunday or public holiday and which is also a Business Day for the purposes of the ASX Listing Rules.

Charge means a first ranking fixed and floating charge over the assets and undertakings of the Company (other than the Excluded Assets) securing the repayment of the Outstanding Moneys in substantially the same form as Annexure B to this Deed.

Company Default Notice has the meaning given in clause 9.1 of this Deed.

Conditions means the terms and conditions applicable to Convertible Notes, including the terms and conditions set out in this Deed and the terms and conditions set out in Schedule 1.

Consolidated Group means the Company and all of its Subsidiaries.

Constitution means the Constitution of the Company.

Conversion Notice means the notice in substantially the same form as Annexure A which may be given by the Noteholder to the Company pursuant to Schedule 1, clause 4 or Schedule 1, clause 5(e)(i).

Conversion Option and **Convert** means the option conferred by Schedule 1, clause 4 and Schedule 1, clause 5(e)(i) on a Noteholder to convert all (but not part) of the Convertible Notes held by the Noteholder into Shares.

Conversion Rate means the rate set out in Schedule 1, clause 4.2.

Convertible Note means a convertible note issued by the Company under the Trust Deed and the Conditions which is outstanding.

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

Date of Conversion means the date on which fully paid ordinary Shares are issued and allotted to the Noteholder in accordance with Schedule 1, clause 4.1(c) consequent upon the issue of a Conversion Notice.

Date of Redemption means the date on which a Convertible Note is redeemed in accordance with Schedule 1, clause 3.2 by payment of the Redemption Amount.

Deed or Trust Deed means this trust deed (including the Conditions set out in Schedule 1) between the Company and the Trustee and includes any document or documents supplemental to the Trust Deed or executed pursuant to the Trust Deed signed by the Trustee (including without limitation any Conditions) and any schedules or appendices to the Trust Deed.

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

Early Redemption means redemption of the Convertible Notes by the Company as set out in Schedule 1, clause 3.5.

Early Redemption Amount means the amount payable upon Early Redemption being:

- (a) face value; plus
- (b) Early Redemption Penalty; plus
- (c) accrued but unpaid interest.

Early Redemption Penalty means the amount payable on Early Redemption pursuant to Schedule 1, clause 3.6.

Excluded Assets has the same meaning in the Charge.

Event of Default means each of the events set out in clause 9.1.

Fee Letter means the letter dated 8 September 2010 between the Company and the Trustee in accordance with which the Company agrees to pay certain

fees to the Trustee as remuneration for its services as trustee on the terms set out in that letter.

First Interest Payment Date means 31 December 2010.

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

Initial Prospectus means the prospectus lodged by the Company with the ASIC on or about 29 October 2010 in respect of a fully underwritten non-renounceable rights issue of approximately 12,187,034 Convertible Notes to be issued at a price of \$1.65 per Convertible Note on the basis of 1 Convertible Note for every 10 Shares held on the Record Date to raise approximately \$20,108,606 and a fully underwritten placement of approximately 11,515,152 Convertible Notes at an issue price of \$1.65 per Convertible Note to raise an additional \$19,000,000.

Interest Payment Date means 31 March, 30 June, 30 September and 31 December in each year commencing on the First Interest Payment Date until the Maturity Date.

Law means:

- (a) any law; or
- (b) any administrative guideline, directive, regulation, request or policy of any Government Authority whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible banks or financial institutions,

and without limitation to the generality of the foregoing, Law expressly includes the requirements of Part 2L of the Corporations Act.

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

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

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

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

Liquidation Proceeds means any amount received by or due to a person in a Liquidation of the Company in respect of a debt owed to that person by the Company.

Maturity Date in relation to the Convertible Note means the first to occur of:

- (a) the Date of Conversion;

- (b) 4 years from the date of issue (rounded to the last day of the Quarter in which the date occurs); and
- (c) any earlier date on which the Company repays the Convertible Note in accordance with the Conditions.

Note means Convertible Note.

Note Obligations means all Liabilities of the Company to Noteholders, and of the Company to the Trustee on behalf of Noteholders, under the Conditions of the Convertible Notes, including the Principal Amount Outstanding, interest on the Principal Amount Outstanding and the Early Redemption Penalty (if applicable) but does not include any Liabilities of the Company to the Trustee for the costs, fees and expenses of the Trustee in respect of its duties under the Trust Deed.

Noteholder means, in relation to a Convertible Note, the person entered in the Register as the holder of the Note.

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

Permitted Finance Arrangement means any bank facilities obtained from time to time by the Company that entitle a bank providing a bank guarantee or other facility to the Company to a lien over cash deposited by the Company with the bank up to a maximum aggregate of \$5,000,000 at any one time.

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

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

Record Date means in relation to the Initial Prospectus, 7.00pm (EST) on 10 November 2010.

Redemption Amount of a Convertible Note means the face value of the Convertible Note plus interest which has accrued but which has not become due, plus unpaid interest up to the Date of Redemption of the Convertible Note plus the Early Redemption Penalty (if applicable).

Redemption Notice means the notice which may be given by the Trustee pursuant to an exercise of its rights under clause 9.2 or 9.6 or by the Noteholder under clause 9.7 or Schedule 1, clause 5(e)(ii).

Register means a register of holders of Convertible Notes established and maintained in Sydney under clause 17.1.

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

Secured Property has the meaning given to it in the Charge.

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

Special Resolution has the same meaning as that term has in clause 20.21.

Subsidiary has the meaning given to it in the Corporations Act.

Transaction Document means:

- (a) the Trust Deed;
- (b) the Conditions;
- (c) the Charge; and
- (d) any document or agreement entered into or given under (a) or (b) or (c) above.

Trust means the trust constituted by this Deed.

Trust Fund means:

- (a) the right to enforce the Company's duty to repay the Convertible Notes;
- (b) the right to enforce the Charge granted as security for repayment of the Convertible Notes. In this regard, Noteholders have an interest in the Charge proportionate to their holding of Convertible Notes secured by the Charge;
- (c) the right to enforce any other duties that the Company has under the terms of the Convertible Notes, this Deed and Chapter 2L of the Corporations Act;
- (d) the amount of A\$10 referred to in clause 4.4; and
- (e) any other property held by the Trustee on the trust established under this Deed (including, without limitation, the benefit of any covenants, undertakings, representations, warranties, rights, powers, benefits or remedies in favour of the Trustee under the Transaction Documents).

Trustee means Australian Executor Trustees Limited (ACN 007 869 794) or any successor trustee appointed in accordance with the Trust Deed.

Trustee Default means, in respect of the Trustee, fraud, gross negligence, wilful default or breach of section 283DB of the Corporations Act.

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

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

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (c) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (d) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
- (g) reference to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (i) a reference to **\$** or **dollar** is to Australian currency.

2. BENEFIT AND BURDEN OF DEED

2.1 Noteholders

- (a) Each Noteholder (and any person claiming through or under a Noteholder) is bound by, and is taken to have notice of, each Transaction Document. The Noteholders are taken to have authorised the Trustee to enter into each Transaction Document in its capacity as trustee of the Trust.
- (b) It is a fundamental condition of receiving any of the rights or benefits under a Note that a Noteholder must perform all of the obligations and comply with all restrictions and limitations applicable to it under this Deed (including, for the avoidance of doubt, the Conditions) in respect of the Notes.

2.2 Limit on Noteholder's rights

All of the rights against the Company in connection with the Notes or the Charge are held by the Trustee for the Noteholders. Accordingly, subject to clause 9.7 (Action by Noteholders):

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

3. TRUST DEED

3.1 Trust Deed

This Deed:

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

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

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

3.3 Constitution and status

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

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

3.4 Undertaking to pay

- (a) In respect of each Note, the Company undertakes to the Trustee (on behalf of the relevant Noteholder), to pay the amounts due and payable in respect of the Notes under and in accordance with the Transaction Documents.
- (b) The Trustee directs the Company to pay such amounts under this Deed directly to the Noteholders, unless:
 - (i) an Event of Default occurs;
 - (ii) the Company is directed by the Trustee to make the payments to the Trustee by the giving of notice to that effect not less than five Business Days before the scheduled date for the making of the payment; or
 - (iii) the Company advises the Trustee that it is not likely to meet its obligations under this Deed,

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

- (c) The payment of an amount due under a Note to either the Noteholder or the Trustee discharges the obligation of the Company to pay that amount under that Note to each of the Noteholders and the Trustee.

3.5 Debentures

The Notes are "debentures" for the purposes of section 283BH of the Corporations Act.

4. APPOINTMENT OF TRUSTEE

4.1 Appointment of Trustee

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

4.2 Noteholders regarded as beneficial owners of Trust Fund

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

4.3 Constitution of Trust

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

4.4 Declaration of Trust

The Trustee declares that, on execution of this Deed, it holds the sum of A\$10, and that it will hold the Trust Fund, on trust at any time for the benefit of itself and the persons who are Noteholders from time to time on the terms of this Deed.

4.5 Name of Trust

The trust established under this Deed will be known as the "IMF (Australia) Ltd Trust".

4.6 Commencement and termination of Trust

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

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

4.7 Perpetuity period

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

4.8 Receipt of moneys

- (a) Prior to the enforcement of the Charge, all money received by the Trustee in respect of amounts payable under this Deed must be applied by the Trustee in accordance with clause 6.
- (b) After the occurrence of an Event of Default and enforcement of the Charge, all proceeds must be applied in accordance with clause 11.1 of the Charge.

5. CONVERTIBLE NOTES

5.1 Issue of Convertible Notes

The Company may from time to time issue Convertible Notes with an aggregate principal amount not exceeding \$40,000,000 in accordance with and subject to this Deed.

5.2 Conditions of issue

Each Convertible Note will be issued subject to the Conditions.

5.3 Conditions and this Deed binding

This Deed including the Conditions will be binding on the Company, the Trustee, the Noteholders and all persons claiming through or under them and Noteholders will be entitled to the benefit of, will be bound by and will be deemed to have notice of, all the provisions of this Deed and the Conditions.

5.4 Validity of Convertible Notes

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

5.5 Registration of Convertible Notes

- (a) The Company will not be issuing certificates in respect of the Convertible Notes. The Company (or its share registry) will provide Noteholders with a statement that sets out the number of Convertible Notes issued to a Noteholder.
- (b) When Convertible Notes are issued to a Noteholder the Company will include in the Register the particulars required by clause 17.1.

5.6 Equal ranking

All Convertible Notes will rank equally.

5.7 Security

The repayment of each and every amount now or at any time in the future owed or owing to the Noteholder and the Trustee in respect of the Convertible Notes will be secured by the Charge which must be executed by the Company and delivered to the Trustee before the first Convertible Note is issued.

5.8 Fees relating to issue of Convertible Notes

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

5.9 Purchase by Company

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

6. PAYMENT ON CONVERTIBLE NOTES

6.1 Payment of Outstanding Moneys

Subject to clause 3.4 and the Conditions the Company must make payment of the Principal Amount Outstanding and interest in respect of Convertible Notes to Noteholders directly as and when due in accordance with the Conditions.

6.2 Receipt and Distribution by Trustee

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

6.3 Return of Outstanding Moneys

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

6.4 Interest accruing on Outstanding Moneys

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

7. OBLIGATIONS OF COMPANY

7.1 Section 283BF – quarterly report

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

7.2 Cash at bank

If the Company's cash at bank falls below \$40 million (\$40,000,000) the Company must notify the Trustee as soon as practicable in accordance with clause 22.

7.3 Section 2L.2 Company Duties

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

7.4 Notice of default

The Company must notify the Trustee in writing of the occurrence of any Event of Default immediately upon becoming aware of the same in each case stating what action it is taking to cure the default and procure its directors to notify the Trustee immediately they are aware that any condition of this Deed or the Conditions cannot be fulfilled or has been breached.

7.5 Details of charge

The Company undertakes to the Trustee that it will not create or allow to exist a charge on the whole or any part of its present or future property, other than a Permitted Finance Arrangement, without the prior written consent of the Trustee (which consent must not be unreasonably withheld).

7.6 Information at reasonable request of Trustee

- (a) The Company agrees to provide the Trustee such information as the Trustee reasonably requests about the Company and any of its Subsidiaries to enable the Trustee to carry out its duties under this Deed and the Corporations Act, including, subject to confidentiality and commercial or price sensitive information, making available for

inspection its financial records required to carry out its duties under this Deed and the Corporations Act and providing any reasonable explanation, information or other assistance in relation to those records.

- (b) Where the information requested in clause 7.6(a) relates to financial information, the Trustee may request the Company to provide an Auditors certificate stating that the Auditor has reviewed that financial information and acknowledges that based on the Auditor's reasonable enquiries nothing has come to the Auditor's attention which causes the Auditor to believe that the information provided to the Trustee may be incorrect or incomplete.

7.7 Compliance with Deed and Law

- (a) The Company undertakes to the Trustee to comply with this Deed and to comply with the Law.
- (b) The Trustee declares and acknowledges that the benefit of the undertaking of the Company set out in clause 7.7(a) is held for the Trustee and separately on trust by the Trustee for the benefit of the Noteholders.

7.8 Disposal of Secured Property

The Company undertakes to the Trustee that it will not dispose of (or agree to dispose of) all or a substantial part of the Secured Property (either in a single transaction or in a series of transactions whether related or not and whether voluntary or involuntary) except:

- (a) disposals made with the consent of the Trustee which consent must not be unreasonably withheld;
- (b) disposals made in the ordinary course of business for arm's length consideration; or
- (c) disposals of the main undertaking of the Company that would require approval of the ordinary shareholders of the Company in accordance with Listing Rule 11.2, in which case the Company will provide Noteholders with written notice (**Sale Notice**) within 10 Business Days of entering into an agreement for the proposed disposal and Noteholders must elect within 10 Business Days after the Sale Notice is sent to Noteholders to either:
 - (i) elect to convert all the Convertible Notes held by that Noteholder to fully paid ordinary Shares in accordance with Schedule 1, clause 4 by providing the Company with a Conversion Notice; or
 - (ii) require the Company to redeem all the Convertible Notes held by that Noteholder in accordance with Schedule 1, clause 3 by providing the Company with a Redemption Notice.

If a Noteholder does not comply with clause 7.8(c) within the time period specified in that clause, then the Company will redeem all the Convertible Notes held by that Noteholder in accordance with Schedule 1, clause 3.

7.9 Representations and Warranties

The Company represents and warrants to the Trustee that:

- (a) **status:** it is duly incorporated in its place of incorporation and is validly existing under the laws of that jurisdiction with power to own its assets and carry on its business;
- (b) **corporate authority:** it has taken all necessary action to authorise the execution, delivery and performance of the Transaction Documents;
- (c) **documents binding:** the Transaction Documents constitute legal, valid and binding obligations enforceable against it in accordance with their terms;
- (d) **transactions permitted:** the execution, delivery and performance of the Transaction Documents did not and will not:
 - (i) contravene its constitution, any law, authorisation, agreement or obligation binding upon it or applicable to its assets or revenues;
 - (ii) cause any limitation on its powers or the powers of its directors to be exceeded;
 - (iii) result in the creation of any security interest over any of its assets or revenues (other than the Charge);
 - (iv) result in the acceleration or cancellation of any agreement or obligation in respect of its indebtedness; or
 - (v) involve any act, matter or thing which constitutes (or which would, with the giving of notice, the passage of time or the fulfillment of any other condition, constitute) an event of default or prepayment, cancellation or similar event under any agreement or obligation relating to its indebtedness;
- (e) **Authorisations:** all authorisations necessary or advisable from any person for or in connection with the execution, delivery and performance by it and the validity and enforceability against it of the Transaction Documents have been obtained and are in full force and effect and it is not necessary in order to ensure the validity, enforceability or admissibility in evidence of the Transaction Documents in any relevant jurisdiction that the Transaction Documents or any other document be filed or registered with any person or stamped (other than registration of the Charge under the Corporations Act);
- (f) **accuracy of information:** all information given to the Trustee by or with its authority in connection with the Transaction Documents, at the time it was given, was true and correct in all material respects and if the information was given prior to the date of this Deed, at the date of this Deed, or, if the information was given later, when provided, in the light of the circumstances subsisting at the time and all expressions of expectation, intention belief and opinion contained in that information were given honestly and on reasonable grounds after due and careful enquiry;

- (g) **no litigation:** no proceeding or other procedure for the resolution of disputes is currently taking place, pending or, to the best of the Company's knowledge, threatened against the Company or the business, assets or revenues of the Company (other than litigation which the Company is funding as part of its business);
- (h) **other default:** it is not in default in any material respect under any law, authorisation, agreement or obligation binding upon it or applicable to its business, assets or revenues;
- (i) **Accounts:** the most recent financial statements of the Company for the time being were prepared in accordance with applicable accounting standards and show a true and fair view of the financial position of the Company as at the end of, and the results of its operations for, the financial period to which they relate and the Company has no indebtedness or other liabilities which have not been disclosed in those financial statements;
- (j) **no adverse change:** except as disclosed in writing by the Company to the Trustee prior to the date of this Deed, since the date of the financial statements referred to in paragraph (i) of this clause, no material change in the financial or business affairs of any member of the Company;
- (k) **not a trustee:** it is not the trustee of any trust;
- (l) **no immunity:** neither the Company nor any of its assets or revenues have any immunity from jurisdiction, suit, execution, attachment or other legal process in any jurisdiction in which its assets are located or business is carried;
- (m) **completeness:** there is no fact known to it which has not been disclosed in writing by it to the Trustee which materially and adversely affects it;
- (n) **ranking:** its obligations in respect of the Convertible Notes rank in priority to all its other unsecured and unsubordinated obligations other than any Permitted Finance Arrangement and those mandatorily preferred by law; and
- (o) **Event of Default:** no Event of Default has occurred which has not been remedied or waived in writing.

7.10 Repetition of Representations and Warranties

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

8. COVENANTS BY COMPANY

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

8.1 Conduct of business

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

8.2 Meeting convened by Noteholders

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

8.3 Transaction Documents

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

8.4 Dividend and Capital Return Restriction

- (a) If, for any reason, the Company's cash at bank falls below A\$40 million during a Quarter or interest is not paid within 5 Business Days after the Interest Payment Date when the interest is due and payable, the Company must not, without the approval of the Trustee, pay dividends or return capital on its Shares until such time as its cash at bank is at least A\$40 million or the outstanding interest is paid in full, as applicable.
- (b) A request from the Company for Trustee approval under sub clause (a) above will only be granted if 2 directors of the Company certify to the Trustee that the payment of dividends will not materially prejudice the Noteholders and that there will be sufficient funds available at all times to make any payments due or that may become due to the Noteholders.
- (c) The certification referred to in sub clause (b) above must be accompanied by the Company's current financial accounts.
- (d) The Trustee has no duty to monitor the Company's cash at bank or to make any enquiries related to cash at bank.
- (e) The Company will not set a record date for a dividend that is less than 30 days after the date the Company announces its intention to declare a dividend so as to allow time for Noteholders to elect whether to convert their Convertible Notes and participate in the dividend.

8.5 Rights Issues

The Company will not set a record date for a rights issue that is less than 10 days after the date the Company announces its intention to conduct a rights issue so as to allow time for Noteholders to elect whether to convert their Convertible Notes and participate in the rights issue.

8.6 Sale of Main Undertaking

The Company will not settle any sale of its main undertaking until the period by which the Company must convert Convertible Notes in relation to such a sale, as set out in Schedule 1, clause 4.1 (c) (ii), has expired.

9. EVENTS OF DEFAULT

9.1 Events

Each of the following events is an Event of Default:

- (a) **(unremedied default in payment)** if the Company fails to make payment of any Outstanding Moneys in respect of the Convertible Notes in

accordance with the Conditions within five (5) Business Days of the relevant due date for payment and the default has not been remedied to the satisfaction of the Trustee within a further five (5) Business Days (provided the Trustee has given the Company at least two (2) Business Days written notice of the default);

- (b) **(unremedied material breach)** if the Company commits a breach of a covenant, condition or obligation imposed on it by this Deed or the Conditions (other than a failure to pay any Outstanding Moneys) and, if that breach is capable of remedy, that breach has not been remedied to the satisfaction of the Trustee within five (5) Business Days of the Company receiving notice of the breach from the Trustee requiring that breach to be remedied;
- (c) **(winding up)** if an order is made or a resolution is effectively passed (and is not withdrawn within ten (10) Business Days) for the winding up of the Company except for the purposes of a reconstruction or amalgamation with the prior written consent of the Trustee (such consent not to be unreasonably withheld);
- (d) **(liquidation)** if the Company enters Liquidation provided that the Liquidator does not retire or is not removed within 5 Business Days after the date of appointment;
- (e) **(material change in Constitution)** the Company makes a material change to its Constitution without the consent of the Trustee (which consent must not be unreasonably withheld); and
- (f) **(event of default)** if an event of default occurs under another Transaction Document.

The Company must notify the Trustee of the occurrence of an Event of Default as soon as practicable and in any event within 2 (two) Business Days of its occurrence **(Company Default Notice)**.

9.2 Action upon an Event of Default

- (a) Nothing in this clause 9.2 prevents the Trustee from taking any action permitted by clause 9.5 or 9.6 or bringing proceedings or taking any other action from time to time to recover moneys owing to it.
- (b) The Trustee will be entitled where an Event of Default has occurred:
 - (i) to call a meeting of Noteholders where the Trustee may:
 - (A) appoint a person to be the chairperson of the meeting;
 - (B) inform Noteholders of the Event of Default;
 - (C) submit proposals for protection of Noteholder's interests; and
 - (D) ask for directions from Noteholders in relation to the Event of Default;
 - (ii) to commence proceedings for the winding up of the Company but the proceeds of any such enforcement action must be dealt with in accordance with clause 9.6;

- (iii) to issue Redemption Notices requiring the Company to redeem the Convertible Notes provided that the Trustee has first given the Company notice of the Event of Default and the Company has not remedied the Event of Default within 10 days of receipt of the Trustee's notice;
 - (iv) to take other action relating to enforcement of payment of Outstanding Moneys to Noteholders; and
 - (v) to prove in any Liquidation of the Company (irrespective of when that Liquidation is commenced) subject to this Deed, and in particular to the provisions set out in clause 9.6.
- (c) Notwithstanding any other provision in this Deed, the Company may notify the Noteholders that an Event of Default has occurred.

9.3 Knowledge of Trustee

The Trustee will be taken not to have knowledge of the occurrence of an Event of Default unless the Trustee has received a Company Default Notice in accordance with clause 9.1 stating that an Event of Default has occurred and describing it.

9.4 No enforcement

Whether or not an Event of Default has occurred, no Noteholders may demand, plead or seek to enforce, directly or indirectly, including by way of set off or counterclaim, or in any other manner, the payment of any obligations of the Company in respect of the Convertible Notes other than as provided for in this clause 9.

9.5 Permitted actions by Trustee

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

- (a) the right of the Trustee to seek directions from a court, pursuant to section 283HA or section 283HB of the Corporations Act or to take any other proceedings seeking the directions or guidance of any court, tribunal or other authority as to the performance of its functions and duties pursuant to this Deed;
- (b) any proceedings taken by the Trustee and/or any Noteholder at any time seeking a judgment or order declaratory of the rights or obligations of any Noteholder or any of the parties to this Deed;
- (c) the right to take proceedings in respect of any breach or threatened breach of, or to compel or enforce performance of, any of the covenants, undertakings and obligations of the Company hereunder other than in relation to the payment of Note Obligations prior to the Company entering Liquidation;
- (d) the right to take proceedings under the Constitution; or
- (e) the right to take proceedings for the Liquidation of the Company for failure to redeem a Convertible Note, in any circumstances where the Conditions or this Deed specifically give that power to the Trustee.

9.6 Liquidation

Upon the Company entering Liquidation:

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

9.7 Actions by Noteholders

Only the Trustee may enforce the provisions of this Deed and the Convertible Notes (including without limitation applying for Liquidation, lodging a proof or

claim or seeking damages) except that a Noteholder, subject to clause 9.4, may proceed directly against the Company to enforce the performance of any of the provisions of this Deed or the Convertible Notes if the Trustee has failed to do so and at least 21 days have elapsed since that Noteholder has given the Trustee and the Company notice of that Noteholder's intention to do so.

9.8 Judgment to be entered in the name of Trustee

Any judgment or amount obtained by or on behalf of Noteholders in respect of the Outstanding Moneys as a result of the proceedings referred to in clause 9.7 must be entered or held in the name of the Trustee and will be held by or on behalf of the Trustee under and for application in accordance with the provisions of this Deed.

9.9 Enforcement rights of Noteholders correspond with those of Trustee

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

10. REMUNERATION OF TRUSTEE

10.1 Fee

The Company will pay to the Trustee by way of remuneration for its services as trustee such fees as are set out in the Fee Letter or as agreed between the Company and the Trustee in writing from time to time.

10.2 Expenses

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

- (a) in or about the preparation, execution and amendment of the Transaction Documents;
- (b) in or in connection with the carrying out by the Trustee or a Delegate of any right, power or privilege conferred by the Transaction Documents or by law conferred on the Trustee or upon any Noteholder, (including without limitation in respect of any waiver or consent sought by the Company);
- (c) in or in connection with the transfer of Convertible Notes;
- (d) in or in connection with any breach or default in the observance or performance by the Company of the covenants, obligations and conditions of the Transaction Documents;
- (e) in or in connection with the convening, holding and carrying out of any directions or resolutions of any meeting of Noteholders;

- (f) in or in connection with any actual or contemplated legal proceedings (including without limitation any application for directions) brought by or against the Trustee, or in which the Trustee is otherwise involved or any advice sought by the Trustee in relation to any such legal proceedings from any legal , accounting or other professional advisers; or
- (g) in or in connection with any enquiry or investigation from or by a government or judicial body.

10.3 Additional and Exceptional Duties

If the Trustee is required at any time to:

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

then the Trustee is entitled to such additional remuneration as may be agreed between the Trustee, the Company and Noteholders or, failing agreement, such reasonable amount as is determined by a merchant bank (acting as an expert and not as an arbitrator) selected by the Trustee. The determination of such merchant bank shall be conclusive and binding on the Company, the Trustee and the Noteholders so far as allowed by Law.

10.4 Costs of Enforcement

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

10.5 Priority of Trustee entitlements

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

11. TRUSTEE'S POWERS AND DUTIES

11.1 Powers

Subject to this Deed, the Trustee has all the powers that it is legally possible for a natural person or corporation to have in connection with the exercise of its powers under this Deed.

11.2 Extent of obligations

The Trustee has no obligations except those expressly set out in the Transaction Documents to which it is a party and those arising under the Corporations Act

(including chapter 2L of the Corporations Act). The obligations of the Trustee to act, or refrain from acting, are at all times subject to the Corporations Act.

11.3 Excluded roles and duties

The appointment as trustee does not mean that the Trustee:

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

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

11.4 Role of the Trustee

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

- (a) is not required to take any action or exercise any right, power or discretion in connection with any Transaction Document or the Company or any other related matter, fact or circumstance;
- (b) is not in any way involved in the day to day running, management or decision making process of the Company; and
- (c) has no duty, obligation or liability to the Noteholders or the Company.

11.5 Binding nature of relationship

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

11.6 Determination by Trustee

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

11.7 Waiver and application to Court

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

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

11.8 Trustee may act on advice

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

11.9 Appointment of Delegates

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

11.10 Dealing with Delegates

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

11.11 Trustee may take action

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

11.12 Trustee may hold Convertible Notes

(a) Subject to section 283AC of the Corporations Act nothing in this Deed will be deemed to prohibit any Trustee or any Related Body Corporate or director of the Trustee (all hereinafter in this clause where the context permits being included in the expression "Trustee") from being a Noteholder in the Company or in any of its subsidiaries or from acting in any representative capacity for a Noteholder and in particular and without prejudice to the generality of the foregoing it is expressly declared that:

- (i) the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity nor will the acting in any such capacity as aforesaid be deemed a breach or the obligations arising out of the fiduciary relationship between the Trustee on the one hand and the Company or any Related Body Corporate of the Company on the other or the Trustee and the Noteholders hereby established or otherwise imposed or implied by law; and
- (ii) the Trustee will not by reason of its fiduciary capacity be precluded from making any contracts or entering into any

transactions with the Company, or any Related Body Corporate of the Company, or with itself in any other capacity (including without limitation its personal capacity).

- (b) Without prejudice to the generality of this clause 11.12, it is expressly declared that the contracts and transactions referred to in clause 11.12(a)(ii) include any contract or transaction in relation to the subscription or placing of or any dealing with any stocks, shares, debenture stock, debenture, notes or other security of the Company or Related Body Corporate or of any other company in which the Company or any Related Body Corporate is interested, and the acceptance of any office or profit from the Company or any Related Body Corporate, or any contract loan or deposit or other contract or transaction which any person or company not being a Trustee of this Deed could or might have entered into with the Company or any Related Body Corporate or with itself as Trustee including the customary share of brokerage and usual banker's profit.
- (c) The Trustee will not be accountable either to the Company or any of the Company's Related Bodies Corporate or the Noteholders for any profits arising from any the contracts transactions or offices referred to in clause 11.12(a) and (b).

11.13 Trustee's duties

(a) **Duty to ascertain whether Company has committed breach**

The Trustee must exercise reasonable diligence to ascertain whether the Company has committed any breach of:

- (i) the Conditions; or
- (ii) the provisions of this Deed or Chapter 2L of the Corporations Act.

(b) **Duty to ensure Company remedies any breach**

The Trustee must do everything in its power to ensure that the Company remedies any breach actually known to the Trustee of:

- (i) the Conditions; or
- (ii) the provisions of this Deed or Chapter 2L of the Corporations Act,

unless the Trustee is satisfied that the breach will not materially prejudice the Noteholders' interests or any security for the Convertible Notes.

(c) **Duty to ensure compliance with Chapter 2K of the Corporations Act**

The Trustee must ensure that the Company complies with Part 2K of the Corporations Act to the extent that it applies to the Convertible

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

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

(e) **Notification to ASIC if can not be trustee**

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

(f) **Duty to give Noteholders a statement**

The Trustee must give Noteholders a statement explaining the effect of any proposal that the Company submits to the Noteholders before any meeting that:

- (i) the Court (as defined in the Corporations Act) calls in relation to a scheme under subsection 411(1) or (1A) of the Corporations Act; or
- (ii) the Trustee calls under subsection 283EB(1) of the Corporations Act.

(g) **Duty to apply to the Court**

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

(h) **Duty to comply with directions**

- (i) The Trustee must comply with any directions given to it at a meeting called under sections 283EA, 283EB or 283EC of the Corporations Act unless:
 - (A) the Trustee is of the opinion that the direction is inconsistent with the terms of the Convertible Notes, the provisions of this Deed or the Corporations Act or is otherwise objectionable; and
 - (B) has either obtained, or is in the process of obtaining, an order from the Court under section 283HA of the Corporations Act setting aside or varying the direction.
- (ii) The Trustee is not liable for anything done or omitted to be done in accordance with a direction given by the Noteholders at any meeting called under sections 283EA, 283EB or 283EC of the Corporations Act.

11.14 No notice of execution

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

11.15 No notice of default

The Trustee is not obliged to notify the Noteholders:

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

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

11.16 Permitted Reliance

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

12. DISCRETION OF TRUSTEE

- (a) Subject to paragraph (b), the Trustee has, as regards all the powers and authorities and discretions vested in it by this Deed, an absolute and uncontrolled discretion as to the exercise of that discretion in all respects and, in the absence of its fraud, gross negligence or wilful default (or the fraud, gross negligence or wilful default of any attorney, employee, agent or person (including, subject to clause 11.10, a Delegate) appointed by it under this Deed), the Trustee will not be in any way responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of that discretion.
- (b) Where the Trustee has a discretion to act under the Transaction Documents it is not required to exercise that discretion unless it has first sought instructions from the Noteholders via a Special Resolution.

13. TRUSTEE'S LIABILITY

13.1 Limitation of liability

- (a) Subject to paragraph (c) and clause 13.2, a liability or obligation arising under or in connection with this Deed or another Transaction Document is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the Trust Fund out of which the Trustee is actually indemnified for the liability.
- (b) No person may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to the Trust Fund), a liquidator, an administrator or any other similar person to the Trustee or prove in any administration or liquidation of or affecting the Trustee (except in relation to the Trust Fund).
- (c) If any person does not receive the full amount of any money owing to it arising from the non-performance by the Company of any of its obligations, or non-payment by the Company of any of its liabilities, under or in respect of any Transaction Document, by enforcing the rights referred to in paragraph (b), that person may not (except in the case of a Trustee Default) seek to recover the shortfall by:
 - (i) bringing proceedings against the Trustee in its personal capacity; or
 - (ii) applying to have the Trustee wound up, put into administration or applying to have a receiver or similar person appointed to the Trustee or proving in the administration or winding up of the Trustee.
- (d) The Noteholders and the parties other than the Trustee waive their rights and release the Trustee from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - (A) breach by the Trustee of any of its obligations; or
 - (B) non-performance by the Trustee of its obligations; and
 - (ii) which cannot be paid or satisfied out of the Trust Fund of which the Trustee is entitled to be indemnified in respect of any liability incurred by it as trustee of the Trust.
- (e) This limitation of liability clause applies to the maximum extent permitted by section 283DB of the Corporations Act despite any other provision of this Deed or of any other Transaction Document, any provisions of equity or law to the contrary (other than clause 14) and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, document or transaction related to this Deed or any other Transaction Document.

13.2 Trustee Default

The provisions of clause 13.1 do not apply to any liability of the Trustee to the extent that it is not satisfied because, under the Transaction Documents or by

operation of Law there is a reduction in the extent of the Trustee's indemnification out of the Trust Fund, as a result of a Trustee Default.

13.3 Failure by the Company

No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under the Transaction Documents) will be considered a Trustee Default for the purposes of the Transaction Documents to the extent to which the act or omission was caused or contributed to by any failure, act or omission by the Company.

13.4 Evidence of claims

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

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

13.5 Certificate

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

13.6 No monitoring obligation

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

13.7 Noteholder capacity

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

13.8 Knowledge of the Trustee

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

13.9 Acting on directions

To the extent permitted by Law, the Trustee is not liable to a Noteholder or any other person for acting in accordance with any Noteholder Resolution or Special

Resolution or any other direction given by any Noteholder or Noteholders in accordance with this Deed or the Terms with which the Trustee is required to comply.

14. TRUSTEE INDEMNITY

14.1 Corporations Act

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

14.2 Indemnity

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

14.3 Indemnity additional

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

14.4 No obligation to act

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

14.5 Survival

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

15. RETIREMENT AND REMOVAL OF TRUSTEE AND APPOINTMENT OF NEW TRUSTEE

15.1 Retirement

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

15.2 Appointment of new Trustee

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

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

15.3 Appointment by Trustee

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

15.4 Removal

The Company may remove the Trustee from office by notice in writing addressed to the Trustee if:

- (a) the Trustee ceases to be a Trustee Company;
- (b) a Special Resolution of Noteholders determines that the Trustee should be removed;
- (c) the Trustee ceases to carry on business (other than in its capacity as trustee of another trust), enters into a scheme of arrangement (other than for the purposes of or in connection with a solvent reconstruction or amalgamation) or goes into liquidation, provisional liquidation or administration or has a receiver or receiver and manager appointed over any part of the assets or undertakings of the Trustee (not being assets or undertakings of the Trustee held in its capacity as trustee of another trust) which is not removed or withdrawn within 30 days after the date of the appointment;
- (d) the Trustee defaults in performing or observing any of its obligations under this Deed and:
 - (i) that default is incapable of remedy and has had or is likely to have a material adverse effect on the ability of the Company to perform or observe its obligations to Noteholders; or

- (ii) if that default is a material default and is capable of remedy, that default has not been remedied within 10 Business Days of receiving written notice of the default from the Company requiring that default to be remedied.

15.5 No removal without new appointment

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

15.6 Trustee covenant

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

16. POWER OF AMENDMENT

16.1 Amendment without Noteholder consent

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

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

16.2 Amendment with Special Resolution

The Company and the Trustee may with the authority of a Special Resolution make any amendment or addition to this Deed.

17. REGISTER OF NOTEHOLDERS

17.1 Maintenance of Register

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

17.2 Alteration of Register

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

17.3 Register to be kept open

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

17.4 Closure of Register

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

17.5 No trust

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

17.6 Compliance with conditions

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

17.7 Delegation

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

18. GENERAL TRUST PROVISIONS**18.1 Interference by Trustee in conduct of Company's business**

Subject to this Deed, the Trustee must not interfere with the conduct of the business of the Company.

18.2 Appointment of attorneys by Company

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

18.3 Liability of Noteholders to taxes

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

18.4 Taxation

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

19. CONFIDENTIALITY**19.1 Non disclosure**

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

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

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

19.2 Permitted disclosure

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

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

19.3 Confidentiality

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

20. MEETINGS OF NOTEHOLDERS

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

20.1 Convening meetings

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

20.2 Notice

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

20.3 Provision of notices

- (a) Notices to Noteholders may be given:
 - (i) to a Noteholder personally;

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

20.4 Failure to give notice does not invalidate

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

20.5 Quorum

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

20.6 Adjournment in the absence of quorum

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

20.7 Chairman

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

20.8 Adjournment by chairman

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

20.9 Voting

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

20.10 Casting vote

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

20.11 Poll demands

- (a) A poll demanded on the election of a Chairman or on a question of adjournment is to be taken at the meeting without adjournment.
- (b) A poll demanded on any question other than as set out in clause 20.11(a) is to be taken either immediately or at such time (not being more than thirty days from the date of the meeting) and place as the Chairman may direct. No notice need be given of a poll not taken immediately.

- (c) The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (d) The result of a poll will be deemed to be the resolution of the meeting at which the poll was demanded.

20.12 Voting entitlements

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

20.13 Joint holders

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

20.14 Noteholder entitled to more than one vote

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

20.15 Noteholder which is a corporation

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

20.16 Proxy

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

20.17 Deposit of proxies

- (a) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of the power or authority, must be deposited at such place as the Trustee

or the Company may in the notice convening the meeting direct, or if no such place is appointed, then at the registered office of the Company not less than 24 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy will not be treated as valid. A proxy may be deposited with the Company by sending it by email or facsimile to the email or facsimile address or number nominated by the Company or the Trustee (as applicable) in the notice convening the meeting.

- (b) No instrument appointing a proxy is valid after the expiration of 12 months from the date named in it as the date of its execution.

20.18 Proxy Voting

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

20.19 Powers of meeting of Noteholders

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

- (a) power to sanction any modification or compromise or any arrangement in respect of the rights of the Noteholders against the Company whether such rights will arise under the Trust Deed, the Conditions or otherwise;
- (b) power to assent to any modification of the provisions contained in this Deed or the Conditions and to authorise the Trustee to concur in and execute any supplemental deed embodying any such modification;
- (c) power to give any sanction, direction or request which under any of the provisions of this Deed is required to be given with the consent of Noteholders;
- (d) power to give a release in respect of anything done or omitted to be done by the Trustee; and
- (e) power to remove a Trustee.

20.20 Special Resolution binding

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

20.21 Special Resolution - definition

The expression "Special Resolution" when used in this Deed means a resolution passed at a meeting of the Noteholders duly convened and held in accordance with this Deed and carried by a majority consisting of not less than 75% of the persons voting at the meeting upon a show of hands or if a poll is duly demanded then by a majority consisting of the holders of Convertible Notes representing not less than 75% in value of the Principal Amount Outstanding held by the holders of Convertible Notes who are present at the meeting in person, by proxy or representative. Where applicable, "Special Resolution" when used in connection with a resolution passed by written or circular resolution means a resolution passed by all Noteholders in accordance with clause 20.23.

20.22 Minutes

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

20.23 Written Resolution

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

21. INSPECTION OF TRUST DEED

- (a) On receipt of a request from a Noteholder or the Trustee for a copy of this Deed, the Company must provide that Noteholder or the Trustee with a copy of the Deed within 10 Business Days after the date that request is made.
- (b) Copies of this Deed will be provided to the Noteholder at the Company's registered office in Sydney unless the Company otherwise agrees and to the Trustee at its address for notices in clause 22.

22. NOTICES

22.1 Requirements for Notice

Each notice authorised or required to be given to a Party shall be in writing and may be delivered personally or sent by properly addressed and prepaid mail or facsimile in each case addressed to the Party at its address set out in clause 22.2, or as the case may be to such other address as it may from time to time notify to the other Parties pursuant to clause 22.3.

22.2 Address of Parties

The initial address of the Parties shall be as follows:

In the case of the Company:

Level 5
32 Martin Place
SYDNEY NSW 2000

Facsimile: INT + (02) 8223 3555
Email: djones@imf.com.au
Attention: The Chief Operating Offer

In the case of the Trustee:

Level 22
207 Kent Street
SYDNEY NSW 2000

Facsimile: INT + (02) 9028 5942
Email: yvonne.kelaher@aetlimited.com.au or
Philip.joseph@aetlimited.com.au
Attention: Corporate Trust

22.3 Change of Address

Each Party may from time to time change its address by giving notice pursuant to clause 22.1 to the other Parties.

22.4 Receipt of Notice

Any notice given pursuant to clause 22.1 will be conclusively deemed to have been received:

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

23. NOTICE TO NOTEHOLDERS

- (a) Notices to Noteholders may be given:
 - (i) to a Noteholder personally;
 - (ii) by sending it by post to the address for the Noteholder in the Register;
 - (iii) by sending it by facsimile to the facsimile number nominated by the Noteholder;
 - (iv) by the Company posting, at the request of the Trustee, the Notice on its internet website or by the Trustee posting such Notice on its internet website; or

- (v) by any other means that the Company and the Trustee agree in writing and notify to the Noteholder.
- (b) A notice of meeting must specify the place, day and hour of 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.
- (c) A copy of the notice must be promptly sent by post to the Trustee unless the meeting has been convened by the Trustee and to the Company unless the meeting has been convened by the Company.
- (d) A notice sent to a Noteholder is taken to be given 3 days after it is posted if posted within Australia (or 7 days after it is posted if posted to or from a place outside Australia), or on the next Business Day if sent by facsimile or other electronic means.

24. FURTHER ASSURANCE

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

25. GOVERNING LAW

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

26. VARIATION

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

27. COSTS

27.1 Stamp Duty

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

27.2 Legal Costs

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

28. COUNTERPARTS

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

29. MISCELLANEOUS**29.1 Severance**

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

29.2 Entire Agreement

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

29.3 Counterparts

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

29.4 Time

Time shall be of the essence in this Deed in all respects under this Deed.

SCHEDULE 1 - CONDITIONS OF CONVERTIBLE NOTES

1. THE NOTE ISSUE

1.1 Terms

These Convertible Notes will:

- (a) have a face value representing a principal amount of \$1.65;
- (b) bear interest as set out in Schedule 1, clause 2;
- (c) be convertible, as provided in Schedule 1, clause 4, into Shares; and
- (d) where the whole of the face value has not been converted pursuant to the exercise of the Conversion Option, be redeemed in accordance with Schedule 1, clause 3.

1.2 Charge

The Convertible Notes will be secured by the Charge in accordance with the terms of the Trust Deed, including without limitation the provisions of clause 5.7 of the Trust Deed.

1.3 Quotation

The Company will apply for official quotation by the ASX of all Convertible Notes. Such application will be made within 7 days of the date of the Initial Prospectus.

1.4 Withholding Tax

- (a) All payments or credits to, or to the account of Noteholders (including payment of, and credits in respect of interest) will be made net of any tax in respect thereof required by law to be withheld, deducted or paid by the Company except to the extent that the Company is satisfied that the Noteholder is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made. Any Noteholder claiming any such exemption or to be such a person will provide the Company with such evidence as the Company may from time to time require to satisfy itself as to the validity of such claim.
- (b) The Company may make any deduction or withholding from any amount payable to a Noteholder in respect of Convertible Notes for or on account of withholding or other tax required by law to be deducted or withheld, and, where any such deduction or withholding has been made and the amount thereof accounted for by the Company to the Commissioner of Taxation or other appropriate taxing authority and the balance of the amount payable has been paid to the Noteholder concerned, the full amount payable to such Noteholder will be deemed to have been duly paid and satisfied by the Company.

1.5 Entry in Register

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

2. INTEREST

2.1 Interest Rate

- (a) Interest will be payable on the Convertible Note at the rate of 10.25% per annum.
- (b) Subject to Schedule 1, clause 2.1(c) below, interest will accrue daily prior to the Maturity Date and subject to Schedule 1, clause 2.2 and Schedule 1, clause 3.2, will be payable in arrears on the Interest Payment Dates of all Notes.
- (c) In respect of interest payable on the First Interest Payment Date, interest will accrue from the date that the Notes are issued in accordance with clause 5 of the Trust Deed until the First Interest Payment Date and will be payable in arrears for that period.
- (d) Interest payable will be paid no later than 10 Business Days after the relevant Interest Payment Date.
- (e) Interest on the Convertible Notes not paid when due shall compound.

2.2 Payment following Conversion

If the Conversion Option is exercised in respect of a Note after an Interest Payment Date but before the next Interest Payment Date then, because interest is payable in arrears, on the next Interest Payment Date being a date following the Date of Conversion the Company will pay to the Noteholder on the next Interest Payment Date an amount of interest calculated in accordance with the following formula:

$$R = \left(\frac{i}{90} \times MP \right)$$

Where:

R = the amount of interest to be paid by the Company

i = the total amount of interest which would have been payable to that Noteholder in respect of the Convertible Notes held by that Noteholder in arrears on the Interest Payment Date following the Date of Conversion, had the Conversion Option not been exercised; and

MP = the number of days commencing on the Interest Payment Date which immediately preceded the Date of Conversion and ending on the Date of Conversion.

3. REDEMPTION

3.1 Redemption

Subject to Schedule 1, clauses 4 and 5, a Convertible Note will be redeemed on the first to occur of the following:

- (a) the receipt by the Company of a Redemption Notice in respect of the Convertible Note as a result of the exercise by the Trustee of its rights

under clause 9.2 or 9.6 of the Trust Deed or by the Noteholder under clause 9.7 of the Trust Deed; or

- (b) the receipt by the Company of a Redemption Notice in respect of the Convertible Note as a result of the exercise by the Noteholder of its rights under Schedule 1, clause 5(e)(ii) of the Trust Deed; or
- (c) the Company voluntarily redeeming the Convertible Notes in accordance with Schedule 1, clause 3.5; or
- (d) if the Noteholder has not exercised the Conversion Option prior to the Maturity Date, the Maturity Date.

3.2 Timing of redemption

Subject to Schedule 1, clauses 4 and 5, a Convertible Note will be redeemed:

- (a) in the event of the occurrence of an event in accordance with Schedule 1, clause 3.1(a), within 10 Business Days after that event; or
- (b) in the event of a takeover in accordance with schedule 1, clause 5(a)), within 10 Business Days after the later of the close of the takeover offer and the date that the Company's shareholders receive their consideration under the takeover bid;
- (c) in the event of a change of control of 50% or more of the shares in accordance with Schedule 1, clause 5(b)), within 10 Business Days after the transfer of the shares to the new shareholder;
- (d) in the event of a sale of the main undertaking of the Company in accordance with schedule 1, clause 5(c), within 10 Business Days after completion of the transfer of the main undertaking;
- (e) in the event of a voluntary redemption by the Company in accordance with Schedule 1, clause 3.5, on the date specified by the Company in accordance with that clause; or
- (f) in the case of redemption on the Maturity Date, on the Maturity Date,

and the Company will deliver to the Noteholder a cheque or draft or by electronic transfer in favour of the Noteholder or such other person as the Noteholder will have directed the Company in writing, for the Redemption Amount including the amount of any accrued but unpaid interest calculated in accordance with the following formula:

$$R = \left(\frac{i}{90} \times MP \right)$$

Where:

R = the amount of interest to be added to the Redemption Amount.

i = the total amount of interest which would have been payable to that Noteholder in respect of the Convertible Notes held by that Noteholder in arrears on the Interest Payment Date immediately following the date of the Redemption Notice (had the Redemption Notice not been given); and

MP = the number of days commencing on the Interest Payment Date which immediately preceded the Date of Redemption and ending on the Date of Redemption.

For the avoidance of doubt, the Early Redemption Penalty will not be paid upon a redemption pursuant to this clause (other than clause 3.2(e)).

3.3 Redemption of the Note

The Trustee or a Noteholder will only be entitled to issue a Redemption Notice pursuant to an exercise of their respective rights under clauses 9.2, 9.6 or 9.7, or Schedule 1, clause 5(e)(ii) of the Trust Deed, and only in respect of all of the Notes:

- (a) then on issue - in the case of the issue of a Redemption Notice by the Trustee under clause 9.2 or 9.6 of the Trust Deed; or
- (b) held by that Noteholder - in the case of the issue of a Redemption Notice by a Noteholder under clause 9.7, or Schedule 1, clause 5(e)(ii) of the Trust Deed,

and only in respect of the whole of the face value of those Notes.

3.4 Exclusion

The Noteholder will not be entitled to require redemption of any Convertible Notes held by him or her otherwise than pursuant to this Schedule 1, clause 3.

3.5 Early Redemption

- (a) The Company may redeem all (but not some) of the Notes with 60 days prior notice in writing (**Company Redemption Notice**) for the face value plus interest accrued and owing and the Early Redemption Penalty:
 - (i) during the period commencing on that date which is 24 months after the issue date; and
 - (ii) ending on the Maturity Date.
- (b) Despite the Company issuing a Company Redemption Notice, a Noteholder can elect to convert their Convertible Notes into Shares in accordance with Schedule 1 clause 4.

3.6 Early Redemption Penalty

The early redemption penalty is that amount determined by multiplying the face value of each Convertible Note by 2.0% per annum compounded Quarterly for the period commencing on the date the voluntary redemption takes effect and ending on the Maturity Date. The Early Redemption Penalty is only payable on voluntary redemption by the Company in accordance with Schedule 1, clause 3.5 and not on conversion or mandatory redemption.

4. CONVERSION

4.1 Conversion

- (a) A Noteholder will be entitled to convert all of the Notes held by that Noteholder in accordance with this Schedule 1 clause 4 by delivering a Conversion Notice:
 - (i) during the period commencing 10 Business Days before the end of a Quarter and ending on the last day of the Quarter;
 - (ii) during the period commencing on the date the Noteholder receives a Company Redemption Notice in relation to a voluntary redemption of the Convertible Notes by the Company and ending on the Business Day before the voluntary redemption takes effect;
 - (iii) in accordance with Schedule 1 clause 5(e); or
 - (iv) in accordance with Schedule 1 clause 6.
- (b) A Noteholder may only exercise the Conversion Option:
 - (i) in respect of all the Notes held by that Noteholder and not in respect of a portion only of the Notes held by that Noteholder; and
 - (ii) in respect of the whole of the face value of the Notes held by that Noteholder and not in respect of a proportion only of the face value of the Notes held by that Noteholder.
- (c) Within:
 - (i) 10 Business Days of the end of a Quarter in which a Conversion Notice is received in accordance with Schedule 1, clause 4.1(a)(i); and
 - (ii) 10 days of receipt of a Conversion Notice in accordance with Schedule 1, clauses 4.1(a)(ii), (iii) or (iv),

the Company will proceed to issue and allot to the Noteholder that number of Shares as calculated in accordance with Schedule 1, clause 4.2, and will notify the Trustee accordingly.
- (d) The issue and allotment of Shares as fully paid on conversion pursuant to this clause will be and be deemed for all purposes to be in full satisfaction and discharge of the principal amount owing to the Noteholder pursuant to the Convertible Notes the subject of the Conversion Notice but the conversion pursuant to this clause will in no way affect any liability of the Company for unpaid interest accrued up to the Date of Conversion which the Company will pay to the Noteholder in accordance with Schedule 1, clause 2.2.
- (e) The Shares issued and allotted upon the conversion pursuant to this clause will rank equally in all respects with all issued ordinary shares in the capital of the Company at the Date of Conversion.

- (f) The Company will make application for official quotation by the ASX of all Shares issued and allotted upon the conversion pursuant to this clause. Such application will be made as soon as reasonably practicable after Shares are so issued and allotted.
- (g) Within 10 Business Days of the issue and allotment of Shares to a Noteholder upon the conversion pursuant to this clause, the Company will deliver to the Noteholder a shareholding statement in respect of the fully paid Shares so issued and allotted.

4.2 Conversion Rate

Subject to Schedule 1, clause 4, the number of Shares to which a Noteholder will be entitled on exercise of the Conversion Option will be 1 Share for each Note.

4.3 No other rights of conversion

A Convertible Note will only be converted to Shares as set out in this Schedule 1 clause 4.

4.4 Shares allotted on conversion

The Shares to be allotted on conversion under this Schedule 1 will be shares with respect to which no provision is made (whether by the Constitution of the Company or other instrument constituting or defining the constitution of the Company or otherwise) for changing or converting them into shares of another class, except for the purpose of enabling, in accordance with any law relating to companies, the consolidation and division of all or any of the share capital of the Company or of another company or the subdivision of all or any of the shares in the capital of the Company or of another company.

4.5 Reconstruction

- (a) If there is a reconstruction (including, consolidation, subdivision, reduction or return) of the issued capital of the Company, the basis for conversion of the Notes set out in the Conversion Rate will be reconstructed in the same proportion as the issued capital of the Company is reconstructed and in a manner which will not result in any additional benefits being conferred on the Noteholder which are not conferred on the shareholders of the Company, (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of shareholders approving the reconstruction of capital) but in all other respects the terms for conversion of the Notes will remain unchanged.
- (b) The adjustments in this Schedule 1, clause 4.5 will, subject to the ASX Listing Rules, be determined by the Company.

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

If:

- (a) a takeover bid (as defined in the Corporations Act) is made for 50% or more of the Shares and that bidder is successful in acquiring a relevant interest in 50% or more of the Shares; or
- (b) there is a change in control of 50% or more of the Shares; or

- (c) there is a sale of the main undertaking of the Company that would require approval of the ordinary shareholders of the Company in accordance with Listing Rule 11.2,

at any time after the issue of the Convertible Notes and prior to the issue of a Conversion Notice in respect of such Convertible Notes, then:

- (d) the Company will give to each Noteholder written notice (a "**Sale Notice**") of the takeover bid, change of control, or sale of main business undertaking within 10 Business Days of receiving notice of it (or entering into an agreement in respect of the proposed disposal); and
- (e) the Noteholder must within 10 Business Days after the Sale Notice is sent to Noteholders either:
 - (i) elect to convert all the Convertible Notes held by that Noteholder to fully paid ordinary Shares in accordance with Schedule 1, clause 4.1 by providing the Company with a Conversion Notice; or
 - (ii) require the Company to redeem all the Convertible Notes held by that Noteholder in accordance with Schedule 1, clause 3 by providing the Company with a Redemption Notice.
- (f) If a Noteholder does not comply with Schedule 1, clause 5(e), within the time period specified in that clause, then the Company will redeem all the Convertible Notes held by that Noteholder in accordance with clause 3.

6. CONVERSION FOLLOWING ANNOUNCEMENT OF A DIVIDEND OR RIGHTS ISSUE

- (a) If the Company declares a dividend at any time after the issue of the Convertible Notes and prior to the issue of a Conversion Notice in respect of such Convertible Notes, then each Noteholder may elect to convert all the Convertible Notes held by that Noteholder into fully paid ordinary Shares in accordance with Schedule 1, clause 4.1 by providing the Company with a Conversion Notice within 10 days of the date the dividend is declared.
- (b) If the Company announces its intention to conduct a rights issue at any time after the issue of the Convertible Notes and prior to the issue of a Conversion Notice in respect of such Convertible Notes, then each Noteholder may elect to convert all the Convertible Notes held by that Noteholder into fully paid ordinary Shares in accordance with Schedule 1, clause 4.1 by providing the Company with a Conversion Notice within 10 days of the date the Company announces its intention to conduct a rights issue.

7. BONUS ISSUES

If a bonus share allotment is made by the Company to its ordinary shareholders, at any time during the period subsequent to the issue of a Convertible Note to a Noteholder and prior to the Date of Conversion, and if the Noteholder exercises its Conversion Option on that Date of Conversion, the Company will issue and allot to that Noteholder:

- (a) shares in the capital of the Company of the same class as the shares the subject of the bonus share allotment; and

- (b) the number of shares so issued will be equal to the number of shares in the capital of the Company to which that Noteholder would have been entitled, if the face value of the Convertible Notes held by that Noteholder in respect of which the Conversion Option has been exercised by that Noteholder, had been converted immediately prior to the making of the bonus share allotment,

on terms and conditions that are the same as or correspond with or are no more favourable to the Noteholder than the terms and conditions on which such shares are allotted to any ordinary shareholder of the Company.

8. RIGHT TO ATTEND MEETINGS

A Noteholder is entitled to attend any shareholder meeting of the Company. A Note does not carry a right to vote at any shareholder meeting unless provided for by the ASX Listing Rules or the Corporations Act.

9. FOREIGN HOLDERS

Where Convertible Notes are held by or on behalf of a person resident outside Australia, then, despite any other terms or conditions applicable to such Convertible Notes, it will be a condition precedent to the right of the Noteholder to receive payment of any amount payable under this Schedule 1 or to obtain Shares on conversion that the requirements of all applicable laws of the Commonwealth of Australia or any of its States or Territories and of the country of residence of the Noteholder in respect of such payment or conversion are satisfied so that such payment or conversion will not result in a breach of any such applicable law by the Company.

10. CONVERSION TO VOTING SHARES PRECLUDED

10.1 Breaches of law

Notwithstanding any other term of the Trust Deed or these Conditions, a Noteholder is not entitled to Convert (and the Company is entitled to refuse to Convert) such number of Convertible Notes that would result in:

- (a) a person acquiring Voting Shares in the Company in breach of section 606 of the Corporations Act (or any equivalent provision); or
- (b) a person acquiring Shares where a notification or consent being required to be sent to, or consent is required under, any legislation by which the Company and its Related Bodies Corporate are bound has not been obtained.

10.2 Statutory Declaration

The Company may in its discretion require a Noteholder to provide a statutory declaration confirming that the circumstances referred to in Schedule 1, clause 10.1 do not exist in respect of any Conversion by that Noteholder.

11. REGISTRATION OF TRANSFERS

11.1 Transfer

The Company will not be issuing certificates in respect of the Convertible Notes. The Company participates in CHESS for those investors who have, or wish to

have, a sponsoring broker. Investors who do not wish to participate through CHESS will be issuer sponsored by the Company. Because the sub-registers are electronic, ownership of securities can be transferred without having to rely upon paper documentation.

Accordingly, Convertible Notes may be transferred, and transfers may be registered, in any manner required or permitted by the ASX Listing Rules applying in relation to that system. Additionally, transfers can occur off market.

Subject to the terms of the Trust Deed, the Noteholder may transfer all or any of the Convertible Notes that it holds:

- (a) by an instrument in writing in any usual form or in any other form that the directors of the Company approve (in respect of an off market transfer) or
- (b) in accordance with the ASX Listing Rules (for on market transfers).

11.2 Recording transfers

- (a) The Company or share registry will promptly upon being satisfied that the transfer has been properly effected, accept the transfer by making an inscription in the Register recording the transfer of the relevant Convertible Note.
- (b) Monthly statements will be provided by the Company or share registry to Noteholders in circumstances in which there have been changes in their security holding in the Company during the preceding month.

11.3 Administration

- (a) The Company's share registry will register the transfer of a Convertible Note notwithstanding that the transfer form (in respect of an off-market transfer) to which the transfer relates has not been marked by the Company.
- (b) The Company or the Company's share registry will procure that all transfer forms (in respect of off-market transfers) which are registered will be retained by the Company for a period of 7 years after receipt but any transfer form which the Company declines to register will (except in the case of fraud or suspected fraud) be returned on demand to the person depositing the same.
- (c) The Company and the Company's share registry will not register the transfer of a Convertible Note on or after its Maturity Date.

11.4 Directions

- (a) Subject to the Trust Deed and these Conditions, and any conditions proposed by the Company at the time the Convertible Notes are issued and any notations on the Register, the Company will comply with any payment or distribution direction made by a transferee:
 - (i) in an application for transfer of Convertible Notes on and from the time of registration of that transfer; and
 - (ii) at any subsequent time in such form as the Company will from time to time determine.

- (b) A direction from any one or more joint holders of a Convertible Note will bind all the joint holders. If more than one direction is received from joint holders of a Convertible Note the direction of the senior is to be accepted to the exclusion of the other directions and for this purpose seniority is determined by the order in which the names appear in the Register of Noteholders in respect of the joint holding.

11.5 Transmission

Subject to Schedule 1 clause 10.1, a person becoming entitled to Convertible Notes as a consequence of the death or bankruptcy of a Noteholder or of a vesting order or a person administering the estate of a Noteholder may, upon producing such evidence as to that entitlement or status as the Company consider sufficient, transfer the Convertible Notes of that Noteholder or, if so entitled, become registered as the holder of the Convertible Notes.

11.6 Non-Registration of Third Party Interests

Convertible Notes will be registered by name only without reference to any trusteeships. Any entry in the Register of the name and address of a Noteholder and the amount owed to that Noteholder is conclusive evidence of title subject to rectification for fraud or error.

11.7 Person registered

The person registered as a Noteholder of an amount of Convertible Notes will be treated by the Company as the absolute owner of that amount of Convertible Notes. Neither the Company, nor the Trustee will, except as ordered by a Court or as required by statute, be obliged to take notice of any claim to a Convertible Note. Entry in the Register of the name and address of a Noteholder and the number of Notes held by that Noteholder is conclusive evidence of title subject to rectification for fraud or error.

EXECUTED by the Parties as a Deed.

EXECUTED BY

IMF (AUSTRALIA) LTD

ABN 45 067 298 088

in accordance with the Corporations Act:

John Walker

Director

Chantelle

Director/Secretary

The Common Seal of

AUSTRALIAN EXECUTOR TRUSTEES LIMITED

ACN 007 869 794

was affixed with the authority of:

..... (signed)

Philip John Walter Joseph

..... (print name)

Authorised Officer

..... (signed)

Joanne Cochrane

..... (print name)

Authorised Officer



ANNEXURE A - CONVERSION NOTICE

To: The Directors
IMF (Australia) Ltd
Level 5
32 Martin Place
SYDNEY NSW 2000

NOTICE is given of the exercise by [] of its right to convert [] of the convertible notes issued by IMF (Australia) Ltd (the **Company**) under a Convertible Note Trust Deed dated on or about [insert] (**Trust Deed**).

The Company must issue 1 fully paid ordinary share in the capital of Company for each Convertible Note the subject of this notice in the manner and on the basis set out in clause 4 of the Conditions in Schedule 1 to the Trust Deed. Fractional entitlements to a share are to be rounded up.

It is acknowledged that the Company may reasonably require provision of further information to prove the title of the person exercising the option to convert.

DATED this day of 20

EXECUTED BY)
[COMPANY])
ABN [insert])
in accordance with the Corporations Act:)

Director

Director/Secretary

ANNEXURE B – CHARGE

ANNEXURE C – REDEMPTION NOTICE

[AUSTRALIAN EXECUTOR TRUSTEES LIMITED (ACN 007 869 794) as Trustee]/[Name of Noteholder if action taken under clause 9.7 of Convertible Note Trust Deed]

Notice of Redemption

To: The Directors
IMF (Australia) Ltd
Level 5
32 Martin Place
SYDNEY NSW 2000

(the **Company**)

¹**[A: Australian Executor Trustees Limited (ACN 007 869 794)] as trustee of the Trust** hereby gives notice, under **clause [9.2]/[9.6]** of the Convertible Note Deed signed on **[date]** 2010 (**'the Deed'**), of its intention to exercise its right to require the Company to redeem **[insert number of Convertible Notes]** Convertible Notes of an amount equal to **[insert amount]** on **[insert date]** (**'the Redemption Date'**).

The Trustee certifies that it is entitled to issue this Redemption Notice in accordance with **clause 9** of the Deed.]

[B: Insert Name of Noteholder if action taken under clause 9.7 of Convertible Note Trust Deed] hereby gives notice, under **clause 9.7** of the Convertible Note Deed signed on **[date]** 2010 (**'the Deed'**), of its intention to exercise its right to require the Company to redeem **[insert number of Convertible Notes]** Convertible Notes of an amount equal to **[insert amount]** on **[insert date]** (**'the Redemption Date'**).] Capitalised terms used in this Redemption Notice have the meaning given to them in the Deed unless otherwise defined in this Redemption Notice.

[[Insert name of Noteholder] certifies that it is entitled to issue this Redemption Notice in accordance with **clause 9.7** of the Deed.]

Capitalised terms used in this Redemption Notice have the meaning given to them in the Deed unless otherwise defined in this Redemption Notice.

DATED:

¹ Delete A or B above as appropriate for Redemption Notice by Trustee (A) or Redemption Notice by Noteholder (B).

[The Common Seal of
AUSTRALIAN EXECUTOR TRUSTEES LIMITED
ACN 007 869 794

was affixed with the authority of:

..... (signed)

..... (print name)

Authorised Officer

..... (signed)

..... (print name)

Authorised Officer] /

[Insert appropriate execution block of Noteholder if Redemption

Notice is issued under clause 9.7]