

AMENDMENTS TO THE CHALLENGER CAPITAL NOTES TERMS

Challenger Limited (ASX: CGF) (Challenger) today released amendments to the terms of Challenger Capital Notes (ASX: CGFPA) (Challenger Capital Notes 1 or CCN1), primarily to facilitate the Reinvestment Offer for Challenger Capital Notes 3 and the Repurchase Invitation.

Those amendments include terms permitting:

- the resale to a nominated purchaser of the Challenger Capital Notes 1 that are to be reinvested in Challenger Capital Notes 3 under the Reinvestment Offer;
- the resale to a nominated purchaser of the Challenger Capital Notes 1 that are the subject of a cash repurchase offer under the Repurchase Invitation; and
- the redemption by Challenger of the Challenger Capital Notes 1 acquired by the nominated purchaser immediately following an acquisition in accordance with the Reinvestment Offer and/or the Repurchase Invitation.

Full details of the Offer for Challenger Capital Notes 3 (including the Reinvestment Offer) are set out in the Prospectus that has been separately lodged with the Australian Securities and Investments Commission and on the Australian Securities Exchange today.

Full details of the Repurchase Invitation for eligible holders of Challenger Capital Notes 1 are set out in the Repurchase Booklet that is accompanying the Prospectus.

The amendments also permit Challenger to make subsequent Repurchase Invitations on future Distribution Payment Dates. Any subsequent Repurchase Invitation will be at Challenger's discretion and no decision has been taken to make any.

The amendments to the CCN1 Terms are highlighted in the attached amending and restating deed¹ and take effect from today. The amendments to the CCN1 Terms have been approved by the Trust Company (Australia) Limited as trustee under the Challenger Capital Notes Trust Deed dated 27 August 2014, as amended and restated and the Australian Prudential Regulation Authority, which confirmed it has no objection to the amendments in its letter to Challenger dated 2 October 2020.

¹ Provisions of the CCN1 Terms which will be removed by the amendments are shown with a line struck through the middle of the text. Provisions which will be inserted by the amendments are shown as underlined. All other text is unchanged by the amendments.

Defined terms referred to in this announcement have the same meaning given to them in the Challenger Capital Notes 3 Prospectus and Challenger Capital Notes Repurchase Booklet.

This document has been authorised for release by Challenger's Continuous Disclosure Committee.

ENDS

About Challenger

Challenger Limited (Challenger) is an investment management firm focusing on providing customers with financial security for retirement.

Challenger operates two core investment businesses, a fiduciary Funds Management division and an APRA-regulated Life division. Challenger Life Company Limited is Australia's largest provider of annuities.

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Disclaimer

This announcement does not constitute an offer of any securities (including Challenger Capital Notes 3) for sale or issue or for the purchase of any securities (including Challenger Capital Notes 1). No action has been taken to register or qualify Challenger Capital Notes 3 or the Offer or the Repurchase Invitation, or invitation to purchase Challenger Capital Notes 1, outside Australia. In particular, this announcement does not constitute an offer of securities for sale, or invitation to purchase securities, in the United States. Neither Challenger Capital Notes 3 nor the Challenger Capital Notes 1 have been or will be registered under the US Securities Act or the securities laws of any state of the United States, and they may not be offered or sold in the United States. Challenger Capital Notes 3 are being offered and sold in the Offer solely outside the United States pursuant to Regulation S under the US Securities Act.

Second Amending and Restating Deed – Challenger Capital Notes Trust Deed

Dated 13 October 2020

Challenger Limited (ABN 85 106 842 371) (**Issuer**)
The Trust Company (Australia) Limited (ABN 21 000 000 993) (**Trustee**)

King & Wood Mallesons

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Governor Phillip Tower
1 Farrer Place
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Second Amending and Restating Deed – Challenger Capital Notes Trust Deed Details

Parties	Issuer and Trustee	
Issuer	Name	Challenger Limited
	ABN	85 106 842 371
	Address	Level 15, 255 Pitt St Sydney NSW 2000 Australia
	Fax	+ 61 2 9257 7178
	Telephone	+61 2 9994 7000
	Attention	Company Secretary
	Trustee	Name
ABN		21 000 000 993
Address		Level 12, Angel Place, 123 Pitt Street Sydney NSW 2000 Australia
Fax		+61 2 8256 1414
Telephone		+61 2 9299 9000
Email		csf.team@perpetual.com.au
Attention		Manager, Retail Securities – Perpetual Corporate Trust
Date of deed	<u>13</u> October 2020	

Second Amending and Restating Deed – Challenger Capital Notes Trust Deed

General terms

1 Interpretation

1.1 Definitions

Capitalised terms which are not defined in this deed have the meaning given to them in the Challenger Capital Notes Trust Deed.

Challenger Capital Notes Trust Deed means the Original Trust Deed as amended and restated by this deed and set out in Annexure A to this deed.

Original Trust Deed means the document entitled “Challenger Capital Notes Trust Deed” dated 27 August 2014 (as amended and restated on 3 September 2014) between the Issuer and the Trustee.

1.2 Interpretation

Clause 20 (“Interpretation and definitions”) of Annexure A (Challenger Capital Notes Trust Deed) applies to this deed as if it were fully set out in this deed.

2 Amendment and restatement

As from the date of this deed, the Original Trust Deed is amended and restated as set out in Annexure A to this deed.

3 General

Clauses 18 (“Notices”) and 19 (“General”) of Annexure A (Challenger Capital Notes Trust Deed) apply to this deed as if they were fully set out in this deed.

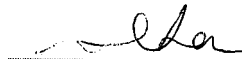
EXECUTED as a deed

Second Amending and Restating Deed – Challenger Capital Notes Trust Deed Signing page

Dated: 13 OCTOBER 2020

Trustee

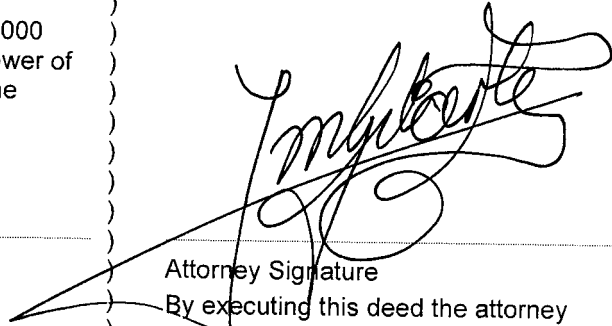
SIGNED SEALED AND DELIVERED
for **THE TRUST COMPANY**
(AUSTRALIA) LIMITED ACN 21 000
000 993 by its attorneys under power of
attorney dated 21 June 2017 in the
presence of:



Witness Signature

Shanila Khan

Print Name



Attorney Signature

By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

Juan Manuel Gilarte

Print Name

Attorney Signature


By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

Print Name

Second Amending and Restating Deed – Challenger Capital Notes Trust Deed

Issuer

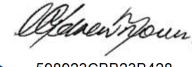
EXECUTED by **CHALLENGER LIMITED** (ABN 85 106 842 371) in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

DocuSigned by:

8E678CF620CD40C

Signature of director

Richard Howes

Name of director (block letters)

DocuSigned by:

598923CBB23B428...

Signature of ~~director~~/company secretary*

*delete whichever is not applicable

Andrew Brown

Name of ~~director~~/company secretary* (block letters)

*delete whichever is not applicable

Annexure A – [Second](#) Amended and Restated
Challenger Capital Notes Trust Deed

Challenger Capital Notes Trust Deed

Dated: 27 August 2014 (as amended and restated on 3 September 2014
[and as further amended and restated on 13 October 2020](#))

Challenger Limited (ABN 85 106 842 371) (“**Issuer**”)

The Trust Company (Australia) Limited (ABN 21 000 000 993) (“**Trustee**”)

King & Wood Mallesons

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Details

Interpretation – definitions are in clause 20 to this deed

Parties	Issuer and Trustee	
Issuer	Name	Challenger Limited
	ABN	85 106 842 371
	Address	Level 15, 255 Pitt St Sydney NSW 2000 Australia
	Fax	+61 2 9257 7178
	Telephone	+61 2 9994 7000
	Attention	Company Secretary
Trustee	Name	The Trust Company (Australia) Limited
	ABN	21 000 000 993
	Address	Level 12, Angel Place, 123 Pitt Street Sydney NSW 2000 Australia
	Fax	+61 2 8256 1414
	Telephone	+61 2 9299 9000
	Email	csf.team@perpetual.com.au
Attention	Manager, Retail Securities – Perpetual Corporate Trust	
Date of deed	27 August 2014 (as amended and restated on 3 September 2014 and as further amended and restated on 13 October 2020)	

Challenger Capital Notes Trust Deed

General terms

1 Benefit and burden of deed

1.1 Holders bound

Each Holder (and any person claiming through or under a Holder) is bound by, and is taken to have notice of, each Transaction Document. The Holders are taken to have authorised the Trustee to enter into each Transaction Document (other than this deed) in its capacity as trustee of the Trust.

It is a fundamental condition of receiving any of the rights or benefits under a Capital Note that a Holder 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 Terms) in respect of the Capital Note.

1.2 Limit on Holders' rights

All of the rights against the Issuer in connection with the Capital Notes are held by the Trustee for the Holders. Accordingly, subject to clause 1.4:

- (a) no Holder is entitled to directly enforce any rights, powers or remedies in connection with the Capital Notes (whether under this deed or the other Transaction Documents) against the Issuer; 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 Holder may exercise any of them (whether in its own name or the Trustee's name).

1.3 Enforcement on direction

Subject to the Transaction Documents and to section 283DA(h) of the Corporations Act, the Trustee may at any time in its discretion take action to enforce the Transaction Documents in accordance with their terms but is not required to take any such action unless:

- (a) the Trustee is requested to take such action:
 - (i) by Holders who hold in aggregate 15% or more of the Face Value of all Capital Notes then outstanding; or
 - (ii) by a Holder Resolution;
- (b) the Trustee is indemnified to its satisfaction, against:
 - (iii) all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action;
 - (iv) all Costs which the Trustee may incur in taking the action; and
 - (v) all reasonable management time spent by employees or officers of the Trustee in relation to such action which will be charged at the Trustee's standard hourly rates prevailing from time to time provided that such rates are reasonable and have been notified to and agreed with the Issuer in writing; and

- (c) the action is permitted under the Transaction Documents and is not prohibited by law.

1.4 Holder's right to take action

No Holder is entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Capital Note or this deed unless the Trustee, having become bound to proceed, fails to do so within 21 days and such failure is continuing, in which case any Holder may itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so.

1.5 Untraceable Holders

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

- (a) is required to pay any monies to a Holder; and
- (b) has made reasonable efforts to locate a Holder but is unable to do so;

then those monies:

- (i) must be paid by the Trustee to the Issuer, if the Trustee has actual possession and control of such moneys; and
- (ii) are to be held by the Issuer for the Holder in a non-interest bearing deposit with a bank selected by the Issuer until the Holder or any legal personal representative of the Holder claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

The Trustee is not liable to any Holder for any moneys paid to the Issuer under this clause 1.5. The Issuer indemnifies the Trustee from any and all costs, losses, liabilities, expenses, demands or claims suffered or incurred by the Trustee in respect of any moneys paid to the Issuer under this clause 1.5.

2 Capital Notes Trust Deed

2.1 Capital Notes Trust Deed

This deed:

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

2.2 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.

2.3 Constitution and status

The Capital Notes are unsecured, subordinated debt obligations of the Issuer constituted by, and owing under, this deed and to be issued on the Terms in accordance with the Offer. The obligations of the Issuer in respect of each Capital Note:

- (a) constitute separate and independent acknowledgments of the indebtedness of the Issuer;
- (b) are subject to the terms of this deed (including the Terms); and

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

The Capital Notes are not:

- (d) policies with any member of the Challenger Group for the purposes of the Life Insurance Act;
- (e) investments in any superannuation or other fund managed by a member of the Challenger Group; or
- (f) protected accounts with an approved deposit taking institution for the purposes of the depositor protection provisions of, or the financial claims scheme established under, the Banking Act 1959 (Cth).

2.4 Undertaking to pay

- (a) In respect of each Capital Note, the Issuer undertakes to the Trustee (as trustee for the relevant Holder), subject to any obligation of the Issuer to Convert or Write-off the Capital Notes, to pay the amounts due and payable in respect of that Capital Note under and in accordance with the Terms.
- (b) The Trustee directs the Issuer to pay such amounts under this deed directly to the Holders, unless a Winding-up Event has occurred and is subsisting in which event the payment must be made to the Trustee.
- (c) The payment of an amount due under a Capital Note to either the Holder or the Trustee discharges the obligation of the Issuer to pay that amount under that Capital Note to each of the Holder and the Trustee.

2.5 Unsecured notes

The Capital Notes are “unsecured notes” for the purposes of section 283BH of the Corporations Act.

3 Declaration of trust

3.1 Trustee

The Trustee is appointed and agrees to act as the trustee of the Trust established under this deed and the Corporations Act with effect from the date of this deed.

3.2 Constitution of Trust

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

3.3 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 Holders from time to time on the terms of this deed.

3.4 Name of Trust

The trust established under this deed will be known as the “Capital Notes Trust”.

3.5 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 on which the Issuer is discharged and released from its liabilities, obligations and covenants under this deed under clause 17.1; or
- (b) the date required by law.

3.6 Beneficiaries

Subject to the rights of the Trustee, the Holders are the persons beneficially entitled to the Trust Fund from time to time on the terms of this deed. They hold that beneficial entitlement as equitable tenants in common, provided that joint holders of a Capital Note shall hold as between themselves and the Issuer as joint tenants.

3.7 Safe custody of this deed

The Trustee will hold its counterparts of this deed in safe custody for itself and the Holders.

3.8 Receipt of moneys

All money received by the Trustee in respect of amounts payable under this deed must be held by the Trustee on trust to be applied in the following order:

- (a) first, in payment of all Costs incurred by or other amounts owing to, the Trustee under or in connection with any Transaction Document (including all remuneration payable to the Trustee and any amount payable under clause 6.2);
- (b) secondly, in or towards payment equally and rateably of all amounts due but remaining unpaid in respect of the Capital Notes; and
- (c) thirdly, in payment of the balance (if any) to the Issuer.

4 General powers, rights and responsibilities

4.1 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 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.

4.2 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 Holder, the Issuer or any other person, except as provided in the Transaction Documents.

4.3 Binding nature of relationship

Each Holder 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 Holder gave an instruction or approved of the thing done or not done.

4.4 Exercise of rights and compliance with obligations

- (a) **(Powers of a natural person)** The Trustee has all the powers of a natural person or corporation in connection with the exercise of its rights and compliance with its obligations under the Transaction Documents.
- (b) **(Exercise of powers)** Subject to clauses 15.1 and 15.2, the Trustee may exercise its rights and comply with its obligations under the Transaction Documents in any manner it thinks fit.
- (c) **(Waiver)** The Trustee may waive in writing, at any time and on any terms or conditions, any breach by the Issuer under this deed, provided that where a Winding-up Event has occurred and is subsisting, the Holders have by a Holder Resolution consented in writing to the waiver and, where the waiver may cause APRA to object to the Challenger Group using, or having used, the proceeds of the issue of some or all of the Capital Notes to fund Additional Tier 1 Capital of CLC, only if the prior written approval of APRA has been obtained. The Trustee is entitled to accept an Officer's Certificate delivered to it by the Issuer and attaching evidence that APRA's approval is not required, or if required has been obtained from APRA, as conclusive evidence that the APRA approval of the waiver is not required, or if required has been obtained.
- (d) **(Dealings with the Issuer)** The Trustee (including an officer or employee of the Trustee) and its Related Bodies Corporate may, without being liable to account to the Issuer or any Holder for any benefit derived by doing so:
 - (i) hold, in any capacity, Capital Notes, shares or any other marketable securities issued by the Issuer or any other entity in the Challenger Group;
 - (ii) in any capacity, represent or act for, or contract with, individual Holders;
 - (iii) deal in any capacity with the Issuer or any of its Related Bodies Corporate or associates; or
 - (iv) act in any capacity in relation to any other trusts,but the Trustee may not act in a manner which would preclude the Trustee from acting as trustee of the Trust under Chapter 2L of the Corporations Act.

4.5 Trustee's undertakings

The Trustee must:

- (a) exercise its duties under Chapter 2L of the Corporations Act;
- (b) act honestly and in good faith and comply with all laws in performing its duties and in the exercise of its discretions under this deed;
- (c) exercise such reasonable diligence and prudence as a person carrying on the business of a professional trustee would exercise in performing its duties and in the exercise of its discretions under this deed;
- (d) keep, or cause to be kept, accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee under this deed; and

- (e) keep the assets of the Trust which are held by the Trustee separate from all other assets of the Trustee which are held in a capacity other than trustee under this deed.

5 Delegation and reliance on advice

5.1 Power to delegate

The Trustee may employ agents, contractors and attorneys and may delegate any of its rights, powers, authorities or discretions conferred on it under this deed without notifying any person of the employment or delegation provided that the Trustee reasonably believes that it is fit, proper and appropriate to so employ, contract, engage or delegate.

5.2 Trustee may rely on communications and opinions

In relation to any Transaction Document, and any exercise of its rights or powers thereunder, the Trustee may rely:

- (a) 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;
- (b) as to legal, accounting, taxation or other professional matters, on advices, opinions and statements received by it from any legal, accounting, taxation or professional advisers engaged or appointed by it in relation to the interpretation of any Transaction Document or any other document (whether statutory or otherwise) or generally in connection with the Trust, provided that it reasonably believes the adviser engaged or appointed by it is fit, proper and appropriate; and
- (c) on any other document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely,

and the Trustee will not be liable for anything done, suffered or omitted to be done by it in good faith in reliance upon such decision, advice, statement, communication or document, unless there is manifest error on the face of the opinion, advice, statement, communication or document of which the Trustee is aware.

5.3 Trustee may seek direction

In relation to any matter connected with the Transaction Documents, the Trustee may (but need not) do one or both of the following:

- (a) obtain and rely in good faith on advice from any adviser referred to in clause 5.2(b); or
- (b) apply to a court for any direction or order the Trustee reasonably considers appropriate and comply with any such directions or orders.

If there is any dispute or ambiguity in relation to any matter connected with the Transaction Documents, as long as the Trustee is using reasonable endeavours to resolve any such dispute or ambiguity, the Trustee may (but need not) refuse to do anything in relation to matters affected by the dispute or ambiguity and will not be liable to the Holders for so refusing to act.

6 Trustee indemnity

6.1 Corporations Act

The Trustee's right of indemnity and any limitation on the Trustee's liability under the Transaction Documents is subject to, and limited to the maximum extent to which it is valid under, the Corporations Act.

6.2 Indemnity

The Trustee, its officers, directors, employees and attorneys (together included in the defined term "Trustee" for the purposes of this clause 6.2) are entitled to be indemnified by the Issuer and, without limitation, out of the property of the Trust Fund in respect of all costs, losses, liabilities, expenses, Taxes, demands or claims suffered or properly incurred by the Trustee in the execution of the Trust or any of the powers, authorities or discretions vested in the Trustee under this deed and any other Transaction Document, but this indemnity does not extend to:

- (a) any such costs, losses, liabilities, expenses, demands or claims to the extent arising out of a Trustee Default; or
- (b) any Taxes (excluding any Indirect Tax) imposed on the Trustee's remuneration for its services as Trustee.

The Trustee may retain and pay out of any moneys in its hand in priority to any claim by a Holder, all sums necessary to effect and satisfy an amount due and payable to the Trustee under this clause 6.

6.3 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.

6.4 No obligation to act

Without limiting clause 1.3, 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 reasonable satisfaction against any expense or liability which it may incur as a result of doing so including but not limited to all actions, proceedings claims and demands to which it may render itself liable as a result of carrying out any act.

6.5 No personal indemnity by Holders

Except as otherwise agreed with any Holder or Holders in accordance with the taking of action by the Trustee as directed by the Holders as contemplated in clause 6.4, the Trustee is not entitled to be indemnified by any Holder personally.

6.6 Survival

The provisions of this clause 6 (including, without limitation, the indemnities) 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.

7 Trustee's liability

7.1 Limitation of liability

- (a) The Trustee enters into this deed in its capacity as trustee of the Trust and in no other capacity.
- (b) The Issuer and Holders acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to

the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.

- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
- (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the Trust Fund; and
 - (ii) there is sufficient property held by the Trustee as trustee of the Trust at the time, which is available to meet that indemnity amount (after all Trust assets have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to paragraph (e), no person will be entitled to:
- (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust,
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in paragraphs (c) and (d) do not apply to any Trustee Liability to the extent to which there is, whether under this deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust Fund, as a result of a Trustee Default.
- (f) The Issuer and Holders agree that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will be considered a Trustee Default for the purposes of paragraph (e) to the extent to which the act or omission was caused or contributed to by any failure of the Issuer or a Holder to fulfil their obligations relating to the Trust or by any other act or omission of that person or by the non-performance of any other person of any of their obligations under or in respect of this deed or any other Transaction Document.
- (g) No attorney, agent or other person appointed in accordance with this deed or any other Transaction Document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered a Trustee Default for the purposes of paragraph (f).
- (h) This limitation of the Trustee's liability applies, subject to clause 6.1, despite any other provisions of this deed or any other Transaction Document or any provisions of equity or law to the contrary and extends

to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed or any other Transaction Document or their performance.

- (i) The Trustee is not obliged to do or refrain from doing anything under this deed or any other Transaction Document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in paragraphs (a) to (h).
- (j) The Trustee is not liable to a Holder for the acts of any nominee appointed under clause 8.10 or clause 8.11 of the Terms to sell the Ordinary Shares and has no duties in connection with any such sale and no responsibility for any costs, losses, liabilities, expenses, demands or claims which arise as a result of such sale.
- (k) In this clause 7.1, "**Trustee Liability**" means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this deed or any other Transaction Document or their performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this deed or any other Transaction Document or their performance.

7.2 Certificate by Issuer

The Trustee is entitled to:

- (a) accept and rely upon an Officer's Certificate as to any fact or matter as conclusive evidence of it;
- (b) accept, rely upon and act upon any information, statement, certificate, report, balance sheet or account supplied by the Issuer or any duly authorised officer of the Issuer as conclusive evidence of the contents of such; and
- (c) accept, rely upon and act upon the statements (including statements given to the best of knowledge and belief or similarly qualified) and opinions contained in any statement, certificate, report, balance sheet or accounts given under the provisions of, or in relation to, this document as conclusive evidence of the contents of it,

in each case in the absence of the Trustee's knowledge of any manifest error.

The Trustee is not bound to call for further evidence other than such certificate, statement, report, balance sheet or accounts nor to enquire as to their accuracy and is not responsible for any costs, losses, liabilities, expenses, demands or claims that may be occasioned by its relying on them provided the Trustee has no knowledge that the relevant certificate, statement, report, balance sheet or accounts was not accurate or, as the case may be, the relevant document was not authentic.

7.3 Evidence of claims

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

- (a) the amounts of the claims of the creditors which have been admitted in any liquidation, dissolution or other winding up and which will not have been satisfied in full out of the other assets of the Issuer; and

(b) the persons entitled to those assets and their respective entitlements.

7.4 Certificate

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

7.5 Not bound to give notice

The Trustee is not bound to give notice to any person of the execution of this deed or any other Transaction Documents and the Trustee is not bound to take any steps to ascertain whether any event has happened upon the happening of which Capital Notes become immediately payable.

7.6 No monitoring obligation

Notwithstanding any other provisions of the Transaction Documents, but subject to the Trustee's obligations under the Corporations Act, the Issuer acknowledges that the Trustee has no obligation to monitor compliance by the Issuer with its covenants and obligations under the Transaction Documents or any other activities or status of the Issuer whatsoever including taking steps to ascertain whether there has occurred or is likely to occur any Non-Viability Trigger Event or Inability Event.

7.7 Holder capacity

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

7.8 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 (as the case may be) 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.

7.9 Acting on directions

To the extent permitted by law, the Trustee is not liable to a Holder for acting in accordance with any Holder Resolution or any other direction given by any Holder or Holders in accordance with this deed or the Terms with which the Trustee is required to comply.

8 Fees and expenses

8.1 Fees

The Issuer agrees to pay fees to the Trustee on terms agreed between the Issuer and the Trustee from time to time. The payment of such fees must be made by the Issuer by transfer to such account nominated from time to time by the Trustee to the Issuer or by such other means notified by the Trustee to the Issuer from time to time.

8.2 Costs and expenses

The Issuer must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Transaction Documents and must pay the Trustee on demand for:

- (a) all reasonable expenses (including reasonable legal fees, costs and disbursements) reasonably incurred in connection with negotiating, preparing and executing the Transaction Documents, and any subsequent consent, agreement, approval, waiver or amendment relating to the Transaction Documents;
- (b) all losses and expenses (including legal fees, costs and disbursements, determined without taxation, assessment, or similar process) incurred in connection with exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under the Transaction Documents;
- (c) all losses and expenses (including legal fees, costs and disbursements) suffered or properly incurred by the Trustee which arise out of, or in the course of, the Trustee acting as the trustee of the Trust, except where such expenses are incurred by the Trustee as a direct result of a Trustee Default; and
- (d) where the Trustee incurs expenses as the result of a Winding-up Event and these expenses would not have been incurred had there not been a Winding-up Event, the Trustee has the discretion to demand such expenses are recovered at an hourly rate, provided these expenses are properly incurred by or on behalf of the Trustee.

9 Retirement and removal of Trustee

9.1 Retirement

Subject to compliance with the relevant statutory requirements for the time being, the Trustee may retire (without giving any reason for its retirement) at any time upon giving not less than 60 days' notice (or such other period as the Trustee and the Issuer may agree) in writing to the Issuer of its intention to do so.

9.2 Eligible Trustee

Subject to clause 9.3, the power to appoint a new Trustee (which new Trustee must be an Eligible Trustee) is vested in the Issuer.

9.3 Trustee may appoint Eligible Trustee

Subject to the Corporations Act, if 60 days (or such other period as the Trustee and the Issuer may agree) after the Trustee has given notice in writing to the Issuer of its desire to retire, a new Trustee has not been appointed, the retiring Trustee may appoint (or, in its discretion, apply to the court for the appointment of) an Eligible Trustee as the new Trustee and any such appointment will be effective without the approval of the Issuer or the Holders being required, but the Trustee may, in lieu of exercising the power conferred by this clause 9.3, call a meeting of Holders for the purpose of appointing by the passing of a Holder Resolution a person nominated either by the Trustee or by any Holder as the new Trustee.

9.4 When retirement to take effect

Notwithstanding anything contained in this clause 9, the Trustee covenants that the retirement of the Trustee under this clause 9 will not take effect unless and until:

- (a) a new Trustee (being an Eligible Trustee) has been appointed; and
- (b) the new Trustee has executed a deed whereby it agrees to perform the obligations of the Trustee under the Transaction Documents,

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

9.5 Removal of Trustee

- (a) Subject to compliance with the relevant statutory requirements for the time being, where:
- (i) the Trustee is in breach of its obligations under any Transaction Document in any material respect and has not rectified the breach within 7 Business Days of receiving a notice from the Issuer specifying the breach and requesting that it be remedied;
 - (ii) a Trustee Default has occurred and is continuing;
 - (iii) the Trustee ceases or has ceased or has expressed an intention to cease to carry on business;
 - (iv) the Trustee is placed in liquidation or is wound-up or dissolved;
 - (v) a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Trustee;
 - (vi) any licence, consent, authorisation, permit or similar thing the Trustee is required to hold to carry out its obligations and duties under or in respect of this deed is revoked or not renewed;
 - (vii) the Issuer becomes aware that any of the things referred to in section 283BD of the Corporations Act have occurred;
 - (viii) the Trustee ceases to be a person who can be appointed a trustee under section 283AC(1) of the Corporations Act;
 - (ix) the Trustee cannot continue to act as Trustee because of the operation of section 283AC(2) of the Corporations Act;
 - (x) the Issuer is authorised or requested to do so by a meeting of the Holders called under clause 14; or
 - (xi) the Trustee has breached section 283DA(a), (b) or (c) of the Corporations Act,

the Issuer may remove the Trustee by giving not less than 60 days' notice to the Trustee (or such other period as the Trustee and the Issuer may agree).

- (b) Any removal of the Trustee under this clause 9.5 will only take effect upon the appointment of a new Trustee under clause 9.3 or under section 283AE of the Corporations Act.
- (c) On the retirement or removal of the Trustee, the Trustee must at the cost of the Issuer do all such things and execute all such deeds and assurances as are necessary for the purpose of vesting in a new Trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed. The Trustee is entitled to its remuneration up to the date of its retirement or removal and reimbursement for its costs of complying with this clause 9.5(c).

9.6 Reasonable steps

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

- (a) has ceased to exist;

- (b) has not been validly appointed;
- (c) cannot be a trustee under section 283AC of the Corporations Act; or
- (d) has failed or refused to act as Trustee.

9.7 Discharge

- (a) By force of this clause 9.7, when the Trustee retires or is removed, the Trustee is, to the extent permitted by law, discharged and released from its obligations, covenants and liabilities under this document arising after the date it retires or is removed. The Issuer must then, if required by the Trustee, execute a confirmation of release in favour of the trustee in a form and substance reasonably acceptable to the Trustee.
- (b) Notwithstanding the retirement or removal of the Trustee, the former Trustee will continue to be entitled to the indemnities contained in this deed and any other Transaction Document in relation to all acts and omissions occurring up to the date of its retirement, removal or replacement and it may retain copies of any documents and records required by it and which it reasonably considers to be relevant and will be given reasonable access to any other documents and records by the new Trustee.

9.8 ASIC

The Issuer must advise ASIC of the name of the Trustee and:

- (a) if the Trustee has an ACN, the Trustee's ACN; or
- (b) if the Trustee does not have an ACN, the Trustee's ABN,

within 14 days after the Trustee or a new Trustee is appointed.

10 Covenants

10.1 Issuer's general duties

The Issuer must, for so long as any of the Capital Notes remain outstanding:

- (a) carry on and conduct its business in a proper and efficient manner;
- (b) if requested by a Holder or the Trustee, provide a copy of this deed to the Holder or the Trustee (as the case may be);
- (c) make all of its financial and other records available for inspection by:
 - (i) the Trustee;
 - (ii) an officer or employee of the Trustee authorised by the Trustee to carry out the inspection; or
 - (iii) a registered company auditor appointed by the Trustee to carry out the inspection,

and give them any information, explanations or other assistance that they require about matters relating to those records;

- (d) notify the Trustee promptly after it becomes aware of a Winding-up Event, a Non-Viability Trigger Event, an Inability Event or a breach by the Issuer of Chapter 2L of the Corporations Act or the Terms;
- (e) keep proper books of account;
- (f) maintain, or cause to be maintained, a Register;
- (g) if the Issuer creates a security interest (as defined in the Corporations Act), provide the Trustee with written details of the security interest within 21 days after it is created and, if the total amount to be advanced on the security of the security interest is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else, provide the Trustee with written details of the amount of each advance within 7 days after it is made;
- (h) comply with the Terms;
- (i) provide to the Trustee:
 - (i) within 120 days after the close of each financial year, a copy of the Issuer's audited financial statements lodged with ASIC in respect of that financial year;
 - (ii) within 90 days after the close of each financial half year, a copy of the Issuer's unaudited financial statements lodged with ASIC in respect of that half year;
 - (iii) copies of all documents and notices given by it to Holders generally at the same time as they are given to Holders; and
 - (iv) all other information or reports required to be provided to the Trustee under the Corporations Act or requested by the Trustee which is reasonably required for the purposes of the discharge of the duties, trusts and powers vested in the Trustee under this deed or imposed upon it by law,

and, if requested by a Holder, provide copies of any of the above to such Holder within a reasonable time of such request; and
- (j) comply with all statutory and regulatory requirements applicable to it (including under Chapter 2L of the Corporations Act) to the extent they relate to its obligations under the Transaction Documents, where a failure to do so would have or would be likely to have a Material Adverse Effect.

10.2 Reports

The Issuer undertakes to comply with its reporting obligations to the Trustee, to the Holders and ASIC under the Corporations Act (including section 283BF and section 318), the ASX Listing Rules and the ASTC Settlement Rules. For the purpose of subsection 283BF(2) of the Corporations Act, the Issuer fixes 31 March 2015 as the last day of the relevant first quarter.

10.3 Authorisations

The Issuer undertakes to promptly obtain and renew all necessary consents, filings and authorisations relating to its business and the entry into and performance of its obligations under the Transaction Documents where failure to do so would have or would be likely to have a Material Adverse Effect.

10.4 Benefit

The Trustee declares and acknowledges that the benefit of the undertakings and covenants of the Issuer in this deed is held on trust by the Trustee for the benefit of the Holders.

11 Representations and warranties

11.1 Representations and warranties by the Issuer

The Issuer makes the following representations and warranties to the Trustee:

- (a) **(incorporation and existence)** it has been incorporated as a company limited by shares in accordance with the law of its place of incorporation, is validly existing under that law and has power and authority to carry on its business as it is now being conducted;
- (b) **(power)** it has the power to enter into the Transaction Documents to which it is a party and to issue Capital Notes and to comply with its obligations under each of them;
- (c) **(no contravention or exceeding power)** the Transaction Documents and the transactions under them which involve it do not contravene its constituent documents (if any) or any law, directive or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (d) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, to comply with its obligations and exercise its rights under them, to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under the Transaction Documents constitute (and in the case of the Capital Notes, when issued will constitute) legal, valid, binding and (subject to insolvency and other laws generally affecting creditors' rights and the discretionary nature of equitable remedies) enforceable obligations;
- (f) **(accounts)** its most recent audited financial statements lodged with ASIC:
 - (i) were prepared in accordance with the applicable accounting standards for a financial year; and
 - (ii) are a true and fair statement of its financial position as at the date to which they are prepared and disclose or reflect all its actual and contingent liabilities as at that date;
- (g) **(no Winding-up)** no Winding-up Event has occurred and is subsisting or will result from the issue of the Capital Notes;
- (h) **(No proceedings)** except as disclosed in the Prospectus, it is not aware of any pending or threatened proceeding affecting it or any of its Subsidiaries or any of their assets before a court, authority, commission or arbitrator except those in which a decision against it or the Subsidiary (either alone or together with other decisions) are not likely to have a Material Adverse Effect;
- (i) **(no immunity)** neither it nor any of its assets has any immunity from set off, suit or execution;

- (j) **(not as trustee)** it does not enter into any of the Transaction Documents as trustee; and
- (k) **(solvency)** it is solvent (as that term is defined in the Corporations Act).

11.2 Representations and warranties by the Trustee

The Trustee makes the following representations and warranties to the Issuer:

- (a) **(Status)** the Trustee is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) **(Power, authority and due authorisation)** the Trustee:
 - (i) has the power and authority to own its assets and to carry on its business as, and in such places or places as, it is now being conducted;
 - (ii) has the power to enter into, and exercise its rights and perform and comply with its obligations (if any) under the Transaction Documents;
 - (iii) has taken or will take all necessary action to authorise the entry into the relevant Transaction Documents and the performance of all its obligations under those documents; and
 - (iv) meets the requirements of a trustee as provided in sections 283AC(1) and 283AC(2) of the Corporations Act;
- (c) **(Binding obligations)** the obligations assumed by it in the Transaction Documents are legal, valid, binding and enforceable under their terms, subject to any necessary stamping and registration and subject to principles of equity and laws affecting creditors' rights generally and legal reservations in any legal opinions delivered in connection with the issue of the Capital Notes; and
- (d) **(Transactions permitted)** the entry into and performance by it of any obligations under the Transaction Documents, the exercise by it of any right or the performance or observance of any obligation under any of those documents, and the transactions contemplated by them does not (and will not) breach or conflict with:
 - (i) any laws and regulations applicable to it or any directive of any Government Agency;
 - (ii) any agreement or instrument (including any encumbrance) binding on it; or
 - (iii) its constitutional documents.

11.3 Reliance

The Issuer and the Trustee acknowledge that they have each entered into this deed in reliance on the representations and warranties in, or given under, this deed, including under clause 11.1 and clause 11.2 (as the case may be).

12 Issue of Capital Notes

12.1 Issue

Subject to the terms of this deed, the Issuer may issue Capital Notes to any person under the Terms.

12.2 Issue upon entry in Register

The Issuer may create and issue Capital Notes by registering, or causing the registration of the relevant applicants (or their nominees) in the Register as the holders of the relevant number of Capital Notes on or about the Issue Date.

A Capital Note is issued when the initial Holder is entered in the Register as the holder of the Capital Note.

A Capital Note in respect of which an entry is made in the Register is (subject to correction for fraud or error) taken to have been validly issued under this deed when the first such entry is made, regardless of any non-compliance by the Issuer with the provisions of this deed.

12.3 No certificates

Except to the extent required by law or otherwise determined by the Issuer, no certificates (as distinct from Statements of Holding) in respect of the Capital Notes will be issued by the Issuer or the Trustee.

12.4 Statement of Holding

- (a) The Issuer or the Registrar (as applicable) must issue to each Holder a Statement of Holding as soon as reasonably practicable after the Issue Date for the Capital Notes and in any event within 15 Business Days of the Issue Date for the Capital Notes.
- (b) A Statement of Holding is no assurance or guarantee that any amounts will be paid to the Holder.

12.5 Issuer dealing with Capital Notes

The Issuer or any of its Related Entities may purchase or otherwise deal with any Capital Notes in accordance with the Terms.

13 Registers

13.1 Registers

The Issuer must establish and maintain, or procure the establishment and maintenance of, a register of the Holders of Capital Notes. The Issuer must enter into the relevant Register in respect of a Capital Note and each Holder:

- (a) the name of the Holder or, in the case of joint Holders, the names of the first two Holders on the application form or Transfer Form for such Capital Note;
- (b) the address of the Holder or, in the case of joint Holders, the address of each Holder whose name first appears on the application form or Transfer Form for such Capital Note;
- (c) the number and amount of Capital Notes held by such Holder;
- (d) if provided, their Australian tax file number or evidence of any exemption from the need to provide an Australian tax file number;
- (e) if provided, their Australian Company Number, Australian Business Number or other Australian identifying registration number;
- (f) the account to which payments in respect of the Capital Note are to be paid or the address to which payments are to be posted;
- (g) the Issue Date; and

- (h) any other particulars the Issuer considers desirable or are required under this deed or by law.

13.2 Location of Register

The Register will be kept at:

- (a) the Registrar's principal place of business in New South Wales;
- (b) such other place in Australia approved by the Issuer and the Registrar where the work involved in maintaining the Register is done; or
- (c) another place in Australia approved by ASIC,

provided that the Register must not be located in South Australia.

13.3 Issuer not liable for mistakes

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

13.4 Trustee may accept correctness

In the absence of manifest error or an error proven to the Trustee, a Register is conclusive evidence of the ownership of the Capital Notes and the Trustee is entitled to accept the correctness of all information contained in a Register without investigation and is not liable to any person for any error in it.

13.5 Inspection

Without limiting the Issuer's obligations under the Corporations Act, the Holders, the Trustee and persons duly authorised by any of them may inspect the Register free of charge during normal business hours. Nothing in this deed limits the ability of the Issuer to charge a fee for inspection of the Register to persons other than Holders, the Trustee and persons duly authorised by them.

13.6 Change in information

A Holder must advise the Issuer of any change to the information noted in the Register in respect of that Holder. On receipt of such advice, the Issuer must promptly update the information contained in that Register.

The Issuer is not however obliged to change the information contained in the Register while it is closed.

13.7 Rectification of Register

If:

- (a) an entry is omitted from the Register;
- (b) an entry is made in the Register otherwise than under this deed;
- (c) an entry wrongly exists in the Register;
- (d) there is an error or defect in any entry in the Register; or
- (e) a default is made or an unnecessary delay takes place in entering into the Register that any person has ceased to be the holder of a Capital Note or any other information,

the Issuer may rectify the same. None of the Issuer or the Trustee is liable for any loss, Costs or liability incurred as a result of any of the above occurring.

13.8 Appointment of Registrar

The Issuer may cause the Register to be maintained by a third party on its behalf and require that person to:

- (a) discharge the Issuer's obligations under this deed in connection with the Register and transfers of Capital Notes; and
- (b) assist it in the supply and delivery of the information, records and reports required by law.

Neither the Issuer nor the Trustee is liable for any act or omission of any person appointed by the Issuer under this clause 13.8, provided that the Issuer will be liable unless it has taken reasonable steps to select a person competent to perform the intended functions. If the Issuer is not establishing or maintaining the Register, the Issuer must immediately notify the Trustee of the person who is establishing and maintaining the Register.

13.9 Replacement of Registrar

If the Issuer is actually aware that the Registrar is not performing its duties, the Issuer shall take reasonable steps to remove the Registrar and replace it with a person it reasonably believes is competent to perform the intended functions.

13.10 Copy to the Trustee

The Issuer will give, or cause to be given, to the Trustee, a complete copy (which may be in electronic or written form as the Issuer so determines) of the Register as soon as is reasonably practicable after the Trustee so requests.

13.11 Property in Capital Notes situated where Register is

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

13.12 Clearing System sub-register

If the Capital Notes are lodged or approved for entry on a Clearing System which involves the maintenance of a sub-register, then the rules and regulations of that Clearing System with respect to that sub-register prevail to the extent of any inconsistency with this clause 13 in connection with the Capital Notes.

14 Meetings of Holders

14.1 Meeting provisions

The Trustee and the Issuer agree to call and hold meetings of Holders under the Meeting Provisions, the Corporations Act and the ASX Listing Rules.

14.2 Holder Resolution

Subject to clause 14.3, Holders may, by a Holder Resolution:

- (a) approve the alteration of this deed under clause 15.1(b)(ii); and
- (b) give directions to the Trustee as to, or authorise, ratify or confirm anything done or not done by the Trustee in respect of the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to the Transaction Documents or the Capital

Notes, or any other instrument to which the Trustee is or becomes a party in the capacity of trustee under this deed.

To the extent permitted by law, the Trustee is not liable to a Holder, the Issuer or any other person for acting on directions given by the Holders under this deed, or under any authorisation, resolution or confirmation made or given by the Holders to the Trustee in any form whatsoever.

14.3 Special Resolution

Notwithstanding any other term of this deed, Holders may by a Special Resolution:

- (a) approve the release of the Trustee from liability for something done or omitted to be done by the Trustee or any other person before the release is given;
- (b) approve any act taken or to be taken by the Trustee; and
- (c) approve the alteration of this deed under clause 15.1(b)(iii) or 15.1(b)(iv).

15 Alteration

15.1 Alteration

- (a) At any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, with the approval of the Trustee (such approval not to be unreasonably withheld or delayed), but without the consent of the Holders, alter the Terms in accordance with the Terms and this deed.
- (b) At any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, with the approval of the Trustee (such approval not to be unreasonably withheld or delayed) by a supplemental deed, alter this deed (other than the Terms):
 - (i) without the consent of the Holders, if the Issuer is of the opinion such alteration is:
 - (A) of a formal or technical or minor nature;
 - (B) made to cure any ambiguity or correct any manifest error;
 - (C) necessary or expedient for the purpose of enabling the Capital Notes to be:
 - (aa) listed for quotation, or to retain quotation, on any securities exchange; or
 - (ab) offered for subscription or for sale under the laws for the time being in force in any place;
 - (D) necessary to comply with:
 - (aa) the provisions of any statute or the requirements of any statutory authority;
 - (ab) the ASX Listing Rules or the listing or quotation requirements of any securities exchange on

which the Issuer may propose to seek a listing or quotation of the Capital Notes;

- (E) in respect of any date or time period stated, required or permitted in connection with any Mandatory Conversion, Non-Viability Conversion or Exchange in a manner necessary to facilitate the Mandatory Conversion, Non-Viability Conversion or Exchange (including without limitation where in connection with a Redemption the proceeds of Redemption are to be reinvested in a new security to be issued by the Issuer or a Related Entity); or
- (F) in any other case, not materially prejudicial to the interests of the Holders as a whole,

provided that, in the case of an alteration pursuant to paragraph (C), (D) or (F), the Issuer has provided to the Trustee an opinion which is addressed to the Trustee and in form reasonably satisfactory to it of independent legal advisers of recognised standing in New South Wales that such alteration is otherwise not materially prejudicial to the interests of Holders as a whole.

For the purposes of determining whether an alteration is not materially prejudicial to the interests of Holders as a whole, the taxation and regulatory capital consequences to Holders (or any class of Holders) and other special consequences or circumstances which are personal to a Holder (or any class of Holders) do not need to be taken into account by the Issuer or such legal advisers;

- (ii) except as otherwise provided in paragraphs (iii) and (iv) below, if such alteration is authorised by a Holder Resolution;
- (iii) in the case of an alteration to this clause 15 or any clause of this deed providing for Holders to give a direction to the Trustee by a Special Resolution, if a Special Resolution is passed in favour of such alteration; or
- (iv) in the case of an alteration to the Meeting Provisions and to which paragraph (b)(i) of this clause 15.1 does not apply, if a Special Resolution is passed in favour of such alteration.

15.2 Consent

Prior to any alteration under clause 15.1, the Issuer must obtain any consent needed to the alteration under any Transaction Document and, in particular, any alteration of any Transaction Document which may cause APRA to object to the Challenger Group using, or having used, the proceeds of the issue of some or all of the Capital Notes to fund Additional Tier 1 Capital of CLC, is subject to the prior written approval of APRA. The Trustee is entitled to accept an Officer's Certificate delivered to it by the Issuer and attaching evidence that APRA's approval is not required, or if required has been obtained from APRA, as conclusive evidence that the APRA approval of the alteration is not required, or if required has been obtained.

15.3 No consent of Senior Creditors

Nothing in this clause 15 shall be taken to require the consent of any Senior Creditor to any alteration of any Transaction Document.

15.4 Interpretation

In this clause 15, “alter” includes modify, cancel, amend, waive or add to, and “alteration” has a corresponding meaning.

16 Confidentiality

16.1 Financial information

The Trustee has no duty or obligation to provide any Holder with any financial information relating to the Issuer provided that the Trustee shall, at the request of a Holder, provide to that Holder copies of any financial statements received by the Trustee under clause 10.1(i).

16.2 Confidential Information

The Trustee must keep confidential all Confidential Information (as defined below) of the Issuer except:

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

16.3 Undertaking

The Trustee agrees to use its reasonable endeavours to ensure that every person to whom it provides Confidential Information under this clause 16 (except clauses 16.2(a) and 16.2(b)) gives and performs obligations under a confidentiality undertaking in the same terms as this clause 16.

16.4 Meaning

In this clause 16, “**Confidential Information**” means all information and other material provided to or obtained by the Trustee, a delegate or any officer, employee, professional adviser or other consultant of the Trustee under, in connection with or related to a Transaction Document or any obligation, duty or power of the Trustee under a Transaction Document, that is not in the public domain.

17 Discharge and release

17.1 Discharge and release

By force of this clause 17, the Issuer will immediately be discharged and released from its liabilities, obligations and covenants under this deed when:

- (a) if no Capital Notes have been issued, any date specified by the Issuer by notice to the Trustee; or
- (b) if any Capital Notes have been issued, when:

- (i) the Face Value for each Capital Note and any Interest due and payable as at that date have been paid in full or otherwise Redeemed or satisfied or the Capital Note has been Converted or Written Off;
- (ii) the Issuer provides an Officer's Certificate stating that the Face Value for each Capital Note and any Interest due and payable as at that date have been paid in full or otherwise Redeemed or satisfied or the Capital Note has been Converted or Written Off; or
- (iii) all fees, costs, charges and expenses reasonably incurred by the Trustee and all other amounts which are payable or reimbursable by the Issuer have been paid.

The Trustee must then, if required by the Issuer, execute a confirmation of discharge and release in favour of the Issuer (which includes a statement that the requirements of this clause 17 have been satisfied) and terminate this deed and this deed will terminate on such a confirmation being given, without prejudice to clause 6.6. The Trustee is, to the extent permitted by law, discharged and released from its obligations, covenants and liabilities under this deed with effect from the termination of this deed.

17.2 Distribution

If this deed is terminated under clause 17.1, the Trustee will distribute the balance of the capital and income (if any) of the Trust (including cash) at the direction of the Issuer.

18 Notices

18.1 Notices to Holders

All notices and other communications by the Issuer to a Holder must be in writing and sent by fax or prepaid post (airmail if appropriate) to or left at the address of the Holder (as shown in the Register at the close of business on the day which is three Business Days before the date of the notice or communication) or sent by email or electronic message to the electronic address (if any) nominated by that person and may also be given:

- (a) by an advertisement published in The Australian Financial Review, The Australian or any other newspaper of national circulation in Australia;
- (b) by delivery to a Clearing System for communication by such Clearing System to the persons shown in its respective records as having interests therein.

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

18.2 Delivery of certain notices

Notwithstanding clause 18.1, a notice under clause 3.7 of the Terms, a Non-Conversion Notice, a Non-Viability Trigger Event Notice, an Exchange Notice, a Deferred Conversion Notice, an Acquisition Event Notice, an Acquisition Conversion Notice, a Deferred Acquisition Conversion Notice, a notice under clause 8.3 of the Terms, an Adjustment Notice, a notice under clause 8.14(c) of the Terms, and a notice of change of Specified Office may each be given to Holders, the Trustee and the Registrar by the Issuer publishing the notice on the Challenger Group's website and announcing the publication of the notice on the ASX.

18.3 Notices

All notices and other communications to the Issuer, the Trustee, the Registrar or any other person (other than Holders) must be in writing and may be sent by fax or electronic messages to the electronic address (if any) of the addressee or by prepaid post (airmail if appropriate) to or may be left at the Specified Office of the Issuer, the Trustee, the Registrar or such other person.

18.4 When effective

Notices and other communications the subject of this clause 18 take effect from the time they are taken to be received unless a later time is specified in them. Nothing in this clause 18 affects the operation of clause 8.14 of the Terms.

18.5 Receipt - publication in newspaper or Clearing System

If published in a newspaper, a notice or other communication is taken to be received on the first date that publication has been made in all the required newspapers or on the fourth Business Day after delivery to a Clearing System.

18.6 Deemed receipt – postal, fax or email

- (a) If sent by post, notices or other communications the subject of this clause 18 are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).
- (b) If sent by fax, notices or other communications the subject of this clause 18 are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.
- (c) If sent by email, notices or other communications the subject of this clause 18 are taken to be received when:
 - (i) the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email), provided that the sender does not receive an automated message within those four hours that the email has not been delivered.

18.7 Deemed receipt - general

Despite clause 18.6, if notices or other communications the subject of this clause 18 are received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day in the place of receipt.

18.8 Copies of notices

If this deed requires a notice or other communication to be copied to another person, a failure to so deliver the copy will not invalidate the notice or other communication.

19 General

19.1 Application to Transaction Documents

If any provision in this deed is inconsistent with a provision in another Transaction Document, then the provisions in this deed prevail to the extent of the inconsistency.

19.2 Certificates

The Trustee may give to any other party to the Transaction Documents a certificate about an amount payable or other matter in connection with a Transaction Document. In the absence of manifest or proven error, that certificate is sufficient evidence of the amount or matter.

19.3 Remedies cumulative

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

19.4 Payments of commission, brokerage etc

The Issuer or another member of the Challenger Group may pay a commission, procuration fee, brokerage or any other fees to any person for subscribing or underwriting the subscription of or subscription for the Capital Notes.

19.5 Indemnities

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

19.6 Serving documents

Without preventing any other method of service, any document in a court action in connection with this deed or the Capital Notes may be served by being delivered to or left at that party's address specified in the Details (if relevant) or at the person's registered office or principal place of business.

19.7 Indirect Tax

- (a) All payments to be made by the Issuer under or in connection with any Transaction Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply for the purposes of Indirect Tax then, when the payer makes the payment:
 - (i) the payer must pay to the Trustee an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
 - (ii) the Trustee will promptly provide to the payer a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where a Transaction Document requires the Issuer to reimburse the Trustee for any Costs, the Issuer must also at the same time pay and indemnify the Trustee against all Indirect Tax incurred by the Trustee in respect of the Costs save to the extent that the Trustee is entitled to repayment or credit in respect of the Indirect Tax. The Trustee will promptly provide to the Issuer a tax invoice complying with the relevant law relating to that Indirect Tax. Unless notified by the Trustee, the Issuer must assume that the Trustee is not entitled to any input tax credit for that Indirect Tax. The Trustee must promptly notify the Issuer if it is entitled to any input tax credit for that Indirect Tax.

Terms used in this clause 19.7 have the meaning given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as appropriate).

19.8 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to this deed. If so, the signed copies are treated as making up the one document.

19.9 Governing law and jurisdiction

- (a) This deed and the Capital Notes are governed by the law in force in New South Wales.
- (b) Each party submits, and each Holder is taken to have submitted, to the non-exclusive jurisdiction of the courts of that place.
- (c) The Issuer waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

20 Definitions and interpretation

20.1 Definitions in Terms

Any term capitalised in this deed and not defined has the meaning given in the Terms.

20.2 Other definitions

In this deed, these meanings apply unless the contrary intention appears:

ASIC means the Australian Securities and Investments Commission;

Capital Note means an unsecured, subordinated debt obligation issued, or to be issued, by the Issuer on the terms and conditions set out in Schedule 1;

Clearing System means the Clearing House Electronic Sub-register System operated by ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532) or any other applicable securities trading and/or clearance system;

Costs includes costs, charges and expenses;

Details means the section of this deed headed "Details";

Eligible Trustee means a body corporate eligible to act as a trustee for the purposes of Section 283AA and 283AC of the Corporations Act;

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

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature;

Issuer means Challenger Limited (ABN 85 106 842 371);

Material Adverse Effect means an event or circumstance which (and, for the avoidance of doubt, after taking account of any warranty, indemnity or other right of recourse against any creditworthy third party with respect to the relevant event or circumstance provided that in each such case the benefit of each such warranty, indemnity, insurance, or other right of recourse is likely to be realised within a timeframe sufficient to negate the otherwise material adverse effect of the event or circumstance in question) has or would reasonably be expected to have a material adverse effect on:

- (a) the ability of the Issuer to meet its payment obligations in respect of the Capital Notes; or
- (b) subject to reservations or qualifications in any legal opinion accepted by the Trustee in connection with the issue of any Capital Notes or any Transaction Documents, the validity or enforceability of the rights and remedies (taken as a whole) of the Holders under the Transaction Documents.

Meeting Provisions means the provisions for meetings of the Holders set out in Schedule 2 to this deed;

Officer's Certificate means a certificate signed by a director or secretary of the Issuer;

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

Specified Office means the office specified in the Prospectus as the address of the relevant party or person or any other address notified to Holders from time to time;

Statement of Holding means a statement of holding (in the form determined by the Issuer and the Registrar from time to time) which sets out details of the number of Capital Notes inscribed in the Register in the Holder's name as at the date specified in the statement;

Subsidiary has the meaning given in the Corporations Act;

Terms means the terms and conditions of the Capital Notes as set out in Schedule 1;

Transaction Documents means:

- (a) this deed; and
- (b) any other document agreed by the parties in writing to be a Transaction Document for the purposes of this deed, provided that, if such Transaction Document may cause APRA to object to the Challenger Group using, or having used, the proceeds of the issue of some or all of the Capital Notes to fund Additional Tier 1 Capital of CLC, the written approval of APRA must be obtained prior to its execution;

Transfer Form means a transfer form substantially in the form determined by the Issuer;

Trust means the trust constituted by this deed;

Trustee means The Trust Company (Australia) Limited (ABN 21 000 000 993);

Trust Fund means:

- (a) the right to enforce the Issuer's duty to repay under the Capital Notes;
- (b) the right to enforce the Issuer's obligation to pay all other amounts payable under the Capital Notes;
- (c) the right to enforce any other duties or obligations that the Issuer has:
 - (i) under the Terms;
 - (ii) under this deed;

- (iii) to the Holders under any other Transaction Documents; or
- (iv) under Chapter 2L of the Corporations Act;
- (d) the amount of A\$10 referred to in clause 3.3;
- (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 Default means, in respect of the Trustee, fraud, gross negligence or wilful default; and

Trustee Liability has the meaning given in clause 7.1(k) of this deed.

20.3 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document (including this deed) includes all schedules or annexes to it;
- (d) a reference to a clause or paragraph is to a clause or paragraph of this deed or its schedules or annexes provided that a reference to a clause in the Terms is to the correspondingly numbered term and a reference in the Terms to “the Trust Deed” is to this deed;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to “**Australian dollars**”, “**A\$**”, “**dollar**”, “**\$**” or “**cent**” is a reference to the lawful currency of Australia;
- (g) unless otherwise specified, a reference to time is to Sydney, Australia time;
- (h) a reference to a person includes a reference to the person’s executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code, rule, directive or law (however described) includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;

- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed;
- (n) any provisions which refer to the requirements of APRA or any other prudential regulatory requirements will apply to the Issuer only if the Issuer is an entity subject to regulation and supervision by APRA at the relevant time;
- (o) any provisions which require APRA's consent or approval (written or otherwise) will apply only if APRA requires that such consent or approval be given at the relevant time; and
- (p) any provisions in this deed requiring the prior approval of APRA for a particular course of action to be taken by the Issuer do not imply that APRA has given its consent or approval to the particular action as of the Issue Date or that it will at any time give its consent or approval to the particular action.

20.4 Acknowledgements

The parties acknowledge and agree, and each Holder is taken to have acknowledged and agreed, that Capital Notes which are lodged or approved for entry on a Clearing System are subject to the rules and regulations of that Clearing System.

20.5 Inconsistency with the ASX Listing Rules

So long as Capital Notes are quoted on ASX, these Terms as they relate to those Capital Notes are to be interpreted in a manner consistent with applicable ASX Listing Rules, except to the extent that an interpretation consistent with the ASX Listing Rules would cause APRA to object to the Challenger Group using, or having used, the proceeds of the issue of some or all of the Capital Notes to fund Additional Tier 1 Capital of CLC.

20.6 Inconsistency with Terms

A provision of any part of this deed (other than the Terms) or any other Transaction Document which is inconsistent with a provision of the Terms does not operate to the extent of the inconsistency.

EXECUTED as a deed

Capital Notes Trust Deed

Schedule 1 – Capital Notes Terms

1 Form of Capital Notes

1.1 Constitution under Trust Deed

Challenger Capital Notes (the **Capital Notes**) are non-cumulative, convertible, transferable, redeemable, subordinated, perpetual, unsecured notes of the Issuer constituted by, and owing under, the Trust Deed.

1.2 Form

The Capital Notes are issued in registered form by entry in the Register.

1.3 Face Value

The Capital Notes have a Face Value of A\$100 and are issued fully paid.

1.4 Currency

The Capital Notes are denominated in Australian dollars.

1.5 Clearing system

The Capital Notes will be entered into and dealt with in CHESS. For so long as the Capital Notes remain in CHESS, the rights of a person holding an interest in the Capital Notes are subject to the rules and regulations of CHESS but without affecting any Term which may cause APRA to object to the Challenger Group using, or having used, the proceeds of the issue of some or all of the Capital Notes to fund Additional Tier 1 Capital of CLC.

1.6 No certificates

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

1.7 ASX quotation

The Issuer must use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure that the Capital Notes are, and until Redeemed, Converted or Written-Off remain, quoted on ASX.

1.8 No other rights

The Capital Notes confer no rights on a Holder:

- (a) to vote at any meeting of shareholders of the Issuer;
- (b) to subscribe for new securities or to participate in any bonus issues of securities of the Issuer; or
- (c) to otherwise participate in the profits or property of the Issuer,

except as set out in these Terms or the Trust Deed.

2 Status and ranking

2.1 Status and ranking

The Capital Notes constitute direct and unsecured subordinated obligations of the Issuer, ranking for payment of Distributions and for payment of the Redemption Price in a winding-up of the Issuer:

- (a) ahead of Ordinary Shares;
- (b) equally among themselves and with all other instruments issued as Relevant Perpetual Subordinated Instruments; and
- (c) behind the claims of Senior Creditors.

2.2 Unsecured Notes

The Capital Notes are unsecured notes for the purposes of section 283BH of the Corporations Act.

2.3 Not policies under Life Insurance Act

The Capital Notes are not policies with any member of the Challenger Group for the purposes of the Life Insurance Act.

3 Distributions

3.1 Distributions

Subject to these Terms, each Capital Note entitles the Holder on a Record Date to receive, on the relevant Distribution Payment Date, interest (“**Distribution**”) on its Face Value calculated according to the following formula:

$$\text{Distribution} = \frac{\text{Distribution Rate} \times \text{A\$}100 \times \text{N}}{365}$$

where:

Distribution Rate (expressed as a percentage per annum) is calculated according to the following formula:

Distribution Rate = (Bank Bill Rate + Margin) x Franking Adjustment Factor

where:

Bank Bill Rate (expressed as a percentage per annum) means, for a Distribution Period, the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Distribution Period or, if there is a manifest error in the calculation of that average mid-rate or that average mid-rate is not displayed by 10:16am (Sydney time) on that date, the rate specified in good faith by the Issuer at or around 10:30am (Sydney time) on that date having regard, to the extent possible, to:

- (a) the rates otherwise bid and offered for bills of a term of 90 days or for funds of that tenor displayed on Reuters page BBSW (or any page which replaces that page) at or around that time on that date; or

- (b) if bid and offer rates for bills of a term of 90 days are not otherwise available, the rates otherwise bid and offered for funds of that tenor at or around that time on that date;

Franking Adjustment Factor means:

$$\frac{(1 - T)}{1 - [T \times (1 - F)]}$$

where:

- (i) F means the Franking Rate; and
(ii) T means the Tax Rate;

Margin (expressed as a percentage per annum) means the margin determined under the Bookbuild; and

N means in respect of:

- (a) the first Distribution Payment Date, the number of days from (and including) the Issue Date until (but not including) the first Distribution Payment Date; and
(b) each subsequent Distribution Payment Date, the number of days from (and including) the preceding Distribution Payment Date until (but not including) the relevant Distribution Payment Date.

3.2 Franking Rate on Distributions

The Issuer must determine the Franking Rate for each Distribution in accordance with the Tax Act so that (unless the Tax Act otherwise requires):

- (a) the Franking Rate for a Distribution equals the Franking Rate of:
- (i) a Dividend paid or expected to be paid by the Issuer during the Franking Period in which that Distribution is paid (**Applicable Franking Period**); or
(ii) if a Dividend is not paid or expected to be paid by the Issuer in the Applicable Franking Period, a prior Distribution paid during the Applicable Franking Period; and
- (b) if the circumstances in paragraphs (a)(i) or (a)(ii) do not apply in respect of a Distribution, then the Franking Rate for that Distribution will be determined at the absolute discretion of the Issuer.

3.3 Payment of a Distribution

The payment of any Distribution on a Distribution Payment Date is subject to:

- (a) the absolute discretion of the Issuer; and
(b) no Payment Condition existing in respect of the relevant Distribution Payment Date.

3.4 Distributions are discretionary, non-cumulative and only payable in cash

- (a) Payments of Distributions are within the absolute discretion of the Issuer and are non-cumulative. If all or any part of a Distribution is not paid because of this clause 3.4 or because of any other reason:
 - (i) the Issuer has no liability to pay the unpaid amount of the Distribution;
 - (ii) Holders have no claim or entitlement in respect of such non-payment (including, without limitation, on a winding-up of the Issuer); and
 - (iii) such non-payment does not constitute an event of default.
- (b) No interest accrues on any unpaid Distributions and Holders have no claim or entitlement in respect of interest on any unpaid Distributions.
- (c) Any payments of Distributions to Holders must be made in the form of cash.

3.5 Distribution Payment Dates

Subject to this clause 3, Distributions will be payable in arrear in respect of a Capital Note on the following dates (each a **Distribution Payment Date**):

- (a) each 25 February, 25 May, 25 August and 25 November commencing on 25 February 2015 until (but not including) the date on which the Capital Note is Converted, Redeemed or Resold in accordance with these Terms; and
- (b) each date on which a Conversion, Redemption or Resale of the Capital Note occurs, in each case, in accordance with these Terms.

If a Distribution Payment Date is a day which is not a Business Day, then the Distribution Payment Date becomes the next day which is a Business Day.

3.6 Record Dates

A Distribution is only payable on a Distribution Payment Date to those persons registered as Holders on the Record Date for that Distribution.

3.7 Notification of Distribution, Distribution Rate and other items

For each Distribution Period, the Issuer must notify the Trustee, the Registrar and ASX of the Distribution Rate and the expected Distribution payable as soon as practicable, but in any event no later than the fourth Business Day of the Distribution Period.

3.8 Restrictions in the case of non-payment of a Distribution

Subject to clause 3.9, if for any reason a Distribution has not been paid in full on a Distribution Payment Date (the **Relevant Distribution Payment Date**), the Issuer must not, without the approval of a Special Resolution, until and including the next Distribution Payment Date:

- (a) declare, determine to pay or pay a Dividend; or
- (b) undertake any Buy Back or Capital Reduction,

unless the Distribution is paid in full within three Business Days of the Relevant Distribution Payment Date.

3.9 Exclusions from restrictions in case of non-payment

The restrictions in clause 3.8 do not apply:

- (a) to a Buy Back or Capital Reduction in connection with any employment contract, benefit plan or other similar arrangement; and
- (b) to the extent that at the time a Distribution has not been paid on the relevant Distribution Payment Date, the Issuer is legally obliged to pay on or after that date a Dividend or complete on or after that date a Buy Back or Capital Reduction.

Nothing in these Terms prohibits the Issuer or a Controlled Entity from purchasing Challenger Shares (or an interest therein) in connection with a transaction for the account of a customer of the Issuer or a customer of a Controlled Entity or, with the prior written approval of APRA, in connection with the distribution or trading of Challenger Shares in the ordinary course of business. This includes where the Issuer or a Controlled Entity acquires Challenger Shares acting as trustee for another person and neither the Issuer nor any Controlled Entity has a beneficial interest in the trust (other than a beneficial interest that arises from a security given for the purposes of a transaction entered into in the ordinary course of business).

4 Mandatory Conversion

4.1 Mandatory Conversion

Subject to clauses 5, 6 and 7, on the Mandatory Conversion Date the Issuer must Convert all (but not some) of the Capital Notes on issue at that date into Ordinary Shares in accordance with clause 8 and this clause 4.

4.2 Mandatory Conversion Date

The **Mandatory Conversion Date** will be the first to occur of the following dates (each a **Relevant Date**) on which the Mandatory Conversion Conditions are satisfied:

- (a) 25 May 2022 (the **Scheduled Mandatory Conversion Date**); and
- (b) a Distribution Payment Date after the Scheduled Mandatory Conversion Date (a **Subsequent Mandatory Conversion Date**).

4.3 Mandatory Conversion Conditions

The Mandatory Conversion Conditions for each Relevant Date are:

- (a) the VWAP on the 25th Business Day immediately preceding (but not including) the Relevant Date (the **First Test Date**, provided that if no trading in Ordinary Shares took place on that date, the First Test Date is the first Business Day before the 25th Business Day immediately preceding (but not including) the Relevant Date on which trading in Ordinary Shares took place) is greater than the First Test Date Percentage of the Issue Date VWAP (the **First Mandatory Conversion Condition**);
- (b) the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Relevant Date (the **Second Test Period**) is greater than the Conversion Test Date Percentage of the Issue Date VWAP (the **Second Mandatory Conversion Condition**); and

- (c) no Delisting Event applies in respect of the Relevant Date (the **Third Mandatory Conversion Condition** and together with the First Mandatory Conversion Condition and the Second Mandatory Conversion Condition, the **Mandatory Conversion Conditions**).

In this clause 4.3:

First Test Date Percentage = 110% x **Relevant Fraction**
(expressed as a percentage)

Conversion Test Date Percentage = 101.01% x **Relevant Fraction**
(expressed as a percentage)

4.4 Non-Conversion Notices

If:

- (a) the First Mandatory Conversion Condition is not satisfied in relation to a Relevant Date, the Issuer will give notice to Holders and the Trustee between the 25th and the 21st Business Day before the Relevant Date; or
- (b) the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition is not satisfied in relation to a Relevant Date, the Issuer will give notice to Holders and the Trustee on or as soon as practicable after the Relevant Date,

that Mandatory Conversion will not (or, as the case may be, did not) occur on the Relevant Date (each such notice a **Non-Conversion Notice**).

5 Conversion on Non-Viability Trigger Event

5.1 Non-Viability Trigger Event

- (a) A **Non-Viability Trigger Event** occurs when APRA provides a written determination to the Issuer that the conversion to Ordinary Shares or write-off of Relevant Perpetual Subordinated Instruments in accordance with their terms or by operation of law is necessary because:
- (i) without the conversion to Ordinary Shares or write-off, APRA considers that the Issuer would become non-viable; or
- (ii) without a public sector injection of capital into, or equivalent capital support with respect to, the Issuer, APRA considers that the Issuer would become non-viable.

A determination by APRA under this clause 5.1(a) is a **Non-Viability Determination**.

- (b) If a Non-Viability Trigger Event occurs, the Issuer must convert to Ordinary Shares or write-off:
- (i) all Relevant Perpetual Subordinated Instruments; or
- (ii) where clause 5.1(a)(i) applies, an amount of the Relevant Perpetual Subordinated Instruments if APRA is satisfied that conversion to Ordinary Shares or write-off of that amount will be sufficient to ensure that the Issuer does not become non-viable.

5.2 Consequences of a Non-Viability Trigger Event

- (a) If a Non-Viability Trigger Event occurs:

- (i) on that date, whether or not that day is a Business Day (the **Non-Viability Conversion Date**), the Issuer must immediately determine in accordance with APRA's determination under clause 5.1:
 - (A) the amount of Capital Notes that will be Converted into Ordinary Shares and the amount of other Relevant Perpetual Subordinated Instruments which will be converted into Ordinary Shares; and
 - (B) the identity of the Holders whose Capital Notes will Convert at the time that the Conversion is to take effect and in making that determination the Issuer may make any decisions with respect to the identity of the Holders at that time as may be necessary or desirable to ensure Conversion occurs in an orderly manner, including disregarding any transfers of Capital Notes that have not been settled or registered at that time;
 - (ii) subject only to clause 5.1(b)(ii) and despite any other provision in these Terms, on the Non-Viability Conversion Date the relevant amount of Capital Notes will be Converted, and the relevant amount of other Relevant Perpetual Subordinated Instruments will be converted or written-off, in each case immediately and irrevocably; and
 - (iii) the Issuer must give notice of the Non-Viability Trigger Event (a **Non-Viability Trigger Event Notice**) to Holders and the Trustee as soon as practicable that Conversion has occurred which notice must state the Non-Viability Conversion Date, the amount of Capital Notes Converted and the relevant amount of Relevant Perpetual Subordinated Instruments converted or written-off.
- (b) If in accordance with clause 5.1(b)(ii) the Issuer is required to convert or write-off some (but not all) Relevant Perpetual Subordinated Instruments, the Issuer must endeavour to treat Holders and holders of other Relevant Perpetual Subordinated Instruments on an approximately proportionate basis, but may discriminate to take account of the effect on marketable parcels and other logistical considerations and the need to effect the conversions or write-offs immediately.
- (c) None of the following shall prevent, impede or delay the Conversion of Capital Notes as required by this clause 5.2:
- (i) any failure or delay in the conversion of any other Relevant Perpetual Subordinated Instruments;
 - (ii) any failure or delay in giving a Non-Viability Trigger Event Notice;
 - (iii) any failure or delay in quotation of the Ordinary Shares to be issued on Conversion;
 - (iv) any decision as to the identity of Holders whose Capital Notes are to be Converted in accordance with clause 5.2(a)(i)(B); or
 - (v) any requirement to treat Holders and holders of other Relevant Perpetual Subordinated Instruments as required by clause 5.2(b).

- (d) From the Non-Viability Conversion Date, the Issuer shall treat the Holder in respect of the Capital Notes as the holder of the Conversion Number of Ordinary Shares and will take all such steps, including updating any of its registers, required to record the Conversion.

5.3 Priority of Conversion obligations

- (a) Conversion on account of the occurrence of a Non-Viability Trigger Event is not subject to the Mandatory Conversion Conditions.
- (b) A Conversion required on account of a Non-Viability Trigger Event takes place on the date, and in the manner, required by clause 5.2 notwithstanding anything in clauses 4.1, 6, 7 or 16.
- (c) If on the Non-Viability Conversion Date an Inability Event subsists, then to the extent such event prevents the Issuer from Converting Capital Notes within five Business Days of that date:
 - (i) Conversion on account of the Non-Viability Trigger Event will not occur; and
 - (ii) clause 8.14 shall apply.

6 Optional Exchange by the Issuer

6.1 Optional Exchange by the Issuer

The Issuer may with APRA's prior written approval by notice to Holders [of the relevant Capital Notes](#) and the Trustee (an **Exchange Notice**) elect to Exchange:

- (a) all or some Capital Notes on an Exchange Date following the occurrence of a Tax Event or a Regulatory Event;
- (b) all (but not some only) Capital Notes on an Exchange Date following the occurrence of a Potential Acquisition Event; or
- (c) all or some Capital Notes on the Optional Exchange Date; [and](#)
- (d) [all \(but not some only\) Participating Capital Notes on the Reinvestment Date or, in the case of Cash Resale Capital Notes the subject of a Repurchase Invitation after the Reinvestment Date, any subsequent Distribution Payment Date.](#)

An Exchange Notice under this clause 6:

- (i) cannot be given in the period of 20 Business Days preceding (and not including) a Relevant Date where the First Mandatory Conversion Condition has been met in respect of that Relevant Date; and
- (ii) once given is irrevocable, [except as set out in these Terms or the Trust Deed.](#)

6.2 Contents of Exchange Notice

An Exchange Notice must specify:

- (a) where clause 6.1(a) or clause 6.1(b) applies, the details of the Tax Event, Regulatory Event or Potential Acquisition Event to which the Exchange Notice relates;

- (b) the date on which Exchange is to occur (the **Exchange Date**), which:
 - (i) in the case of a Potential Acquisition Event, is the Business Day prior to the date reasonably determined by the Issuer to be the last date on which holders of Ordinary Shares can participate in the bid or scheme concerned or such other earlier date as the Issuer may reasonably determine having regard to the timing for implementation of the bid or scheme concerned or such later date as APRA may require;
 - (ii) in the case of a Tax Event or a Regulatory Event, is the last Business Day of the month following the month in which the Exchange Notice was given by the Issuer unless the Issuer determines an earlier Exchange Date having regard to the best interests of Holders as a whole and the relevant event; or
 - (iii) in the case of clause 6.1(c), is the Optional Exchange Date, which must fall:
 - (A) no earlier than:
 - (aa) 25 Business Days, where the Exchange Method elected is Conversion; or
 - (ab) 15 Business Days, where the Exchange Method elected is Redemption or Resale; and
 - (B) in any case no later than 50 Business Days, after the date on which the Exchange Notice is given;
- (j) [in the case of clause 6.1\(d\), is a date specified in accordance with clause 6.1\(d\);](#)
- (c) the Exchange Method in accordance with clause 6.3;
- (d) if less than all Capital Notes are subject to Exchange, the proportion of the Capital Notes that are to be Exchanged;
- (e) if the Exchange Notice provides that any Capital Notes are to be Resold, the identity of the Nominated Purchaser or Nominated Purchasers for that Resale; and
- (f) whether any Distribution will be paid in respect of the Capital Notes to be Exchanged on the Exchange Date.

6.3 Exchange Method

- (a) If the Issuer elects to Exchange Capital Notes in accordance with clause 6.1, it must, subject to clauses 6.3(b), 6.4 and 6.5 and subject to APRA's prior written approval, elect which of the following it intends to do in respect of Capital Notes (the **Exchange Method**):
 - (i) Convert Capital Notes into Ordinary Shares in accordance with clause 8;
 - (ii) Redeem Capital Notes in accordance with clause 9; or
 - (iii) Resell Capital Notes in accordance with clause 10.

Holders should not expect that APRA's approval will be given for any Exchange of Capital Notes under these Terms.

- (b) Subject to clauses 6.4 and 6.5, in the election under clause 6.3(a), the Issuer may specify which of Conversion, Redemption or Resale applies to a particular Capital Note. Without limitation to the foregoing:
- (i) the Issuer may select any one or more of Conversion, Redemption or Resale to apply to the Capital Notes held by a Holder; and
 - (ii) the Issuer may select a different combination of Conversion, Redemption and Resale in respect of Capital Notes held by different Holders,

but otherwise the Issuer must endeavour to treat Holders, in the case of an Exchange of only some Capital Notes, on an approximately proportionate basis (although it may discriminate to take account of the effect on marketable parcels and other logistical considerations).

6.4 Restrictions on election by the Issuer of Redemption or Resale as Exchange Method

The Issuer may elect:

- (a) Redemption or Resale as the Exchange Method in respect of an Exchange under this clause 6:
 - (i) ~~(a)~~ on the Optional Exchange Date; ~~and~~
 - (ii) ~~(b)~~ in the case of a Tax Event or Regulatory Event; and
- (b) Resale (but not Redemption) as the Exchange Method in respect of an Exchange under clause 6.1(d),

~~but not~~ but may not elect Redemption or Resale in any other case of Exchange and provided in all cases where the Issuer elects Redemption that APRA is satisfied that either:

- (j) Capital Notes the subject of the Exchange are replaced concurrently or beforehand with a Relevant Perpetual Subordinated Instrument of the same or better quality or Ordinary Shares and the replacement of the instrument is done under conditions that are sustainable for the Issuer's income capacity; or
- (i) having regard to the projected capital position of the Challenger Group, that the Issuer does not have to replace the Capital Notes the subject of the Redemption.

6.5 Restrictions on election by the Issuer of Conversion as Exchange Method

The Issuer may not elect Conversion as the Exchange Method in respect of an Exchange under this clause 6 if:

- (a) on the second Business Day before the date on which an Exchange Notice is to be sent by the Issuer (or, if trading in Ordinary Shares did not occur on that date, the last Business Day prior to that date on which trading in Ordinary Shares occurred) (the **Non-Conversion Test Date**) the VWAP on that date is less than or equal to the First Test Date

Percentage of the Issue Date VWAP (the **First Optional Conversion Restriction**);~~or~~

(b) a Delisting Event applies in respect of the Non-Conversion Test Date (the **Second Optional Conversion Restriction** and together with the **First Optional Conversion Restriction**, the **Optional Conversion Restrictions**); ~~or~~

(c) [the Exchange is in respect of Participating Capital Notes as contemplated by clause 6.1\(d\).](#)

6.6 Conditions to Conversion occurring once elected by the Issuer

If the Issuer has given an Exchange Notice in which it has elected Conversion as the Exchange Method but, if the Exchange Date were a Relevant Date for the purposes of clause 4, either the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition would not be satisfied in respect of that date, then, notwithstanding any other provision of these Terms:

- (a) the Exchange Date will be deferred until the first Distribution Payment Date on which the Mandatory Conversion Conditions would be satisfied if that Distribution Payment Date were a Relevant Date for the purposes of clause 4 (the **Deferred Conversion Date**);
- (b) the Issuer must Convert the Capital Notes on the Deferred Conversion Date (unless the Capital Notes are Exchanged earlier in accordance with these Terms); and
- (c) until the Deferred Conversion Date, all rights attaching to the Capital Notes will continue as if the Exchange Notice had not been given.

The Issuer will notify Holders on or as soon as practicable after an Exchange Date in respect of which this clause 6.6 applies that Conversion did not occur on that Exchange Date (a **Deferred Conversion Notice**).

7 Conversion on Acquisition Event

7.1 Notice of Acquisition Event

The Issuer must notify Holders and the Trustee of the occurrence of an Acquisition Event as soon as practicable after becoming aware of that event (an **Acquisition Event Notice**).

7.2 Conversion on occurrence of Acquisition Event

If an Acquisition Event occurs, subject to clause 7.4 and clause 7.5 the Issuer must give notice to Holders and the Trustee (an **Acquisition Conversion Notice**) and Convert all (but not some only) Capital Notes on the Acquisition Conversion Date in accordance with this clause 7 and clause 8.

7.3 Contents of Acquisition Conversion Notice

An Acquisition Conversion Notice must specify:

- (a) the details of the Acquisition Event to which the Acquisition Conversion Notice relates;
- (b) the date on which Conversion is to occur (the **Acquisition Conversion Date**), which must be:
 - (i) the Business Day prior to the date reasonably determined by the Issuer to be the last date on which holders of Ordinary Shares

can participate in the bid or scheme concerned or such other earlier date as the Issuer may reasonably determine having regard to the timing for implementation of the bid or scheme concerned; or

- (ii) such later date as APRA may require; and
- (c) whether any Distribution will be paid in respect of the Capital Notes on the Acquisition Conversion Date.

7.4 Where Acquisition Conversion Notice not required

Notwithstanding any provision of clause 7.2 or clause 7.3, the Issuer is not required to give an Acquisition Conversion Notice if either or both of the Optional Conversion Restrictions would apply if the Acquisition Conversion Notice were an Exchange Notice under clause 6 and in this case the provisions of clause 7.5 will apply.

7.5 Deferred Conversion on Acquisition Event

If clause 7.4 applies or the Issuer has given an Acquisition Conversion Notice but, if the Acquisition Conversion Date were a Relevant Date for the purposes of clause 4.2, either the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition would not be satisfied in respect of that date, then notwithstanding any other provision of these Terms (but without limitation to the operation of clause 5.3):

- (a) the Acquisition Conversion Notice, if given, is taken to be revoked and Conversion will not occur on the Acquisition Conversion Date specified in the Acquisition Conversion Notice;
- (b) the Issuer will notify Holders and the Trustee as soon as practicable that Conversion will not (or, as the case may be, did not) occur (a **Deferred Acquisition Conversion Notice**); and
- (c) the Issuer must, unless clause 7.4 then applies, give an Acquisition Conversion Notice (or, as the case may be, a new Acquisition Conversion Notice) on or before the 25th Business Day prior to the immediately succeeding Distribution Payment Date which is at least 25 Business Days after the date on which the Deferred Acquisition Conversion Notice was given.

The Acquisition Conversion Notice given in accordance with paragraph (c) above must comply with the requirements in clause 7.3.

If this clause 7.5 applies but:

- (i) clause 7.4 applies in respect of the Distribution Payment Date referred to in paragraph (c) such that no Acquisition Conversion Notice (or, as the case may be, no new Acquisition Conversion Notice) is given under this clause 7.5; or
- (ii) an Acquisition Conversion Notice (or, as the case may be, a new Acquisition Conversion Notice) is given under this clause 7.5 but, if the Acquisition Conversion Date specified in the Acquisition Conversion Notice were a Relevant Date for the purposes of clause 4.2, either the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition would not be satisfied in respect of that date,

then this clause 7.5 will be reapplied in respect of each subsequent Distribution Payment Date until a Conversion occurs.

8 Conversion mechanics

8.1 Conversion

If the Issuer elects to Convert Capital Notes (with APRA's prior written approval) or must Convert Capital Notes in accordance with these Terms, then, subject to this clause 8, the following provisions shall apply:

- (a) each Capital Note that is being Converted will Convert into the Conversion Number of Ordinary Shares. The Conversion Number will be calculated by the Issuer in accordance with the following formula:

$$\text{Conversion Number} = \frac{\text{Face Value}}{99\% \times \text{VWAP}}$$

subject always to the Conversion Number being no greater than the Maximum Conversion Number.

where:

VWAP (expressed in dollars and cents) means the VWAP during the VWAP Period;

Maximum Conversion Number means a number calculated according to the following formula:

$$\text{Maximum Conversion Number} = \frac{\text{Face Value}}{\text{Issue Date VWAP} \times \text{Relevant Fraction}}$$

Relevant Fraction means:

- (i) in the case of a Mandatory Conversion, 0.5; and
- (ii) in the case of any other Conversion, 0.2;
- (b) each Holder's rights in relation to each Capital Note that is being Converted will be immediately and irrevocably terminated (except for rights relating to Distributions which have been determined to be payable but have not been paid on or before the Mandatory Conversion Date, the Non-Viability Conversion Date, the Exchange Date or the Acquisition Conversion Date (as the case may be), which rights will continue) for an amount equal to the Face Value and the Issuer will apply the Face Value of each Capital Note by way of payment for the subscription for the Ordinary Shares to be allotted and issued under clause 8.1(a). Each Holder is taken to have irrevocably directed that any amount payable under this clause 8.1 is to be applied as provided for in this clause 8.1 and Holders do not have any right to payment in any other way;
- (c) if the total number of Ordinary Shares to be allotted and issued in respect of a Holder's aggregate holding of Capital Notes upon Conversion includes a fraction of an Ordinary Share, that fraction of an Ordinary Share will be disregarded; and
- (d) upon Conversion, a Holder will be given all of the rights attaching to the Conversion Number of Ordinary Shares allotted and issued in respect of such Holder's aggregate holding of Capital Notes but these rights do not take effect until 5:00pm Sydney time on the Mandatory Conversion Date, the Exchange Date or the Acquisition Conversion Date (as the case may

be) or, in the case of a Conversion on the Non-Viability Conversion Date, the time at which such Conversion occurs on that date. At that time:

- (i) all other rights conferred or restrictions imposed on that Capital Note under these Terms will no longer have effect (except for rights relating to a Distribution which has been determined to be payable but has not been paid on or before the Mandatory Conversion Date, the Non-Viability Conversion Date, the Exchange Date or the Acquisition Conversion Date (as the case may be), which rights will continue); and
- (ii) the Ordinary Share resulting from the Conversion will rank equally with all other Ordinary Shares.

8.2 Adjustments to VWAP

For the purposes of calculating the VWAP in these Terms:

- (a) where, on some or all of the Business Days in the relevant VWAP Period, Ordinary Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement and Capital Notes will Convert into Ordinary Shares after the date those Ordinary Shares no longer carry that dividend or any other distribution or entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted cum dividend or cum any other distribution or entitlement shall be reduced by an amount (the **Cum Value**) equal to:
 - (i) (in the case of a dividend or other distribution), the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of a recipient of the dividend or other distribution who is both a resident of Australia and a natural person under the Tax Act;
 - (ii) (in the case of any other entitlement that is not a dividend or other distribution under clause 8.2(a)(i) which is traded on ASX on any of those Business Days), the volume weighted average sale price of all such entitlements sold on ASX during the VWAP Period on the Business Days on which those entitlements were traded; or
 - (iii) (in the case of any other entitlement which is not traded on ASX during the VWAP Period), the value of the entitlement as reasonably determined by the Directors; and
- (b) where, on some or all of the Business Days in the VWAP Period, Ordinary Shares have been quoted on ASX as ex dividend or ex any other distribution or entitlement, and Capital Notes will Convert into Ordinary Shares in respect of which the relevant dividend or other distribution or entitlement would be payable, the VWAP on the Business Days on which those Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement shall be increased by the Cum Value.

8.3 Adjustments to VWAP for divisions and similar transactions

- (a) Where during the relevant VWAP Period there is a change in the number of Ordinary Shares on issue as a result of a Reorganisation, in calculating the VWAP for that VWAP Period the VWAP on each Business Day in the relevant VWAP Period which falls before the date on which trading in Ordinary Shares is conducted on a post Reorganisation basis shall be adjusted by the following formula:

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

where:

A means the aggregate number of Ordinary Shares immediately before the Reorganisation; and

B means the aggregate number of Ordinary Shares immediately after the Reorganisation.

- (b) Any adjustment made by the Issuer in accordance with clause 8.3(a) will be effective and binding on Holders under these Terms and these Terms will be construed accordingly. Any such adjustment must be promptly notified to all Holders.

8.4 Adjustments to Issue Date VWAP

For the purposes of determining the Issue Date VWAP, adjustments to the VWAP will be made in accordance with clauses 8.2 and 8.3 during the VWAP Period for the Issue Date VWAP. On and from the Issue Date, adjustments to the Issue Date VWAP:

- (a) may be made by the Issuer in accordance with clauses 8.5 to 8.7 (inclusive); and
- (b) if so made, will correspondingly:
- (i) affect the application of the Mandatory Conversion Conditions and the Optional Conversion Restrictions; and
- (ii) cause an adjustment to the Maximum Conversion Number.

8.5 Adjustments to Issue Date VWAP for bonus issues

- (a) Subject to clause 8.5(b), if at any time after the Issue Date the Issuer makes a pro rata bonus issue of Ordinary Shares to holders of Ordinary Shares generally, the Issue Date VWAP will be adjusted in accordance with the following formula:

$$V = V_o \times \frac{RD}{RD + RN}$$

where:

V means the Issue Date VWAP applying immediately after the application of this formula;

V_o means the Issue Date VWAP applying immediately prior to the application of this formula;

RD means the number of Ordinary Shares on issue immediately prior to the allotment of new Ordinary Shares pursuant to the bonus issue; and

RN means the number of Ordinary Shares issued pursuant to the bonus issue.

- (b) Clause 8.5(a) does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option

plan, share top up plan, share purchase plan or a dividend reinvestment plan.

- (c) For the purposes of clause 8.5(a), an issue will be regarded as a pro rata bonus issue notwithstanding that the Issuer does not make offers to some or all holders of Ordinary Shares with registered addresses outside Australia, provided that in so doing the Issuer is not in contravention of the ASX Listing Rules.
- (d) No adjustments to the Issue Date VWAP will be made under this clause 8.5 for any offer of Ordinary Shares not covered by clause 8.5(a), including a rights issue or other essentially pro rata issue.
- (e) The fact that no adjustment is made for an issue of Ordinary Shares except as covered by clause 8.5(a) shall not in any way restrict the Issuer from issuing Ordinary Shares at any time on such terms as it sees fit nor be taken to constitute a modification or variation of rights or privileges of Holders or otherwise requiring any consent or concurrence of the Holders.

8.6 Adjustment to Issue Date VWAP for divisions and similar transactions

- (a) If at any time after the Issue Date there is a change in the number of Ordinary Shares on issue as a result of a Reorganisation, the Issuer shall adjust the Issue Date VWAP by multiplying the Issue Date VWAP applicable on the Business Day immediately before the date of any such Reorganisation by the following formula:

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

where:

- A** means the aggregate number of Ordinary Shares immediately before the Reorganisation; and
 - B** means the aggregate number of Ordinary Shares immediately after the Reorganisation.
- (b) Any adjustment made by the Issuer in accordance with clause 8.6(a) will be effective and binding on Holders under these Terms and these Terms will be construed accordingly.
 - (c) Each Holder acknowledges that the Issuer may consolidate, divide or reclassify securities so that there is a lesser or greater number of Ordinary Shares at any time in its absolute discretion without any such action constituting a modification or variation of rights or privileges of Holders or otherwise requiring any consent or concurrence.

8.7 No adjustment to Issue Date VWAP in certain circumstances

Despite the provisions of clauses 8.5 and 8.6, no adjustment shall be made to the Issue Date VWAP where such adjustment (rounded if applicable) would be less than one percent of the Issue Date VWAP then in effect.

8.8 Announcement of adjustments

The Issuer will notify Holders and the Trustee (an **Adjustment Notice**) of any adjustment to the Issue Date VWAP under this clause 8 within 10 Business Days of the Issuer determining the adjustment.

8.9 Ordinary Shares

Each Ordinary Share issued or arising upon Conversion ranks pari passu with all other fully paid Ordinary Shares.

8.10 Foreign Holders

Where Capital Notes held by a Foreign Holder are to be Converted, unless the Issuer is satisfied that the laws of the Foreign Holder's country of residence permit the issue of Ordinary Shares to the Foreign Holder (but as to which the Issuer is not bound to enquire), either unconditionally or after compliance with conditions which the Issuer in its absolute discretion regards as acceptable and not unduly onerous, the number of Ordinary Shares which the Foreign Holder is obliged to accept will be issued to a nominee appointed by the Issuer (which must not be a member of the Challenger Group or Related Entity of the Issuer) who will sell that number of Ordinary Shares and pay a cash amount equal to the Proceeds to the Foreign Holder accordingly.

8.11 Conversion where the Holder does not wish to receive Ordinary Shares

If the Issuer has elected or is required to Convert Capital Notes and the Holder has notified the Issuer that it does not wish to receive Ordinary Shares as a result of Conversion, which notice may be given by the Holder at any time on or after the Issue Date and no less than 15 Business Days prior to the date scheduled for Conversion then, on the date for Conversion, the number of Ordinary Shares which that Holder is obliged to accept will be issued to a nominee appointed by the Issuer (which must not be a member of the Challenger Group or Related Entity of the Issuer) who will sell that number of Ordinary Shares and pay a cash amount equal to the Proceeds to the relevant Holder.

8.12 No duty on sale

For the purposes of clauses 8.10 and 8.11:

- (a) the issue of Ordinary Shares to the nominee satisfies the obligation of the Issuer to issue Ordinary Shares in connection with the Conversion and on and from the issue of those Ordinary Shares, the rights of a Holder the subject of, as applicable, clause 8.10 or 8.11 in respect of those Ordinary Shares are limited to its rights in respect of the Proceeds as provided in, as applicable, clause 8.10 or 8.11; and
- (b) neither the Issuer nor the nominee owes any obligations or duties to the Holders in relation to the price for which, or other terms on which, Ordinary Shares are sold and has no liability for any loss suffered by a Holder as a result of the sale of Ordinary Shares.

8.13 Listing Ordinary Shares issued on Conversion

The Issuer shall use all reasonable endeavours to list the Ordinary Shares issued upon Conversion of Capital Notes on ASX.

8.14 Write-Off

- (a) Notwithstanding any other provisions of these Terms, if an Inability Event has occurred and is subsisting and Conversion of any Capital Notes has not been effected within five Business Days of the Conversion Date, then to the extent the Inability Event prevents the Conversion of any Capital Notes, Conversion of those Capital Notes will not occur but instead the relevant Holder's rights (including to Distributions and payment of Face Value) in relation to such Capital Notes, and to be issued with Ordinary Shares, are immediately and irrevocably written-off and terminated (**Written-Off**).

- (b) The Issuer may, but is not required to, seek advice from reputable legal counsel as to whether an Inability Event has occurred and is subsisting. An Inability Event is taken to have occurred and subsist if the Issuer receives advice to that effect from such counsel. The seeking of advice by the Issuer under this clause 8.14(b) shall not delay or impede the Write-Off of the Capital Notes when required under clause 8.14(a).
- (c) The Issuer must give notice to Holders and the Trustee if Conversion has not occurred by operation of this clause 8.14 but failure to give that notice shall not affect the operation of this clause 8.14.

9 Redemption mechanics

9.1 Redemption mechanics to apply to Redemption

If, subject to APRA's prior written approval and compliance with the conditions in clause 6.3(a)(ii), the Issuer elects to Redeem Capital Notes in accordance with these Terms, the provisions of this clause 9 apply to that Redemption.

Holders should not expect that APRA's approval will be given for any Redemption of Capital Notes under these Terms.

9.2 Redemption

- (a) A Capital Note will be Redeemed by payment:
 - (i) ~~(a) except where sub-paragraph (ii) applies,~~ on the Exchange Date of the Face Value to the relevant Holder (**Redemption Price**); and
 - (ii) in the case of a Participating Capital Note being Redeemed pursuant to clause 10.8, on the date specified in accordance with clause 10.8.
- (b) Redemption may occur even if the Issuer, in its absolute discretion, does not pay a Distribution for the final Distribution Period.

9.3 Effect of Redemption on Holders

On the Exchange Date the only right Holders will have in respect of Capital Notes will be to obtain the Redemption Price payable in accordance with these Terms and upon payment of the Redemption Price, all other rights conferred, or restrictions imposed, by Capital Notes will no longer have effect.

10 Resale mechanics

10.1 Resale mechanics

If the Issuer elects to Resell Capital Notes in accordance with these Terms, the provisions of this clause 10 apply to that Resale.

10.2 Appointment of Nominated Purchaser

The Issuer must appoint one or more Nominated Purchasers for the Resale on such terms as may be agreed between the Issuer and the Nominated Purchasers. If the Issuer appoints more than one Nominated Purchaser in respect of a Resale, all or any of the Capital Notes held by a Holder which are being Resold may be purchased by any one or any combination of the Nominated Purchasers, as determined by the Issuer for the Resale Price.

The obligation of a Nominated Purchaser to pay the Resale Price on the Exchange Date may be subject to such conditions as the Issuer may reasonably determine.

Any terms of the appointment or of the Resale which may cause APRA to object to Challenger Group using, or having used, the proceeds of the issue of some or all of the Capital Notes to fund Additional Tier 1 Capital of CLC, is subject to the prior written consent of APRA.

10.3 Identity of Nominated Purchasers

The Issuer may not appoint a person as a Nominated Purchaser unless that person:

- (a) has undertaken on such terms and subject to such conditions as the Issuer reasonably determines for the benefit of each Holder [whose Capital Notes are the subject of a Resale](#) to acquire each [such](#) Capital Note from each [relevant](#) Holder for the Resale Price on the Exchange Date;
- (b) has a long term counterparty credit rating from one of Standard & Poor's, Moody's or Fitch of not less than investment grade; and
- (c) is not a Related Entity of the Issuer.

10.4 Irrevocable offer to sell Capital Notes

Each Holder on the Exchange Date is taken irrevocably to offer to sell Capital Notes the subject of a Resale to the Nominated Purchaser or Nominated Purchasers on the Exchange Date for the Resale Price.

10.5 Effect of Resale

On the Exchange Date subject to payment by the Nominated Purchaser of the Resale Price to the Holders, all right, title and interest in such Capital Notes (excluding the right to any Distribution payable on that date) will be transferred to the Nominated Purchaser free from Encumbrances.

10.6 Effect of failure by Nominated Purchaser or Nominated Purchasers to pay

If a Nominated Purchaser does not pay the Resale Price to the Holders on the Exchange Date (a **Defaulting Nominated Purchaser**) (whether as a result of a condition to purchase not being satisfied or otherwise):

- (a) the Exchange Notice as it relates to the Defaulting Nominated Purchaser will be void;
- (b) Capital Notes will not be transferred to the Defaulting Nominated Purchaser on the Exchange Date; and
- (c) Holders will continue to hold the Capital Notes referable to the Defaulting Nominated Purchaser until they are otherwise Redeemed, Converted or Resold in accordance with these Terms.

10.7 Payment of Resale Price

Clause 14 applies to payment of the Resale Price as if a reference in that clause to the Redemption Price includes a reference to the Resale Price.

[10.8 Redemption of Participating Capital Notes in hands of Nominated Purchaser or Nominated Purchasers](#)

[On the Reinvestment Date or, in the case of Cash Resale Capital Notes the subject of a subsequent Repurchase Invitation, the Distribution Payment Date described in that Repurchase Invitation, the Issuer may Redeem all or some Participating Capital Notes Resold to the Nominated Purchaser or Nominated](#)

Purchasers pursuant to clause 6.1(d) and this clause 10 by payment to the Nominated Purchaser or Nominated Purchasers (as the case may be) of an amount equal to the Face Value in respect of each Participating Capital Note being Redeemed.

10.9 Completion of Resale of Participating Capital Notes

- (a) If, for any reason, the Capital Notes 3 Prospectus is withdrawn, any Exchange Notice given under clause 6.1(d) shall be taken to have been revoked in full and no Resale of Participating Capital Notes shall occur.
- (b) If, and to the extent that, the Issuer determines not to issue Capital Notes 3 to a Holder on the Reinvestment Date, any Exchange Notice given under clause 6.1(d) shall be taken to have been revoked to that extent and no Resale of that Holder's Reinvestment Capital Notes shall occur to the extent of such revocation.

11 General rights

11.1 Power of attorney

- (a) Each Holder appoints each of the Issuer, its officers and any External Administrator of the Issuer (each an **Attorney**) severally to be the attorney of the Holder with power in the name and on behalf of the Holder to sign all documents and transfers and do any other thing as may in the Attorney's opinion be necessary or desirable to be done in order for the Holder to observe or perform the Holder's obligations under these Terms including, but not limited to, effecting any Conversion, Redemption or Resale or making any entry in the Register or the register of any Ordinary Shares.
- (b) The power of attorney given in this clause 11.1 is given for valuable consideration and to secure the performance by the Holder of the Holder's obligations under these Terms and is irrevocable.

11.2 Consent to receive Ordinary Shares and other acknowledgements

Each Holder irrevocably:

- (a) upon receipt of the Conversion Number of Ordinary Shares following Conversion of Capital Notes, consents to becoming a member of the Issuer and agrees to be bound by the constitution of the Issuer, in each case in respect of Ordinary Shares issued on Conversion;
- (b) acknowledges and agrees that it is obliged to accept Ordinary Shares on Conversion notwithstanding anything that might otherwise affect a Conversion of Capital Notes including:
 - (i) any change in the financial position of the Issuer or any member of the Challenger Group since the Issue Date;
 - (ii) any disruption to the market or potential market for Ordinary Shares or capital markets generally; or
 - (iii) any breach by the Issuer of any obligation in connection with the Capital Notes;
- (c) acknowledges and agrees that:
 - (i) where clause 5.2 applies:

- (A) there are no other conditions to a Non-Viability Conversion occurring as and when provided in clauses 5.1 to 5.3 (inclusive);
 - (B) Conversion must occur immediately on the Non-Viability Conversion Date and that Conversion or Write-Off may result in disruption or failures in trading or dealings in Capital Notes;
 - (C) it will not have any rights to vote in respect of any Non-Viability Conversion; and
 - (D) the Ordinary Shares issued on Non-Viability Conversion may not be quoted at the time of issue, or at all;
- (ii) the only conditions to a Mandatory Conversion are the Mandatory Conversion Conditions;
 - (iii) the only conditions to a Conversion on account of an Exchange under clause 6 or a Conversion under clause 7 are the conditions expressly applicable to such Conversion as provided in clauses 6 and 7 of these Terms and no other conditions or events will affect Conversion; and
 - (iv) clause 8.14 is a fundamental term and where clause 8.14 applies, no other conditions or events will affect the operation of that clause and it will not have any rights to vote in respect of any Write-Off;
- (d) agrees to provide to the Issuer any information necessary to give effect to a Conversion; and
 - (e) acknowledges and agrees that:
 - (i) a Holder has no right to request a Conversion, Redemption or Resale of any Capital Note or to determine the Exchange Method;
 - (ii) a Holder has no right to apply for the Issuer to be wound up, or placed in administration, or to cause a receiver, or a receiver and manager, to be appointed in respect of the Issuer merely on the grounds that the Issuer does not or is or may become unable to pay a Distribution when scheduled in respect of Capital Notes;
 - (iii) these Terms contain no events of default. Accordingly (but without limitation) failure to pay in full, for any reason, a Distribution on a scheduled Distribution Payment Date will not constitute an event of default; and
 - (iv) it has no remedy on account of a failure by the Issuer to issue Ordinary Shares to a Holder or a nominee in accordance with these Terms other than (and subject always to clause 8.14) to seek specific performance of the obligation to issue Ordinary Shares.

11.3 No other rights

A Capital Note confers no rights on a Holder:

- (a) to participate in the profits or property of the Issuer, except as set out in these Terms; or

- (b) to subscribe for new securities in the Issuer or to participate in any bonus issues of shares in the Issuer's capital.

12 Takeovers and schemes of arrangement

If:

- (a) a takeover bid is made for Ordinary Shares, acceptance of which is recommended by the Directors; or
- (b) the Directors recommend a scheme of arrangement in respect of the Ordinary Shares of the Issuer which will result in a person other than the Issuer having a relevant interest in more than 50% of the Ordinary Shares,

in each case which would result in an Acquisition Event then, if the Directors consider that:

- (c) the Issuer will not be permitted to elect to Exchange the Capital Notes in accordance with clause 6 or to Convert the Capital Notes in accordance with clause 7; or
- (d) the Second Mandatory Conversion Condition or the Third Mandatory Conversion Condition will not be satisfied in respect of the Acquisition Conversion Date in accordance with clause 7,

the Directors will use all reasonable endeavours to procure that equivalent takeover offers are made to Holders or that they are entitled to participate in the scheme of arrangement or a similar transaction.

13 Title and transfer of Capital Notes

13.1 Title

Title to Capital Notes passes when details of the transfer are entered in the Register.

13.2 Effect of entries in Register

Each entry in the Register in respect of a Capital Note constitutes a separate and independent acknowledgment to the relevant Holder of the obligations of the Issuer to the relevant Holder.

13.3 Register conclusive as to ownership

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

13.4 Non-recognition of interests

- (a) Except as required by law, the Issuer, the Trustee and the Registrar must treat the person whose name is entered in the Register as the holder of a Capital Note as the absolute owner of that Capital Note. This clause 13.4 applies whether or not payment has not been made as scheduled in respect of a Capital Note and despite any notice of ownership, trust or interest in the Capital Note.
- (b) No notice of any trust, Encumbrance or other interest in, or claim to any Note will be entered in the Register.

13.5 Joint holders

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

13.6 Transfers in whole

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

13.7 Transfer

A Holder may, subject to this clause 13.7, transfer any Capital Notes:

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

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

13.8 Market obligations

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

13.9 Issuer may request holding lock or refuse to register transfer

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

- (a) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Capital Notes approved by and registered on the CS Facility's electronic sub-register or Capital Notes registered on an issuer-sponsored sub-register, as the case may be; or
- (b) refuse to register a transfer of Capital Notes.

13.10 Issuer must request holding lock or refuse to register transfer

- (a) The Issuer must request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Capital Notes approved by and registered on the CS Facility's electronic sub-register or Capital Notes registered on an issuer-sponsored sub-register, as the case may be, if the Corporations Act, the ASX Listing Rules or the terms of a Restriction Agreement require the Issuer to do so.
- (b) The Issuer must refuse to register any transfer of Capital Notes if the Corporations Act, the ASX Listing Rules or the terms of a Restriction Agreement require the Issuer to do so.
- (c) During a breach of the ASX Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the Holder of the

Restricted Securities is not entitled to any Distribution (or other distribution on), or voting rights in respect of, the Restricted Securities.

13.11 Notice of holding locks and refusal to register transfer

If, in the exercise of its rights under clauses 13.9 and 13.10, the Issuer requests the application of a holding lock to prevent a transfer of Capital Notes or refuses to register a transfer of Capital Notes, it must, within five Business Days after the date the holding lock is requested or the refusal to register a transfer, give written notice of the request or refusal to the Holder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

13.12 Delivery of instrument

If an instrument is used to transfer Capital Notes according to clause 13.7, it must be delivered to the Registrar, together with such evidence (if any) as the Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Capital Notes.

13.13 Refusal to register

The Issuer may only refuse to register a transfer of any Capital Notes if such registration would contravene or is forbidden by Applicable Regulation or the Terms.

If the Issuer refuses to register a transfer, the Issuer must give the lodging party notice of the refusal and the reasons for it within five Business Days after the date on which the transfer was delivered to the Registrar.

13.14 Transferor to remain Holder until registration

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

13.15 Effect of transfer

Upon registration and entry of the transferee in the Register the transferor ceases to be entitled to future benefits under the Trust Deed in respect of the transferred Capital Notes and the transferee becomes so entitled in accordance with clause 13.2.

13.16 Estates

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

13.17 Transfer of unidentified Capital Notes

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

14 Payments

14.1 Payments subject to law

All payments are subject to applicable law, but without prejudice to the provisions of clause 15.

14.2 Payments on Business Days

If a payment in respect of a Capital Note:

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

Nothing in this clause applies to any payment referred to in clause 8.1(b), which occurs on the Conversion Date as provided in clause 8.1.

14.3 Payment of Redemption Price

Payments of the Redemption Price will be made to each person registered at 10:00 am on the payment date as the holder of a Capital Note.

14.4 Payment of Distribution

Payments of Distributions will be made to each person registered at the close of business on the Record Date as the holder of that Capital Note.

14.5 Payments to accounts

Monies payable by the Issuer to a Holder in respect of a Capital Note may be paid in any manner in which cash may be paid as the Issuer decides, including by any method of direct credit determined by the Issuer to the Holder or Holders shown on the Register or to such person or place directed by them.

14.6 Payments by cheque

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

14.7 Unsuccessful attempts to pay

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

- (a) decides that an amount is to be paid to a Holder by a method of direct credit and the Holder has not given a direction as to where amounts are to be paid by that method;
- (b) attempts to pay an amount to a Holder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful;

- (c) has made reasonable efforts to locate a Holder but is unable to do so; or
- (d) has issued a cheque which has not been presented within six months of its date, then the Issuer may cancel such cheque,

then, in each case, the amount is to be held by the Issuer for the Holder in a non-interest bearing deposit with a bank selected by the Issuer until the Holder or any legal personal representative of the Holder claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

14.8 Payment to joint Holders

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

14.9 Time limit for claims

A claim against the Issuer for a payment under a Capital Note is void unless made within 10 years (in the case of the Redemption Price) or five years (in the case of Distributions and other amounts) from the date on which payment first became due.

15 Taxation

15.1 No set-off, counterclaim or deductions

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

15.2 Withholding tax

- (a) If a law requires the Issuer to withhold or deduct an amount in respect of Taxes from a payment in respect of the Capital Notes such that the Holder would not actually receive on the due date the full amount provided for under the Capital Notes, then the Issuer agrees to deduct the amount for the Taxes.
- (b) If any deduction is required, the Issuer must pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring a penalty under the applicable law.
- (c) If:
 - (i) a deduction is made;
 - (ii) the amount of the deduction is accounted for by the Issuer to the relevant revenue authority; and
 - (iii) the balance of the amount payable has been paid to the Holder,

then the Issuer's obligation to make the payment to the Holder is taken to have been satisfied in full by the Issuer.

15.3 FATCA

The Issuer may withhold or make deductions from payments or from the issue of Ordinary Shares to a Holder where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of Capital Notes may be subject to FATCA, and may deal with such payment, and any Ordinary Shares in accordance with FATCA. If any withholding or deduction arises under or in connection with FATCA, the Issuer will not be required to pay any further amounts and the Issuer will not be required

to issue any further Ordinary Shares on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of Capital Notes for or in respect of any such withholding or deduction. A dealing with such payment and any Ordinary Shares in accordance with FATCA satisfies the Issuer's obligations to that Holder to the extent of the amount of that payment or issue of Ordinary Shares.

16 Winding-up and Subordination

16.1 Winding-up

If an order of a court of competent jurisdiction is made (other than an order successfully appealed or permanently stayed within 30 days), or an effective resolution is passed, for the winding-up of the Issuer in Australia (a **Winding-up Event**), the Issuer is liable to Redeem each Capital Note for its Redemption Price in accordance with, and subject to, this clause 16.

16.2 Subordination

In a winding-up of the Issuer:

- (a) a Holder (and the Trustee) shall be entitled to prove for the Redemption Price in respect of a Capital Note only subject to, and contingent upon, the prior payment in full of, the Senior Creditors; and
- (b) the Holder's (and the Trustee's) claim for payment of the Redemption Price ranks equally with, and shall be paid in proportion to, the claims of holders of other instruments issued as Relevant Perpetual Subordinated Instruments,

so that the Holder receives, for the Capital Note, an amount equal to the amount it would have received if, in the winding up of the Issuer, it had held an issued and fully paid Preference Share.

16.3 Agreements of Holders and Trustee as to subordination

Each Holder (and the Trustee) irrevocably agrees:

- (a) that clause 16.2 is a debt subordination for the purposes of section 563C of the Corporations Act;
- (b) that it does not have, and waives to the maximum extent permitted by law, any entitlement to interest under section 563B of the Corporations Act to the extent that a holder of a preference share which is a Relevant Perpetual Subordinated Instrument would not be entitled to such interest;
- (c) that it shall not have, and is taken to have waived, to the fullest extent permitted by law, any right to prove in a winding-up of the Issuer as a creditor in respect of the Capital Notes so as to diminish any distribution, dividend or payment that any Senior Creditor would otherwise receive;
- (d) not to exercise any voting rights as a creditor in the winding-up or administration of the Issuer:
 - (i) until after all Senior Creditors have been paid in full; or
 - (ii) otherwise in a manner inconsistent with the ranking and subordination contemplated by clause 2 and clause 16.2;
- (e) that it must pay or deliver to the liquidator or administrator any amount or asset received on account of its claim in the winding-up or administration

of the Issuer in respect of the Capital Notes in excess of its entitlement under clause 2 and clause 16.2;

- (f) that it must pay in full all liabilities it owes the Issuer before it may receive any amount or asset on account of its claim in the winding-up or administration in respect of a Capital Note;
- (g) that the debt subordination effected by clause 2 and clause 16.2 is not affected by any act or omission of the Issuer or a Senior Creditor which might otherwise affect it at law or in equity; and
- (h) that it has no remedy for the recovery of the Redemption Price other than to prove in the winding up in accordance with this clause 16.

16.4 No further rights

A Capital Note does not confer on the Holders any further right to participate in the winding-up of the Issuer beyond payment of the Redemption Price.

16.5 No set-off

Neither the Issuer nor any Holder shall be entitled to set-off any amounts, merge accounts or exercise any other rights the effect of which is or may be to reduce any amount payable by the Issuer in respect of the Capital Notes held by the Holder or by the Holder to the Issuer (as applicable).

16.6 No consent of Senior Creditors

Nothing in clause 2 or this clause 16 shall be taken:

- (a) to require the consent of any Senior Creditor to any amendment of these Terms; or
- (b) to create a charge or security interest over any right of the holder or the Trustee.

17 General

17.1 Enforcement by Trustee

Subject to clause 17.2, only the Trustee may enforce the provision of the Trust Deed or these Terms and only in accordance with their terms and subject to the limitation and to the protections of the Trustee set out in the Trust Deed.

17.2 Holder's right to take action

No Holder shall be entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Note or the Trust Deed unless the Trustee, having become bound to proceed, fails to do so within 21 days and such failure is continuing, in which case any Holder may itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so.

17.3 Voting

- (a) The Trust Deed contains provisions for convening meetings of the Holders to consider any matter affecting their interests including certain variations of these Terms which require the consent of the Holders.
- (b) A Holder has no right to attend or vote at any general meeting of the shareholders of the Issuer.

17.4 Alterations without consent

At any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, with the approval of the Trustee (such approval not to be unreasonably withheld or delayed), but without the consent of the Holders, alter these Terms if the Issuer is of the opinion that such alteration is:

- (a) of a formal, technical or minor nature;
- (b) made to cure any ambiguity or correct any manifest error;
- (c) necessary or expedient for the purpose of enabling the Capital Notes to be:
 - (i) listed for quotation, or to retain quotation, on any securities exchange; or
 - (ii) offered for subscription or for sale under the laws for the time being in force in any place;
- (d) necessary to comply with:
 - (i) the provisions of any statute or the requirements of any statutory authority; or
 - (ii) the ASX Listing Rules or the listing or quotation requirements of any securities exchange on which the Issuer may propose to seek a listing or quotation of the Capital Notes;
- (e) made in accordance with the Issuer's adjustment rights in clause 7;
- (f) amends any date or time period stated, required or permitted in connection with any Mandatory Conversion, Non-Viability Conversion or Exchange in a manner necessary or desirable to facilitate the Mandatory Conversion, Non-Viability Conversion or Exchange (including without limitation where in connection with a Redemption the proceeds of Redemption are to be reinvested in a new security to be issued by the Issuer or a Related Entity);
- (g) made to:
 - (i) alter the terms of any Capital Notes to align them with any Relevant Perpetual Subordinated Instruments issued after the date of such Capital Notes; or
 - (ii) alter the definition of "Relevant Perpetual Subordinated Instruments" on account of the issue (after the date of any Capital Notes) of capital instruments of the Challenger Group; or
- (h) in any other case, not materially prejudicial to the interests of the Holders as a whole,

provided that, in the case of an alteration pursuant to paragraph (c), (d) or (h), the Issuer has provided to the Trustee an opinion which is addressed to it and in form reasonably satisfactory to it of independent legal advisers of recognised standing in New South Wales that such alteration is otherwise not materially prejudicial to the interests of Holders as a whole.

For the purposes of determining whether an alteration is not materially prejudicial to the interests of Holders as a whole, the taxation and regulatory capital

consequences to a Holder (or any class of Holders) and other special consequences or circumstances which are personal to a Holder (or any class of Holders) do not need to be taken into account by the Issuer or its legal advisers.

17.5 Alteration with consent

At any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may, with the approval of the Trustee (such approval not to be unreasonably withheld or delayed), alter these Terms:

- (a) except as otherwise provided in paragraphs (b), (c) and (d) below, if such alteration is authorised by a Holder Resolution;
- (b) in the case of an alteration to this clause 17.5 or any clause of the Trust Deed providing for Holders to give a direction to the Trustee by a Special Resolution, if a Special Resolution is passed in favour of such alteration;
- (c) in the case of an alteration to the Meeting Provisions and to which clause 17.4 does not apply, if a Special Resolution is passed in favour of such alteration; and
- (d) otherwise in accordance with the Trust Deed.

17.6 Consents

Prior to any alteration under this clause 17, the Issuer must obtain any consent needed to the alteration and, in particular, any alteration which may cause APRA to object to Challenger Group using, or having used, the proceeds of the issue of some or all of the Capital Notes to fund Additional Tier 1 Capital of CLC, is subject to the prior written consent of APRA.

17.7 Interpretation

In this clause 17, “**alter**” includes modify, cancel, amend, waive or add to, and “**alteration**” has a corresponding meaning.

17.8 Notices

The Trust Deed contains provisions for the giving of notices.

17.9 Further issues

The Issuer may from time to time, without the consent of any Holder, issue any securities ranking equally with the Capital Notes (on the same terms or otherwise) or ranking in priority or junior to the Capital Notes, or incur or guarantee any indebtedness upon such terms as it may think fit in its sole discretion.

17.10 Purchase by agreement

Subject to APRA’s prior written approval, the Issuer or any member of the Challenger Group may purchase Capital Notes at any time and at any price. Any Capital Note purchased by or on behalf of the Issuer shall be cancelled.

17.11 Governing law

These Terms and the Capital Notes are governed by the laws in force in New South Wales.

17.12 Rounding

For the purposes of any calculations required under these Terms:

- (a) all percentages resulting from the calculations must be rounded, if necessary, to the nearest ten-thousandth of a percentage point (with 0.00005% being rounded up to 0.0001%);
- (b) all figures must be rounded to four decimal places (with 0.00005 being rounded up to 0.0001); and
- (c) all amounts that are due and payable must be rounded to the nearest one Australian cent (with 0.5 of a cent being rounded up to 1 cent).

18 Interpretation and definitions

18.1 Interpretation

In these Terms, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document includes all schedules or annexes to it;
- (d) a reference to a clause or paragraph is to a clause or paragraph of these Terms;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to “**Australia**” includes any political sub-division or territory in the Commonwealth of Australia;
- (g) a reference to “**Australian dollars**”, “**A\$**” or “**Australian cent**” is a reference to the lawful currency of Australia;
- (h) a reference to time is to Sydney, Australia time;
- (i) other than:
 - (i) in relation to a Non-Viability Trigger Event and a Conversion or Write-off, in each case on account of a Non-Viability Trigger Event; and
 - (ii) where a contrary intention is expressed,

if an event under these Terms must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (j) a reference to a person includes a reference to the person’s executors, administrators, successors and permitted assigns and substitutes;
- (k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (l) a reference to a statute, ordinance, code, rule, directive or law (however described) includes regulations and other instruments under it and

- consolidations, amendments, re-enactments or replacements of any of them;
- (m) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
 - (n) any agreement, representation or warranty by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
 - (o) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Terms;
 - (p) if the principal securities exchange on which Ordinary Shares are listed becomes other than ASX, unless the context otherwise requires, a reference to ASX shall be read as a reference to that principal securities exchange and a reference to the ASX Listing Rules, ASTC Settlement Rules or any term defined in any such rules, shall be read as a reference to the corresponding rules of that exchange or corresponding defined terms in such rules (as the case may be);
 - (q) any provisions which refer to the requirements of APRA or any other prudential regulatory requirements will apply to the Issuer only if the Issuer is an entity subject to regulation and supervision by APRA at the relevant time;
 - (r) a reference to any term defined by APRA (including, without limitation, **Additional Tier 1 Capital**) shall, if that term is replaced or superseded in any of APRA’s applicable prudential regulatory requirements or standards, be taken to be a reference to the replacement or equivalent term
 - (s) any provisions which require APRA’s consent or approval (written or otherwise) will apply only if APRA requires that such consent or approval be given at the relevant time; and
 - (t) any provisions in these Terms requiring the prior approval of APRA for a particular course of action to be taken by the Issuer do not imply that APRA has given its consent or approval to the particular action as of the Issue Date or that it will at any time give its consent or approval to the particular action.

18.2 Definitions

In these Terms, these meanings apply unless the contrary intention appears:

Acquisition Conversion Date has the meaning given in clause 7.3.

Acquisition Conversion Notice has the meaning given in clause 7.2.

Acquisition Event means:

- (a) either:
 - (i) a takeover bid is made to acquire all or some Ordinary Shares and the offer is, or becomes, unconditional and:
 - (A) the bidder has a relevant interest in more than 50% of the Ordinary Shares on issue; or

- (B) the Directors issue a statement that at least a majority of the Issuer's directors who are eligible to do so recommend acceptance of the offer (which may be stated to be in the absence of a higher offer); or
- (ii) a court approves a scheme of arrangement which, when implemented, will result in a person other than the Issuer having a relevant interest in more than 50% of Ordinary Shares; and
- (b) all regulatory approvals necessary for the acquisition to occur have been obtained.

Acquisition Event Notice has the meaning given in clause 7.1.

Additional Tier 1 Capital means additional tier 1 capital as defined by APRA from time to time.

Adjustment Notice has the meaning given in clause 8.8.

Applicable Franking Period has the meaning given in clause 3.2.

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

APRA means the Australian Prudential Regulation Authority.

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

ASTC Settlement Rules means the operating rules of ASTC.

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

ASX Listing Rules means the listing rules of ASX.

ASX Operating Rules means the market operating rules of ASX as amended, varied or waived (whether in respect of the Issuer or generally) from time to time.

Attorney has the meaning given in clause 11.1.

Bookbuild means the process conducted prior to the opening of the Offer whereby certain investors and brokers lodge bids for Capital Notes and, on the basis of those bids, the Issuer determines the Margin and announces its determination of the Margin prior to the opening of the Offer.

Business Day means:

- (a) a day which is a business day within the meaning of the ASX Listing Rules; and
- (b) for the purposes of calculation or payment of Distributions or any other amount, a day on which banks are open for business in Sydney, New South Wales.

Buy Back means a transaction involving the acquisition by the Issuer of Ordinary Shares pursuant to an offer made at the Issuer's discretion in any way permitted by the provisions of Part 2J of the Corporations Act.

Capital Notes has the meaning given in clause 1.1 and includes Participating Capital Notes where the context requires.

Capital Notes 3 means the perpetual, subordinated, unsecured notes to be issued by the Issuer on the terms and conditions set out in the Capital Notes 3 Prospectus.

Capital Notes 3 Prospectus means the prospectus lodged by the Issuer with ASIC on or around 13 October 2020 and any replacement or supplementary prospectus.

Capital Reduction means a reduction in capital initiated by the Issuer in its discretion in respect of Ordinary Shares in any way permitted by the provisions of Part 2J of the Corporations Act.

Cash Resale Capital Note means any Capital Note the Holder of which has elected to participate in a Repurchase Invitation in respect of that Capital Note.

Challenger Group means the Issuer and its Controlled Entities.

Challenger Shares means Ordinary Shares or any other shares in the capital of the Issuer.

CHESS means the Clearing House Electronic Sub-register System operated by ASTC or any other applicable securities trading and/or clearance system on which the Capital Notes are lodged and traded.

CLC means Challenger Life Company Limited (ABN 44 072 486 938).

Control has the meaning given in the Corporations Act.

Controlled Entity means, in respect of the Issuer, an entity the Issuer Controls.

Conversion means, in relation to a Capital Note, the conversion of the Capital Note into an Ordinary Share in accordance with and subject to clause 8 as it may be amended. “Convert”, “Converting” and “Converted” have corresponding meanings.

Conversion Number has the meaning given in clause 8.1.

Conversion Test Date Percentage has the meaning given in clause 4.3.

Corporations Act means the Corporations Act 2001 of Australia.

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

CS Facility Operator means the operator of a CS Facility.

Cum Value has the meaning given in clause 8.2(a).

Defaulting Nominated Purchaser has the meaning given in clause 10.6.

Deferred Acquisition Conversion Notice has the meaning given in clause 7.5.

Deferred Conversion Date has the meaning given in clause 6.6.

Deferred Conversion Notice has the meaning given in clause 6.6.

Delisting Event means, in respect of a date, that:

- (a) the Issuer has ceased to be listed or Ordinary Shares have ceased to be quoted on ASX on or before that date (and where the cessation occurred before that date, the Issuer or the Ordinary Shares continue not to be listed or quoted (as applicable) on that date);
- (b) trading of Ordinary Shares on ASX is suspended for a period of consecutive days which includes:
 - (i) at least five consecutive Business Days prior to that date; and
 - (ii) that date; or
- (c) an Inability Event subsists.

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

Distribution has the meaning given in clause 3.1.

Distribution Payment Date has the meaning given in clause 3.5.

Distribution Period means in respect of:

- (a) the first Distribution Period, the period from (and including) the Issue Date until (but not including) the first Distribution Payment Date after the Issue Date; and
- (b) each subsequent Distribution Period, the period from (and including) the preceding Distribution Payment Date until (but not including) the next Distribution Payment Date.

Distribution Rate has the meaning given in clause 3.1.

Dividend means any interim, final or special dividend payable in accordance with the Corporations Act and the Issuer's constitution in relation to Ordinary Shares.

Encumbrance means any mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, title retention, preferential right or trust arrangement, any other security agreement or security arrangement (including any security interest under the Personal Property Securities Act 2009 of Australia) and any other arrangement of any kind having the same effect as any of the foregoing other than liens arising by operation of law.

Exchange means:

- (a) Conversion in accordance with and subject to clause 8;
- (b) Redemption in accordance with and subject to clause 9;
- (c) Resale in accordance with clause 10; or
- (d) a combination of two or more of Conversion, Redemption or Resale in accordance with clause 6.3(b),

and Exchanged has a corresponding meaning.

Exchange Date has the meaning given in clause 6.2(b).

Exchange Method has the meaning given in clause 6.3.

Exchange Notice has the meaning given in clause 6.1.

External Administrator means, in respect of a person:

- (a) a liquidator, a provisional liquidator, an administrator or a statutory manager of that person; or
- (b) a receiver, or a receiver and manager, in respect of all or substantially all of the assets and undertakings of that person,

or in either case any similar official.

Face Value means the principal amount of a Capital Note, being A\$100.

FATCA means the *Foreign Account Tax Compliance Act* provisions, sections 1471 through 1474 of the United States Internal Revenue Code (including any regulations or official interpretations issued, agreements entered into or non-US laws enacted with respect to those provisions).

First Mandatory Conversion Condition has the meaning given in clause 4.3.

First Optional Conversion Restriction has the meaning given in clause 6.5.

First Test Date has the meaning given in clause 4.3.

First Test Date Percentage has the meaning given in clause 4.3.

Foreign Holder means a Holder whose address in the Register is a place outside Australia or who the Issuer otherwise believes may not be a resident of Australia.

Franking Adjustment Factor has the meaning given in clause 3.1.

Franking Rate (expressed as a decimal) means the franking percentage (within the meaning of Part 3-6 of the Tax Act or any provisions that revise or replace that Part) applicable to the franking account of the Issuer at the relevant Distribution Payment Date, as determined by the Issuer in accordance with clause 3.2.

Franking Period means the franking period within the meaning of Part 3.6 of the Tax Act or any provisions that revise or replace that part applicable to the Issuer.

Holder means, in respect of a Capital Note, the person whose name is entered on the Register as the holder of that Capital Note.

Holder Resolution means a resolution passed:

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

Inability Event means the Issuer is prevented by applicable law, or order of any court, or action of any government authority (including regarding the insolvency,

winding-up or other external administration of the Issuer) or any other reason from Converting the Capital Notes.

Issue Date means the date on which the issue and allotment of Capital Notes to successful applicants is completed, in accordance with these Terms.

Issue Date VWAP means the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Issue Date, as adjusted in accordance with clauses 8.4 to 8.7 (inclusive).

Issuer means Challenger Limited (ABN 85 106 842 371).

Life Insurance Act means the Life Insurance Act 1995 (Cth).

Mandatory Conversion means the mandatory conversion of Capital Notes to Ordinary Shares on the Mandatory Conversion Date in accordance with clause 4.

Mandatory Conversion Conditions has the meaning given in clause 4.3.

Mandatory Conversion Date has the meaning given in clause 4.2.

Margin has the meaning given in clause 3.1.

Maximum Conversion Number has the meaning given in clause 8.1.

Meeting Provisions means the provisions for meetings of the Holders set out in schedule 2 to the Trust Deed.

Nominated Purchasers means, subject to clause 10.3, one or more third parties selected by the Issuer in its absolute discretion.

Non-Conversion Notice has the meaning given in clause 4.4.

Non-Conversion Test Date has the meaning given in clause 6.5.

Non-Viability Conversion means the Conversion of Capital Notes to Ordinary Shares on the Non-Viability Conversion Date in accordance with clause 5.

Non-Viability Conversion Date has the meaning given in clause 5.2.

Non-Viability Trigger Event has the meaning given in clause 5.1.

Non-Viability Trigger Event Notice has the meaning given in clause 5.2.

Offer means the invitation under the Prospectus made by the Issuer for persons to subscribe for Capital Notes.

Optional Conversion Restrictions has the meaning given in clause 6.5.

Optional Exchange Date means 25 May 2020.

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

Participating Capital Note means a [Cash Resale Capital Note](#) or a [Reinvestment Capital Note](#).

Payment Condition means, with respect to the payment of a Distribution on the Capital Notes on a Distribution Payment Date:

- (a) the consolidated retained earnings of the Challenger Group as at the Distribution Payment Date are, or would on payment of the Distribution become, negative;
- (b) the payment would result in the Issuer becoming, or being likely to become, insolvent for the purposes of the Corporations Act; or
- (c) APRA objecting to the payment.

Potential Acquisition Event means:

- (a) an event within paragraph (a) of the definition of Acquisition Event occurs (without the need that all regulatory approvals necessary for the acquisition to occur have been obtained); or
- (b) a court orders the holding of meetings to approve a scheme of arrangement under Part 5.1 of the Corporations Act and the scheme would result in a person having a relevant interest in more than 50% of the Ordinary Shares that will be on issue after the scheme is implemented.

Preference Share means a notional preference share in the capital of the issuer conferring a claim in the winding up of the issuer equal to the Redemption Price and ranking in respect of return of capital in the winding up ahead only of Ordinary Shares and equally with Relevant Perpetual Subordinated Instruments.

Proceeds means the net proceeds of a sale of Ordinary Shares attributable to the Holder actually received by the nominee calculated after deduction of any applicable brokerage, stamp duty and other taxes and charges, including the nominee's reasonable out of pocket costs, expenses and charges properly incurred by it or on its behalf in connection with such sale from the sale price of the Ordinary Shares.

Prospectus means the prospectus relating to the offer of Capital Notes dated on or about 27 August 2014 published by the Issuer and any supplementary or replacement prospectus.

Prudential Standards means the prudential standards and guidelines of APRA applicable to the Challenger Group and to entities within the Challenger Group from time to time.

Record Date means, for payment of a Distribution:

- (a) the date which is eight calendar days before the Distribution Payment Date for that Distribution (or, in the case of the first Distribution Payment Date, if the Issue Date is less than eight calendar days before the first Distribution Payment Date, the Issue Date); or
- (b) such other date as is determined by the Directors in their absolute discretion and communicated to ASX not less than seven Business Days before the specified Record Date,

or in either case such other date as may be required by ASX.

Redemption means the redemption of a Capital Note in accordance with clause 9 and the words **Redeem**, **Redeemable** and **Redeemed** have corresponding meanings.

Redemption Price has the meaning given in clause 9.2.

Register means the register of Holders (established and maintained under clause 13 of the Trust Deed) and, where appropriate, the term Register includes:

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

Registrar means Computershare Investor Services Pty Limited or any other person appointed by the Issuer to maintain the Register and perform any payment and other duties as specified in that agreement.

Regulatory Event means:

- (a) the receipt by the Directors of an opinion from a reputable legal counsel that, as a result of any amendment to, clarification of or change (including any announcement of a change that will be introduced) in any law or regulation or any official administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations which amendment, clarification or change is effective, or pronouncement, action or decision is announced, on or after the Issue Date (and which the Issuer does not expect, as at the Issue Date, may come into effect) (a **Change in Law**), additional requirements would be imposed on the Issuer in relation to or in connection with Capital Notes which the Directors determine, in their absolute discretion, to be unacceptable; or
- (b) as a result of a Change in Law or a statement received from APRA, the Directors determine that the Issuer is not or will not be entitled to treat some or all Capital Notes as a Relevant Perpetual Subordinated Instrument, (including where APRA has notified the Issuer in writing that it objects to the Challenger Group using or having used the proceeds of the Capital Notes to fund Additional Tier 1 Capital of CLC) except where the reason the Issuer is not or will not be entitled to treat some or all Capital Notes as a Relevant Perpetual Subordinated Instrument is because of a prudential limit or other restriction which is in effect on the Issue Date or which on the Issue Date is expected by the Issuer may come into effect.

Reinvestment Capital Note means any Capital Note which is to be reinvested in the Capital Notes 3 under the Reinvestment Offer.

Reinvestment Date means the issue date of the Capital Notes 3, as described in the Capital Notes 3 Prospectus.

Reinvestment Offer means the invitation made by the Issuer to eligible Holders to offer to reinvest all or some of the proceeds of the Resale of the Capital Notes in the Capital Notes 3 on the terms and conditions set out in the Capital Notes 3 Prospectus.

Related Entity has the meaning given by APRA from time to time.

Relevant Distribution Payment Date has the meaning given in clause 3.8.

Relevant Fraction has the meaning given in clause 8.1.

Relevant Perpetual Subordinated Instrument means a perpetual subordinated instrument (whether in the form of a note, preference share or other security or obligation) issued by the Issuer or another member of the Challenger Group which:

- (a) in accordance with its terms or by operation of law, is capable of being converted into Ordinary Shares or written-off where APRA makes a determination as referred to in clause 5.1(a); and
- (b) has been confirmed in writing by APRA to the Issuer as constituting as at the date of its issue an instrument the proceeds of which APRA does not object to the Challenger Group using to fund Additional Tier 1 Capital of CLC,

and includes the Capital Notes.

Reorganisation means, in relation to the Issuer, a division, consolidation or reclassification of the Issuer's share capital not involving any cash payment or other distribution to or by holders of Ordinary Shares.

Repurchase Invitation means [the invitation to a Holder to offer to have any Capital Note Resold to the Nominated Purchaser as described in the relevant Repurchase Invitation Booklet.](#)

Repurchase Invitation Booklet means [a document setting out a Repurchase Invitation, the first such document being dated on or about the date of the Capital Notes 3 Prospectus.](#)

Resale means the sale of a Capital Note to a Nominated Purchaser in accordance with clause 10, and **Resold** and **Resell** have corresponding meanings.

Resale Price means, for a Capital Note, a cash amount equal to its Face Value.

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

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

Scheduled Mandatory Conversion Date has the meaning given in clause 4.2.

Second Mandatory Conversion Condition has the meaning given in clause 4.3.

Second Optional Conversion Restriction has the meaning given in clause 6.5.

Second Test Period has the meaning given in clause 4.3.

Senior Creditors means all creditors of the Issuer (present and future), including all holders of the Issuer's senior or subordinated debt whose claims:

- (a) are admitted in a winding-up of the Issuer; and
- (b) are not in respect of a Relevant Perpetual Subordinated Instrument.

Special Resolution means:

- (a) a resolution passed at a meeting of the Holders duly called and held under the Meeting Provisions:
 - (i) by at least 75% of the persons voting on a show of hands (unless paragraph (b) below applies); or

- (ii) if a poll is duly demanded, then by a majority consisting of at least 75% of the votes cast; or
- (b) a resolution passed by postal ballot or written resolution under the Meeting Provisions by Holders representing (in aggregate) at least 75% of the aggregate Face Value of the outstanding Capital Notes.

Subsequent Mandatory Conversion Date has the meaning given in clause 4.2.

Tax Act means:

- (a) the *Income Tax Assessment Act 1936* of Australia or the *Income Tax Assessment Act 1997* of Australia as the case may be and a reference to any section of the *Income Tax Assessment Act 1936* of Australia includes a reference to that section as rewritten in the *Income Tax Assessment Act 1997* of Australia; and
- (b) any other Act setting the rate of income tax payable and any regulation promulgated under it.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Holder.

Tax Event means the receipt by the Directors of an opinion from a reputable legal counsel or other tax adviser in Australia, experienced in such matters to the effect that, as a result of:

- (a) any amendment to, clarification of, or change (including any announcement of a change that will be introduced), in the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;
- (b) any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (**Administrative Action**); or
- (c) any amendment to, clarification of, or change in an Administrative Action that provides for a position that differs from the current generally accepted position,

in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known, which amendment, clarification, change or Administrative Action is effective, or which pronouncement or decision is announced, on or after the Issue Date and which is not expected by the Issuer on the Issue Date, there is more than an insubstantial risk which the Directors determine (having received all approvals they consider in their absolute discretion to be necessary (including from APRA)) at their absolute discretion to be unacceptable that:

- (i) any Distribution would not be a frankable distribution within the meaning of Division 202 of the Tax Act; or
- (ii) the Issuer would be exposed to more than a de minimis increase in its costs (including without limitation through the imposition of any taxes, duties, assessments or other charges) in relation to Capital Notes.

Tax Rate (expressed as a decimal) means the Australian corporate tax rate applicable to the franking account of the Issuer at the relevant Distribution Payment Date.

Terms means these terms and conditions.

Trustee means The Trust Company (Australia) Limited (ABN 21 000 000 993).

Trust Deed means the deed entitled “Challenger Capital Notes Trust Deed” between the Issuer and the Trustee and dated on or about 27 August 2014.

VWAP means, subject to any adjustments under clause 8, the average of the daily volume weighted average sale prices (such average being rounded to the nearest full cent) of Ordinary Shares sold on ASX during the relevant period or on the relevant days but does not include any “Crossing” transacted outside the “Open Session State” or any “Special Crossing” transacted at any time, each as defined in the ASX Operating Rules, or any overseas trades or trades pursuant to the exercise of options over Ordinary Shares.

VWAP Period means:

- (a) in the case of a Conversion resulting from a Potential Acquisition Event or an Acquisition Event, the lesser of:
 - (i) 20 Business Days on which trading in Ordinary Shares takes place; and
 - (ii) the number of Business Days on which trading in Ordinary Shares takes place that the Ordinary Shares are quoted for trading on ASX after the occurrence of the Potential Acquisition Event or Acquisition Event (as the case may be),

in each case immediately preceding (but not including) the Business Day before the Exchange Date or Acquisition Conversion Date in respect of that event (as the case may be);
- (b) in the case of a Conversion resulting from a Non-Viability Trigger Event, the period of five Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Non-Viability Conversion Date;
- (c) in the case of any other Conversion, the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the date on which Conversion is to occur in accordance with these Terms; or
- (d) otherwise, the period for which VWAP is to be calculated in accordance with these Terms.

Winding-up Event has the meaning given in clause 16.1.

Written-Off has the meaning given in clause 8.14 and **Write-Off** has a corresponding meaning.

Capital Notes Trust Deed

Schedule 2 – Rules relating to Meetings of Holders

1 Application and power to call meetings

1.1 Ability to convene meetings

Each of the Trustee or the Issuer may, at any time, call a meeting of Holders.

1.2 Issuer's duty to call meeting

On request in writing of the Holders who together hold 10% or more of the aggregate Face Value of all Capital Notes outstanding (or who together hold 10% or more of the aggregate Face Value of the Capital Notes), the Issuer must call a meeting of Holders (or the relevant Holders as the case may be):

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

or both, as so requested by the Holders.

The Issuer will serve a copy of the request in writing on the Trustee, together with all other relevant information.

1.3 Trustee's duty to call meeting

If a Winding-up Event occurs the Trustee must call a meeting of Holders as soon as is reasonably practicable after becoming aware of the Winding-up Event.

1.4 Meeting under Corporations Act

A meeting of Holders may be called under Part 2L.5 of the Corporations Act.

2 How to call meeting and period of notice

2.1 Notice of Meeting

At least 10 Business Days' notice and (15 Business Days' notice for a Special Resolution) exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given, of every meeting is to be given to the Issuer, the Trustee and the Holders of Capital Notes. If the meeting is called under paragraph 1 of these meeting provisions, or the Trustee or the Issuer otherwise desires their presence at the meeting, notice of the meeting must also be given to the auditor of the Issuer.

2.2 Contents of notice

The notice 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. A copy of the notice must be sent by post to the Trustee unless the meeting is called by the Trustee and to the Issuer unless called by the Issuer.

2.3 Amendment of notice

The convenor of the meeting may amend or supplement the notice of meeting by any further information or materials it considers appropriate by further notice given in accordance with this paragraph at least 7 days prior to the time fixed for the meeting.

2.4 Omission to give notice

A meeting is duly convened and proceedings at it are valid, notwithstanding:

- (a) the accidental omission to give notice (or any amending or supplementary notice) to, or the non-receipt of notice by, any person entitled to receive notice; or
- (b) the omission to give notice (or any amending or supplementary notice) to a Holder whose country of residence (as shown in the Register) is outside Australia and where the giving of notice to such Holder is not permitted by applicable law, or applicable only after compliance with conditions which the Issuer in its discretion considers unduly onerous.

2.5 Postal ballot

Any meeting of Holders may be conducted by postal ballot under such arrangements as the Issuer may determine and the Trustee approves reflecting (unless the Trustee and the Issuer agree otherwise), as closely as may be practicable, the provisions of this schedule.

2.6 Location of meetings

All meetings of Holders of Capital Notes must be held in Australia unless the Issuer and the Trustee agree otherwise.

3 Proceedings at meeting and quorum

3.1 Quorum

The quorum for any meeting is two Holders or proxies (or one of each) and holding or representing Holders holding (in aggregate) Capital Notes representing at least 5% of the aggregate Face Value of the Capital Notes outstanding when the meeting begins. No business may be transacted at any meeting unless the requisite quorum is present at the commencement of business.

3.2 No quorum

If a quorum is not present within half an hour from the time appointed for the meeting then the meeting, if called upon the request of Holders, is dissolved. In any other case it stands adjourned to such day and time not being less than 14 days nor more than 42 days thereafter and to such place as may be directed by the Chairperson (as defined below). At such an adjourned meeting the Holders present and entitled to vote are a quorum for the transaction of business, regardless of the aggregate Face Value of the Capital Notes held by them.

3.3 Adjournment

The Chairperson may with the consent of a Holder Resolution and must (if directed by a Holder Resolution on a poll) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. Any proxy provided to the Issuer, the Issuer's agents or the Trustee under paragraph 5 of these meetings provisions, remains valid and effective for a meeting adjourned under these provisions.

3.4 Chairperson

The Trustee may nominate a person to be the chairperson (**Chairperson**) of any meeting of Holders, who need not be a Holder but who may be a representative of the Trustee or the Issuer or any other executive officer of the Trustee or the Issuer. If no such person is nominated, or if at any meeting the person nominated is not present within 15 minutes after the time appointed for holding the meeting, the Holders present may choose one of their number to be Chairperson.

3.5 Attendees

No person may, except for the Chairperson, attend or speak at any meeting other than the Issuer, the Holders and the Trustee (through their respective representatives) and their respective financial and legal advisers and the auditor of the Issuer.

3.6 Minutes

The Issuer must cause minutes of every meeting to be made under section 251A of the Corporations Act, with references to “members” being read as “Holders”.

Minutes of a meeting signed by the Chairperson constitute conclusive evidence of the proceedings of the meeting.

4 Voting show of hands

At any meeting a resolution put to the vote of the meeting is decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairperson, the Trustee or the Issuer or by one or more Holders present or by attorney or proxy holding (in aggregate) Capital Notes representing at least 5% of the aggregate Face Value of the Capital Notes outstanding when the meeting begins.

Unless a poll is so demanded a declaration by the Chairperson that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

Subject to the Corporations Act, the Trustee may, prior to any meeting of Holders, appoint an independent person to count and record the number of votes cast under either voting method specified in this paragraph 4.

4.1 Poll

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

4.2 Conduct of poll

A poll demanded on the election of the Chairperson or on a question of adjournment must be taken at the meeting without adjournment. A poll demanded on any other question must be taken either immediately or at such time and date (not being more than 30 days from the date of the meeting) and place as the Chairperson may direct. No notice need be given of a poll not taken immediately. The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

4.3 Number of votes

Subject to any restrictions under the Corporations Act and the ASX Listing Rules:

- (a) on a show of hands, every Holder who is present has one vote; and
- (b) on a poll every Holder who is present has one vote for every Capital Note with respect to which it is the Holder.

A Holder entitled to more than one vote need not use all its votes or cast all the votes it uses in the same way.

4.4 Joint Holders

In the case of joint registered holders of Capital Notes, the joint Holder first named in the Register (or if that person does not vote, the next named joint Holder) may exercise the voting rights of jointly held Capital Notes.

4.5 Casting vote

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

5 Proxies

5.1 Instrument appointing proxy

An instrument appointing a proxy must be in writing under the hand of the appointor or of its 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.

5.2 Proxy need not be Holder

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

5.3 Deposit of proxy

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a duly certified copy of such power or authority must be deposited at such places in the relevant jurisdiction as the Trustee or the Issuer, with the approval of the Trustee, may in the notice convening the meeting direct or if no such place is appointed then at the office of the Trustee in the relevant jurisdiction not less than 48 hours before the time appointed for holding the meeting or adjourned meeting or for the taking of the poll at which the person named in the instrument proposes to vote and in default the instrument of proxy must not be treated as valid. A notice of revocation or amendment of a proxy must be received from the Holder not less than 24 hours before the time appointed for the holding of the relevant meeting or the taking of the relevant poll to revoke or amend the proxy. No instrument appointing a proxy is valid after the expiration of twelve months from the date named in it as the date of its execution. If the Trustee convenes a meeting of Holders, the Issuer or the Issuer's agents must as soon as reasonably practicable after receipt of the documents deposited with the Issuer under this paragraph 5, provide a copy of those documents to the Trustee.

5.4 Form of proxy

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

5.5 Validity of vote

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

6 Passing of resolutions by instrument in writing

Notwithstanding any other provision of this document, a resolution of Holders (including a Special Resolution) may be passed, without any meeting or previous notice being required, by an instrument or instruments in writing signed by Holders holding the relevant proportion of the aggregate Face Value to pass the relevant resolution and any such instrument is effective upon presentation to the Trustee for entry into the records referred to in paragraph 3.6 of these meeting provisions.

7 Holders bound

A Holder Resolution or a Special Resolution passed at a meeting of the Holders duly called and held (or by way of postal ballot) under this schedule is binding on all the Holders whether or not present at the meeting and each of the Holders is bound to give effect to the resolution.

The Issuer must give notice to the Holders, in the manner provided in clause 18 of this deed, of the result of the voting on a resolution within 14 days of such result being known but failure to do so will not invalidate the resolution.

8 Interpretation

For the purposes this document, a Holder will be taken to be present at a meeting (including an adjourned meeting) if that Holder (being an individual) is present in person or if the attorney, proxy or (in the case of a corporation) corporate representative of the Holder is present, and any vote cast or other action taken by the attorney, proxy or corporate representative on behalf of the Holder in respect of any matter put before the meeting will be taken to be the vote or (as the case may be) action of the Holder.