

1300 135 638

605

page 1/2

15 July 2001

Form 605
Corporations Act 2001
Section 671B

Notice of ceasing to be a substantial holder

1. Company Name/Scheme COSTA GROUP HOLDINGS LIMITED

ACN/ARSN 151 363 129

1. Details of substantial holder (1)

Name Costa AFR Pty Ltd and its shareholders named in paragraph 2
ACN/ARSN (if applicable) 151 727 614

The holder ceased to be a
substantial holder on

23/11/2017

The previous notice was given to the company on

/ /

The previous notice was dated

/ /

2. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest (2) of the substantial holder or an associate (3) in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (4)	Consideration given in relation to change (5)	Class (6) and number of securities affected	Person's votes affected
23/11/2017	Costa AFR Pty Ltd	Settlement of disposal of full legal and beneficial interest in accordance with the accompanying block trade agreement with UBS AG	<i>[Note - this needs to be the total consideration, not a per share consideration]</i>	17,135,820 fully paid ordinary shares	17,135,820
23/11/2017	Robert John Costa	Effect on relevant interest as the holder of more than 20% of the shares in Costa AFR Pty Ltd	Nil	17,135,820 fully paid ordinary shares	17,135,820
23/11/2017	Francis Aloysius Costa	Effect on relevant interest as the holder of more than 20% of the shares in Costa AFR Pty Ltd	Nil	17,135,820 fully paid ordinary shares	17,135,820
23/11/2017	Robert John Costa, David Costa and Elaine Mary Costa as trustees of the estate of Anthony Costa	Effect on relevant interest as the holder of more than 20% of the shares in Costa AFR Pty Ltd	Nil	17,135,820 fully paid ordinary shares	17,135,820

3. Changes in association

The persons who have become associates (3) of, ceased to be associates of, or have changed the nature of their association (7) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ARSN (if applicable)	Nature of association


4. Addresses

The addresses of persons named in this form are as follows:

Name	Address
------	---------

Costa AFR Pty Ltd	Suite 4, 170 Little Malop Street, Geelong, Vic 3220
Robert John Costa	98 Aphrasia Street, Newtown, Vic 3220
Francis Aloysius Costa	'Edgewater' Unit 601, 4-6 Eastern Beach Road, Geelong, Vic 3220
Anthony Gabriel Costa	51 Virginia Street, Geelong, Vic 3220

Signature

print name	ROBERT COSTA	capacity	Director
sign here		date	23/11/2017

GUIDE

This guide does not form part of the prescribed form and is included by ASIC to assist you in completing and lodging form 605.

Signature

This form must be signed by either a director or a secretary of the substantial holder.

Lodging period

Nil

Lodging Fee

Nil

Other forms to be completed

Nil

Additional Information

- (a) If additional space is required to complete a question, the information may be included on a separate piece of paper annexed to the form.
- (b) This notice must be given to a listed company, or the responsible entity for a listed managed investment scheme. A copy of this notice must also be given to each relevant securities exchange.
- (c) The person must give a copy of this notice:
 - (i) within 2 business days after they become aware of the information; or
 - (ii) by 9.30 am on the next trading day of the relevant securities exchange after they become aware of the information if:
 - (A) a takeover bid is made for voting shares in the company or voting interests in the scheme; and
 - (B) the person becomes aware of the information during the bid period.

Annexures

To make any annexure conform to the regulations, you must


- 1 use A4 size paper of white or light pastel colour with a margin of at least 10mm on all sides
- 2 show the corporation name and ACN or ARBN
- 3 number the pages consecutively
- 4 print or type in BLOCK letters in dark blue or black ink so that the document is clearly legible when photocopied
- 5 identify the annexure with a mark such as A, B, C, etc
- 6 endorse the annexure with the words:
This is annexure (mark) of (number) pages referred to in form (form number and title)
- 7 sign and date the annexure.

The annexure must be signed by the same person(s) who signed the form.

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 4 of the form.
- (2) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (3) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (4) Include details of:
 - (a) any relevant agreement or other circumstances because of which the change in relevant interest occurred. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (5) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (6) The voting shares of a company constitute one class unless divided into separate classes.
- (7) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

This is a true copy of the document referred to in the accompanying Form 605 notice of ceasing to be a substantial holder dated November 2017 and signed by me:

.....  23-11-17
 Director
 Costa AFR Pty Ltd ACN 151 727 614



UBS AG, Australia Branch
AFSL 231087
ABN 47 088 129 613

Level 16 Chifley Tower
 2 Chifley Square
 SYDNEY NSW 2000
 Tel. 61 2-9324 2000

www.ubs.com

COMMERCIAL-IN CONFIDENCE

20 November 2017

Costa AFR Pty Ltd
 Level 1
 170 Little Malop Street
 Geelong, Victoria 3220

Sale of Shares in Costa Group Holdings Limited

1. Introduction

This Agreement sets out the terms and conditions upon which Costa AFR Pty Ltd (the "**Vendor**") engages UBS AG, Australia Branch (ABN 47 088 129 613) (the "**Lead Manager**") to dispose of 17,135,620 existing fully paid ordinary shares in Costa Group Holdings Limited ("**Costa**" or the "**Issuer**") (the "**Sale Securities**") (the "**Sale**") and the Lead Manager agrees to procure the disposal of the Sales Shares and to provide underwriting thereof, subject to clauses 2 and 10, in accordance with the terms of this Agreement.

2. Sale of securities

2.1 Sale. The Vendor agrees to sell the Sale Securities and the Lead Manager agrees to:

- (a) manage the sale of the Sale Securities by procuring purchasers for the Sale Securities at the price of \$6.55 per Sale Security ("**Sale Price**"). Purchasers may include the Lead Manager's related bodies corporate and Affiliates (as defined in clause 11.8) and may be determined by the Lead Manager in its discretion; and
- (b) underwrite and guarantee the sale of the Sale Securities by, subject to clause 2.6, purchasing at the Sale Price per Sale Security those of the Sale Securities which have not been purchased by third party purchasers (or the Lead Manager's related

bodies corporate or Affiliates) in accordance with clause 2.1(a) as at 10.00am on the business day immediately following the date of this Agreement (or such time as the parties agree in writing) ("**Balance Shares**"),

in accordance with the terms of this Agreement.

- 2.2 **Timetable.** The Vendor must conduct the Sale in accordance with the timetable set out in Schedule 1 (the "**Timetable**") (unless the Lead Manager consents in writing to a variation).
- 2.3 **Account Opening.** On the date of this Agreement the Lead Manager or its nominated affiliate will (where relevant) open an account in the name of the Vendor in accordance with its usual practice, and do all such things necessary to enable it to act as Lead Manager to sell the Sale Securities in accordance with this Agreement.
- 2.4 **Manner of Sale.** The Lead Manager will conduct the Sale by way of an offer only to persons:
- (a) if in Australia, who do not need disclosure under Part 6D.2 of the Corporations Act 2001 (Cth) ("**Corporations Act**"); and
 - (b) if outside Australia, to whom offers for sale of securities may lawfully be made without requiring the preparation, delivery, lodgement or filing of any prospectus or other disclosure document or any other lodgement, registration or filing with, or approval by, a government agency (other than any such requirement with which the Vendor, in its sole and absolute discretion, is willing to comply), as determined by the Lead Manager,

provided in each case (a) and (b) above that such persons may not be in the United States or U.S. Persons or acting for the account or benefit of U.S. Persons unless the Lead Manager reasonably believes them to be QIBs or they are Eligible U.S. Fund Managers (in each case, as defined in clause 2.5).

Upon receipt of a valid bid for up to 10,432,099 Sale Securities by Frank Costa or his nominee, the Lead Manager will provide a priority allocation of such Sale Securities to Frank Costa or his nominee (as applicable). Subject to the preceding sentence, the allocation of Sale Securities among those purchasers who have lodged a valid bid for Sale Securities is to be determined by the Lead Manager at its sole discretion.

Any investor that purchases Sale Securities (other than Balance Shares or Restricted Shares) will be required to confirm, including through deemed representations and warranties, among other things:

- (a) its status as an investor meeting the requirements of this clause 2.4 and clause 2.5; and
- (b) its compliance with all relevant laws and regulations (including the takeover and insider trading provisions of the Corporations Act and the Foreign Acquisitions and Takeovers Act 1975 as amended (Cth) (FATA)).

2.5 U.S. Securities Act. The Sale Securities shall only be offered and sold:

- (a) to persons that are not in the United States and are not "U.S. persons" (as defined in Rule 902(k) under the U.S. Securities Act of 1933 (the "**U.S. Securities Act**") ("**U.S. Persons**") and are not acting for the account or benefit of U.S. Persons, in "offshore transactions" (as defined in Rule 902(h) under the U.S. Securities Act) in reliance on Regulation S under the U.S. Securities Act ("**Regulation S**"); and
- (b) to persons that are either (A) in the United States whom the Lead Manager reasonably believes to be qualified institutional buyers ("**QIBs**"), as defined in Rule 144A under the U.S. Securities Act, in transactions exempt from the registration requirements of the U.S. Securities Act pursuant to Rule 144A thereunder or (B) dealers or other professional fiduciaries organised, incorporated or (if an individual) resident in the United States that are acting for an account (other than an estate or trust) held for the benefit or account of persons that are not "U.S. Persons" (as defined in Rule 902(k) under the Securities Act), for which they have and are exercising investment discretion, within the meaning of Rule 902(k)(2)(i) of Regulation S ("**Eligible U.S. Fund Managers**"), in reliance on Regulation S.

2.6 Principal Shares. Notwithstanding anything else in this Agreement the number of Sale Securities which must be purchased by the Lead Manager under the terms of this Agreement ("**Principal Shares**") will be the lesser of:

- (a) the Balance Shares; and
- (b) unless the relevant approval or exemption certificate has been obtained, the maximum number of the Sale Securities that can be sold to the Lead Manager without:
 - (i) the Lead Manager or any of its Affiliates being required to notify and obtain approval from the Treasurer of Australia under section 81 of the FATA; or
 - (ii) breach by the Lead Manager or any of its associates of section 606 of the Corporations Act 2001 (Cth) ("**Corporations Act**").

The Lead Manager warrants that the information it provides to the Vendor to enable it to calculate the number of Principal Shares in accordance with this clause 2.6 will, at the time it is given, be accurate. If the number of Principal Shares is less than the number of Balance Shares (such difference to be referred to in this Agreement as the "**Restricted Shares**") the Vendor agrees to retain any Restricted Shares, subject to the terms of this Agreement.

2.7 Restricted Shares

- (a) **Advance Amount.** Subject to clause 10, by 3:00pm on the Settlement Date, the Lead Manager must advance to the Vendor an amount equal to the number of Restricted Shares (if any) multiplied by the Sale Price ("**Advance Amount**"). No interest will be payable on the Advance Amount. The Vendor must repay the Advance Amount from and to the extent that the Vendor receives the proceeds of

sale of the Restricted Shares. The outstanding Advance Amount will not be repayable in any circumstances in respect of Restricted Shares not sold by the End Date (as defined in clause 2.7(c) below) and the agency provided for in clause 2.7(c) will terminate at that time or at such earlier time when all Restricted Shares have been sold. If the Vendor receives a dividend or other distribution on a Restricted Share prior to the End Date, where that dividend or distribution was announced on or after the Trade Date, then the Vendor must pay the after-tax amount of the receipt to the Lead Manager in reduction of the Advance Amount applicable to that Restricted Share.

- (b) **Repayment.** The Lead Manager will automatically apply any proceeds of sale of the Restricted Shares as agent against repayment of the Advance Amount by the Vendor, immediately upon receipt of those proceeds.
- (c) **Restricted Shares.** If there are Restricted Shares, then the Lead Manager will sell, as agent for the Vendor, in the ordinary course of the Lead Manager's business, the Restricted Shares by the date that is 30 Business Days after the date of this Agreement ("**End Date**"). The Vendor must comply with directions of the Lead Manager to transfer Restricted Shares in order to settle any such sale, provided that all sales must be effected by 7.00 pm on the End Date;
- (d) **Execution of sale of Restricted Shares.** The Lead Manager agrees that the sale of the Restricted Shares will be effected by way of one or more special crossings in accordance with the Operating Rules of the ASX and the ASX Settlement Operating Rules, and/or by way of one or more regular brokered transactions on the ASX on the condition that neither it, nor any person acting on its behalf, knows, or has reason to know, that the sale has been pre-arranged with, or that the purchaser is, a person in the United States. Settlement of Restricted Shares sold in this manner will occur on a T + 2 basis, whichever is the typical settlement cycle for ASX ordinary course trading at the time of sale (where T represents the date on which the relevant share was sold).
- (e) **Indemnity for Restricted Shares.** The Lead Manager must indemnify the Vendor for any shortfall between the actual price received for each Restricted Share sold (if any) as agent and the Sale Price in accordance with clause 2.7(c). Any such Indemnified amount is to be paid to the Vendor on settlement in accordance with clause 2.7(d).
- (f) **Interest in Restricted Shares.** The parties acknowledge that the Lead Manager does not acquire any interest in the Restricted Shares (if any) or any rights in them (by way of security or otherwise) in respect of them except as agent for the sale of those shares.

2.8 Effecting of Sale and settlement.

- (a) **Sale and Settlement Date.** The Lead Manager shall procure that the Sale shall be effected:
- (i) subject to clause 2.8(a)(ii), on the Trade Date (as defined in the Timetable in Schedule 1), by way of one or more special crossings (in accordance with relevant ASIC Market Integrity Rules and the ASX Operating Rules) at the Sale Price, with settlement to follow on a T+2 basis in accordance with the ASX Settlement Operating Rules ("**Settlement Date**"); and
 - (ii) in respect of any Restricted Shares (as defined in clause 2.6), in accordance with clause 2.7.
- (b) **Sale Securities.** Subject to clause 10, on the Settlement Date, the Lead Manager shall arrange for the payment to the Vendor of an amount equal to
- (i) the Sale Price multiplied by the number of Sale Securities (excluding the sum of the number of Restricted Shares retained by the Vendor in accordance with clause 2.6, if any and the number of Sale Securities (if any) allocated to Frank Costa or his nominee in accordance with clause 2.4); less
 - (ii) any fees payable under clause 3 (together with any GST payable on those fees),
- by transfer to the Vendor's account for value (in cleared funds) against delivery of the Sale Securities (excluding the Restricted Shares, if any). The Vendor appoints UBS, or an affiliate of UBS, as its agent to act on behalf of it in relation to the settlement of the Sale Securities.

3. Fees

In consideration of performing its obligations under this Agreement the Lead Manager shall be entitled to such fees as the parties agree.

4. GST

- 4.1 **Input Tax Credit.** Any fees which the parties agree to be payable to the Lead Manager and any other amounts payable to the Lead Manager under this Agreement are to be agreed and calculated to be exclusive of GST. However, if any amounts payable to the Lead Manager under this Agreement are calculated by reference to a cost or expense incurred by the Lead Manager, the amount payable to the Lead Manager under any other provision of this Agreement must be reduced by the amount of any input tax credit to which the Lead Manager reasonably determines it is entitled for an acquisition in connection with that cost or expense.
- 4.2 **Tax Invoice.** If any supply made under this Agreement is a taxable supply, the entity making the taxable supply ("**Supplier**") must issue a valid tax invoice to the party providing the consideration for that taxable supply ("**Recipient**"). The tax invoice issued by the Supplier must set out in detail the nature of the taxable supply, the consideration

attributable to the taxable supply, the amount of GST payable by the Supplier in connection with the taxable supply and any other details reasonably requested by the Recipient. The GST amount means, in relation to a taxable supply, the amount of GST for which the Supplier is liable in respect of the taxable supply ("**GST Amount**").

- 4.3 **Timing of Payment.** The Recipient must pay the GST Amount in connection with a taxable supply at the same time that the Recipient must provide the consideration for that taxable supply (under the other provisions of this Agreement), or if later, within 5 business days of the Recipient receiving a tax invoice for that taxable supply.
- 4.4 **Payment Differences.** If the GST payable by the Supplier in connection with the taxable supply differs from the GST Amount paid by the Recipient under this clause, the Supplier must repay any excess to the Recipient or the Recipient must pay any deficiency to the Supplier, as appropriate within 5 business days of the Supplier providing the Recipient with a written notification regarding the difference in the GST payable. Where the difference in the GST payable results from an adjustment event, the written documentation provided by the Supplier under this clause must include an adjustment note or tax invoice as required by the GST law.
- 4.5 **Defined Terms.** The references to "GST" and other terms used in this clause 4 (except Recipient and GST Amount) have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time). However, any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 4.
- 4.6 **References.** A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

5. Undertakings

5.1 Restricted Activities. The Vendor undertakes to the Lead Manager:

- (a) not, prior to settlement on the Settlement Date commit, to be involved in or acquiesce in any activity which breaches:
 - (i) the Corporations Act and any other applicable laws;
 - (ii) its constitution;
 - (iii) the ASX Listing Rules;
 - (iv) any legally binding requirement of ASIC or the ASX;
 - (b) Immediately to notify the Lead Manager of any breach of any warranty or undertaking given by it under this Agreement; and
 - (c) not to withdraw the Sale following allocation of the Sale Securities to transferee(s),
- each of these undertakings being material terms of this Agreement.

6. Representations and Warranties

6.1 **Representations and warranties by the Vendor.** As at the date of this Agreement and on each day until and including the Settlement Date, the Vendor represents and warrants to the Lead Manager that each of the following statements is true, accurate and not misleading:

- (a) **(body corporate)** the Vendor is a corporate entity validly existing and duly established under the laws of The Netherlands;
- (b) **(capacity)** the Vendor has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) **(authority)** it has taken, or will have taken by the time required, all action that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates;
- (d) **(agreement effective)** this Agreement constitutes the Vendor's legal, valid and binding obligation, enforceable against it in accordance with its terms;
- (e) **(ownership, encumbrances)** it is the registered holder and sole legal owner of the Sale Securities. The Vendor will transfer, or procure the transfer of, the full legal and beneficial ownership of the Sale Securities free and clear of all liens, charges, security interests, claims, equities and pre-emptive rights, subject to registration of the transferee(s) in the register of shareholders of Costa;
- (f) **(control)** the Vendor does not control the Issuer (with "control" having the meaning given in section 50AA of the Corporations Act);
- (g) **(Sale Securities)** following sale by the Vendor, the Sale Securities will rank equally in all respects with all other outstanding ordinary shares of Costa, including their entitlement to dividends, and may be offered for sale on the financial market operated by ASX without disclosure to investors under Part 6D.2 of the Corporations Act;
- (h) **(power to sell)** it has the necessary authorities and instructions (which are irrevocable) and power to sell the Sale Securities under this Agreement and no person has a conflicting right, whether contingent or otherwise, in that regard, including to purchase or to be offered for purchase the Sale Securities;
- (i) **(no insider trading offence)** the sale of the Sale Securities will not constitute a violation by the Vendor of Division 3 of Part 7.10 of the Corporations Act;
- (j) **(ASX listing)** the Sale Securities are quoted on the financial market operated by ASX;
- (k) **(no general solicitation or general advertising)** none of the Vendor, any of its Affiliates or any person acting on behalf of any of them (other than the Lead Manager or its Affiliates or any person acting on behalf of any of them, as to whom the Vendor makes no representation) has offered or sold, or will offer or

sell, any of the Sale Securities in the United States using any form of "general solicitation" or "general advertising" within the meaning of Rule 502(c) under the U.S. Securities Act;

- (l) **(no directed selling efforts)** with respect to those Sale Securities offered and sold in reliance on Regulation S, none of the Vendor, any of its Affiliates, or any person acting on behalf of any of them (other than the Lead Manager or its Affiliates or any person acting on behalf of any of them, as to whom the Vendor makes no representation) has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the U.S. Securities Act);
- (m) **(offering restrictions)** each of the Vendor, its Affiliates and any person acting on their behalf (other than the Lead Manager or its Affiliates or any person acting on behalf of any of them, as to whom no representation or warranty is made) has complied and will comply with the offering restrictions requirements of Regulation S with regard to the Sale Securities to be sold in reliance on Regulation S;
- (n) **(foreign private issuer and no substantial U.S. market interest)** to the best of the Vendor's knowledge, Costa is a 'foreign private issuer' as defined in Rule 405 under the U.S. Securities Act and there is no 'substantial U.S. market interest' (as defined in Rule 902(j) under the U.S. Securities Act) in the Sale Securities or any security of the same class or series as the Sale Securities;
- (o) **(no stabilisation or manipulation)** neither the Vendor nor any of its Affiliates has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilisation or manipulation of the price of the Sale Securities in violation of any applicable law;
- (p) **(no integrated offers)** none of the Vendor, any of its Affiliates or any person acting on behalf of any of them (other than the Lead Manager or its Affiliates or any person acting on behalf of any of them, as to whom no representation or warranty is made), has solicited any offer to buy, offered to sell or sold, and none of them will solicit any offer to buy, offer to sell or sell in the United States or to, or for the account or benefit of, any U.S. person any security which could be integrated with the sale of the Sale Securities in a manner that would require the offer and sale of the Sale Securities to be registered under the U.S. Securities Act;
- (q) **(breach of law)** it will perform its obligations under this Agreement so as to comply with all applicable laws in any jurisdiction including in particular the Corporations Act and the Foreign Acquisitions and Takeovers Act 1975 (Cth);
- (r) **(wholesale client)** the client is a "wholesale client" (as such term is defined in section 761G of the Corporations Act);
- (s) **(anti-bribery)** neither it nor any of its related bodies corporate nor, to the knowledge of it, any director, officer, agent, employee or other person acting on behalf of it or any of its related bodies corporate has (i) used any corporate funds

for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any applicable provision of the U.S. Foreign Corrupt Practices Act of 1977 or the *Corruption of Foreign Public Officials Act* (Canada); or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, which, in each of (i) through and including (iv), would have a material adverse effect on the Sale;

- (t) **(sanctions)** none of it, any of its related bodies corporate or, to the knowledge of it, any director, officer, agent, employee or Affiliate of it or any of its related bodies corporate is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**") or any similar Australian sanctions administered by the Commonwealth of Australia; and it will not directly or indirectly use the proceeds of the Sale in a manner that would result in a violation by it of the U.S. sanctions administered by OFAC;
- (u) **(no registration required)** subject to compliance by the Lead Manager with their obligations under paragraphs (g), (h), (i) and (j) of clause 6.2, it is not necessary in connection with the offer, sale and delivery of the Sale Securities to register under the U.S. Securities Act the initial offer, sale and delivery of the Sale Securities, or the initial resale of any Sale Securities by the Lead Managers pursuant to their obligations under this Agreement, in each case in the manner contemplated in this Agreement, it being understood that the Vendor makes no representation or warranty about any subsequent resale of the Sale Securities under the U.S. Securities Act;
- (v) **(not an investment company)** the Vendor reasonably believes that the Company is not, and immediately after giving effect to the offering and sale of the Sale Securities will not be, required to register as an "investment company" under U.S. Investment Company Act of 1940, as amended;
- (w) **(144A eligibility)** the Sale Securities are eligible for resale pursuant to Rule 144A and are not of the same class as securities listed on a national securities exchange registered under Section 6 of the U.S. Securities Exchange Act of 1934 (the "**Exchange Act**") or quoted in a U.S. automated interdealer quotation system; and
- (x) **(Rule 12g3-2(b) status)** the Vendor reasonably believes the Company is exempt from reporting under Section 13 or 15(d) of the Exchange Act pursuant to Rule 12g3-2(b) thereunder.

- 6.2 **Representations and warranties of Lead Manager.** As at the date of this Agreement and on each day until and including the Settlement Date, the Lead Manager represents to the Vendor that each of the following statements is correct.
- (a) **(body corporate)** it is duly incorporated under the laws of its place of incorporation;
 - (b) **(capacity)** it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
 - (c) **(authority)** it has taken, or will have taken by the time required, all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates;
 - (d) **(agreement effective)** this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;
 - (e) **(status)** it is a QIB or is not a U.S. person (as defined in Regulation S under the U.S. Securities Act);
 - (f) **(no registration)** It acknowledges that the Sale Securities have not been and will not be registered under the U.S. Securities Act and may not be offered or sold in the United States or to, or for the account or benefit of, U.S. Persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act;
 - (g) **(no general solicitation or general advertising)** none of it, its Affiliates nor any person acting on behalf of any of them has solicited offers for or offered to sell, and none of them will solicit offers for, or offer or sell, the Sale Securities in the United States using any form of "general solicitation" or "general advertising" within the meaning of Rule 502(c) under the U.S. Securities Act;
 - (h) **(broker-dealer requirements)** all offers and sales of the Sale Securities in the United States by it and any of its Affiliates will be effected by its registered broker-dealer affiliate;
 - (i) **(U.S. selling restrictions)** it, its Affiliates and any person acting on behalf of any of them has offered and sold the Sale Securities, and will offer and sell the Sale Securities:
 - (i) within the United States, either (A) to persons whom it reasonably believes are QIBs pursuant to Rule 144A under the Securities Act, or (B) to Eligible U.S. Fund Managers in reliance on Regulation S and has sold, and in each case will only sell the Sale Securities to such persons that have executed a confirmation letter; and
 - (ii) to persons that are not in the United States and are not, and are not acting for the account or benefit of, U.S. Persons in "offshore transactions" (as

defined in Rule 902(h) under the U.S. Securities Act) in accordance with Regulation S;

- (j) **(no directed selling efforts)** with respect to those Sale Securities sold in reliance on Regulation S, none of it, its Affiliates nor any person acting on behalf of any of them has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the U.S. Securities Act);
- (k) **(no stabilisation or manipulation)** neither it, nor any of its Affiliates, nor any person acting on behalf of any of them, has taken or will take, directly or indirectly, any action designed to, or that would be expected to, cause or result in the stabilisation or manipulation of the price of the Sale Securities in violation of any applicable law; and
- (l) **(breach of law)** it will perform its obligations under this Agreement so as to comply with all applicable laws, including all applicable laws in Australia (including in particular the Corporations Act and the Foreign Acquisitions and Takeovers Act 1975 (Cth)) and the United States of America; provided that the Lead Manager will not be in breach of this warranty to the extent that any breach is caused by an act or omission of the Vendor which constitutes a breach by the Vendor of its representations, warranties and undertakings in clause 6.1.

6.3 **Reliance.** Each party giving a representation and warranty acknowledges that the other party has relied on the above representations and warranties in entering into this Agreement and will continue to rely on these representations and warranties in performing their obligations under this Agreement. The above representations and warranties continue in full force and effect notwithstanding completion of this Agreement, unless otherwise stated.

6.4 **Notification.** Each party agrees that it will tell the other party promptly upon becoming aware of any of the following occurring prior to the completion of the sale of the Sale Securities:

- (a) any material change affecting any of the foregoing representations and warranties; or
- (b) any of the foregoing representations or warranties becoming materially untrue or materially incorrect.

7. **Indemnity**

7.1 The Vendor agrees with the Lead Manager that it will keep the Lead Manager and its Related Bodies Corporate (as that term is defined in the Corporations Act), and their respective directors, officers and employees ("**Indemnified Parties**") indemnified against any losses, damages, liabilities, costs, claims, actions and demands (including any reasonable expenses arising in connection therewith) ("**Losses**") to the extent that such Losses are incurred or made in connection with the Sale or as a result of a breach of this

Agreement by the Vendor, including any breach of any of the above representations or warranties given by the Vendor, and will reimburse the Lead Manager for all out of pocket costs, charges and expenses which it may pay or incur in connection with investigating, disputing or defending any such action, demand or claim for which it is indemnified under this Agreement.

- 7.2 The indemnity in clause 7.1 does not extend to and is not to be taken as an indemnity against any Losses of an Indemnified Party to the extent any Losses are finally judicially determined by a court of competent jurisdiction to have resulted from:
- (a) any fraud, recklessness, wilful misconduct or gross negligence of the Indemnified Party;
 - (b) any penalty or fine which the Indemnified Party is required to pay for any contravention of any law;
 - (c) any amount in respect of which the indemnity would be illegal, void or unenforceable under any applicable law.
- 7.3 Both the Vendor and an Indemnified Party must not settle any action, demand or claim to which the indemnity in clause 7.1 relates without the prior written consent of the Vendor or the Lead Manager, as applicable, such consent not to be unreasonably withheld.
- 7.4 The indemnity in clause 7.1 is a continuing obligation, separate and independent from the other obligations of the parties under this Agreement and survive termination or completion of this Agreement. It is not necessary for the Lead Manager to incur expense or make payment before enforcing that indemnity.
- 7.5 The indemnity in clauses 7.1 is granted to the Lead Manager both for itself and on trust for each of the Indemnified Parties.
- 7.6 Subject to clause 7.7, the parties agree that if for any reason the indemnity in clause 7.1 is unavailable or insufficient to hold harmless any Indemnified Party against any Losses against which the Indemnified Party is stated to be indemnified (other than expressly excluded), the respective proportional contributions of the Vendor and the Indemnified Party or the Indemnified Parties in relation to the relevant Losses will be as agreed, or failing agreement as determined by a court of competent jurisdiction, having regard to the participation in, instigation of or other involvement of the Vendor and the Indemnified Party or the Indemnified Parties in the act complained of, having particular regard to relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission.
- 7.7 The Vendor agrees with each of the Indemnified Parties that in no event will the Lead Manager and its associated Indemnified Parties be required to contribute under clause 7.6 to any Losses in an aggregate amount that exceeds the aggregate of the fees paid to the Lead Manager under this Agreement.

- 7.8 If an Indemnified Party pays an amount in relation to Losses where it is entitled to contribution from the Vendor under clause 7.6 the Vendor agrees promptly to reimburse the Indemnified Party for that amount.
- 7.9 If the Vendor pays an amount to the Indemnified Parties in relation to Losses where it is entitled to contribution from the Indemnified Parties under clause 7.6 the Indemnified Parties must promptly reimburse the Vendor for that amount.

8. Announcements

- 8.1 The Vendor and the Lead Manager will consult each other in respect of any material public releases by any of them concerning the sale of the Sale Securities. The prior written consent of the Vendor must be obtained prior to the Lead Manager making any release or announcement or engaging in publicity in relation to the Sale of the Sale Securities and such release, announcement or engagement must be in compliance with all applicable laws, including the securities laws of Australia, the United States and any other jurisdiction.
- 8.2 The Lead Manager may, after completion of its other obligations under this Agreement, place advertisements in financial and other newspapers and journals at its own expense describing their service to the Vendor provided such advertisements are in compliance with all applicable laws, including the securities laws of Australia, the United States and any other jurisdiction.

9. Confidentiality

Each party agrees to keep the terms and subject matter of this Agreement confidential, except:

- (a) where disclosure is required by applicable law, a legal or regulatory authority or the ASX Listing Rules;
- (b) disclosure is made to an adviser or to a person who must know for the purposes of this Agreement, on the basis that the adviser or person keeps the information confidential; and
- (c) to a person to the extent reasonably necessary in connection with any actual or potential claim or judicial or administrative process involving that party in relation to the Sale.

10. Events of Termination

- 10.1 **Right of termination.** If any of the following events occurs at any time during the Risk Period (as defined in clause 10.4), then the Lead Manager may terminate its obligations under this Agreement without cost or liability to itself at any time before the expiry of the Risk Period by giving written notice to the Vendor:
- (a) **ASX actions.** ASX does any of the following:
 - (i) announces that Costa will be removed from the official list of ASX or ordinary shares in Costa will be suspended from quotation;
 - (ii) removes Costa from the official list; or

- (iii) suspends the trading of ordinary shares in Costa for any period of time.
 - (b) **ASIC inquiry.** ASIC issues or threatens to issue proceedings in relation to the Sale or commences, or threatens to commence any inquiry or investigation in relation to the Sale.
 - (c) **Other termination events.** Subject to clause 10.2, any of the following occurs:
 - (A) **Banking moratorium.** A general moratorium on commercial banking activities in Australia, United States or the United Kingdom is declared by the relevant central banking authority in any of those countries, or there is a material disruption in commercial banking or security settlement or clearance services in any of those countries.
 - (B) **Breach of Agreement.** the Vendor is in default of any of the terms and conditions of this Agreement or breaches any representation or warranty given or made by it under this Agreement.
 - (C) **Change in law.** there is introduced, or there is a public announcement of a proposal to introduce, into the Parliament of the Commonwealth of Australia or any State or Territory of Australia a new law, or the Government of Australia, any State or Territory of Australia, the Reserve Bank of Australia or any Minister or other governmental authority of Australia or any State or Territory of Australia, adopts or announces a proposal to adopt a new policy (other than a law or policy which has been announced before the date of this agreement).
- 10.2 **Materiality.** No event listed in clause 10.1(c) entitles the Lead Manager to exercise its termination rights unless, in the bona fide opinion of the Lead Manager, it:
- (a) has, or would reasonably be expected to have, a material adverse effect on:
 - (i) the willingness of persons to purchase the Sale Securities; or
 - (ii) the price at which ordinary shares in Costa are sold on the ASX; or
 - (b) would reasonably be expected to give rise to a liability of the Lead Manager under the Corporations Act or any other applicable law.
- 10.3 **Effect of termination.** Where, in accordance with this clause 10, the Lead Manager terminates its obligations under this Agreement:
- (a) the obligations of the Lead Manager under this Agreement immediately end;
 - (b) any entitlements of the Lead Manager accrued under this Agreement, including the right to be indemnified, up to the date of termination survive; and
 - (c) no fees will be payable to the Lead Manager in respect of this agreement.
- 10.4 **Risk Period.** For the purposes of this clause, the "Risk Period" means the period commencing on the execution of this Agreement and ending at 10.00am on the Settlement Date.

11. Miscellaneous

- 11.1 **Entire agreement.** This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that matter.
- 11.2 **Governing law.** This Agreement is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those courts are an inconvenient forum. The Vendor undertakes to maintain this appointment and agrees that any service on that person is taken to be served on it.
- 11.3 **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- 11.4 **Waiver and variation.** A provision of or right vested under this Agreement may not be:
- (a) waived except in writing signed by the party granting the waiver; or
 - (b) varied except in writing signed by the parties.
- 11.5 **No merger.** The rights and obligations of the parties will not merge on the termination or expiration of this Agreement. Any provision of this Agreement remaining to be performed or observed by a party, or having effect after the termination of this Agreement for whatever reason remains in full force and effect and is binding on that party.
- 11.6 **No assignment.** No party may assign its rights or obligations under this Agreement without the prior written consent of the other parties.
- 11.7 **Notices.** Any notice, approval, consent, agreement, waiver or other communication in connection with this Agreement must be in writing.
- 11.8 **Affiliates.** In this Agreement the term "Affiliates" means any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a person; "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities by contract or agency or otherwise and the term "person" is deemed to include a partnership.
- 11.9 **Business Day.** In this Agreement "Business Day" means a day on which:
- (a) ASX is open for trading in securities; and
 - (b) banks are open for general banking business in Sydney, Australia.
- 11.10 **Interpretation.** In this Agreement:
- (a) headings and sub-headings are for convenience only and do not affect interpretation;

- (b) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (c) a reference to "dollars" and "\$" is to Australian currency; and
- (d) all references to time are to Sydney, New South Wales, Australia time.

11.11 **Counterparts.** This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

11.12 **Classification.** Where services are provided pursuant to this Agreement via a UBS Group entity located in the European Economic Area, the Vendor will be treated by that entity as a Professional Client for the purposes of the Markets in Financial Instruments Directive. The Vendor may request categorisation as a "Retail Client" although the Lead Manager is not able to provide services to Retail Clients. To discuss this categorisation, please contact the UBS persons whose names appear in this Agreement.

11.13 **Acknowledgements.** The Vendor acknowledges that:

- (a) the Lead Manager is not obliged to disclose to the Vendor or utilise for the benefit of the Vendor, any non-public information which the Lead Manager obtains in the normal course of its business where such disclosure or use would result in a breach of any obligation of confidentiality or any internal Chinese wall policies of the Lead Manager;
- (b) without prejudice to any claim the Vendor may have against the Lead Manager, no proceedings may be taken against any director, officer, employee or agent of the Lead Manager in respect of any claim that the Vendor may have against the Lead Manager; and
- (c) it is contracting with the Lead Manager on an arm's length basis to provide the services described in this agreement and the Lead Manager has not and is not assuming any duties or obligations (fiduciary or otherwise) in respect of it other than those expressly set out in this Agreement.

Yours sincerely,

SIGNED on behalf of
UBS AG, Australia Branch

by its duly authorised signatories



Signature of Authorised Signatory

JOHN SPENCER

Print name



Signature of Authorised Signatory

CHARLIE O'LEARY

Print name

Accepted and agreed to as of the date of this Agreement:

SIGNED on behalf of
Costa AFR Pty Ltd



Signature of Director/Secretary

ROBERT COSTA

Print name



Signature of Director/Secretary, if 2nd
signature is required

DAVID COSTA

Print name

**Schedule 1
Timetable**

	Time (Sydney time)	Date
Books open	5.00pm	20 November 2017
Trade Date (T)		21 November 2017
Settlement Date (T + 2)		23 November 2017