

# ASX Announcement

1 February 2021

## Cleansing Notice under Section 708A(5)(e) and Section 708A(12C)(e) of the Corporations Act 2001 (Cth)

Navigator Global Investments Limited ACN 101 585 737 (ASX: NGI) (**Navigator** or **the Company**) gives this cleansing notice (**Cleansing Notice**) under section 708(5)(e) of the Corporations Act 2001 (Cth) (**Corporations Act**) and section 708A(12C)(e) of the Corporations Act as inserted by ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82 (**ASIC Instrument 2016/82**).

The Company hereby gives notice that:

- (a) the Convertible Notes and Share Consideration (defined and described below) will be issued without disclosure to investors under Part 6D.2 of the Corporations Act; and
- (b) this Cleansing Notice has been given in accordance with section 708(5)(e) section 708A(12C)(e) of the Corporations Act (as inserted by ASIC Instrument 2016/82).

The issue of this Cleansing Notice enables the 40,524,306 fully paid ordinary shares in the capital of the Company (**Shares**) that were issued today and the Shares to be issued on the conversion of the convertible notes (**Convertible Notes**) issued by the Company on the terms described below, to be on-sold to retail investors without further disclosure.

This Cleansing Notice is important and should be read in its entirety.

Neither the Australian Securities and Investments Commission (**ASIC**) or the Australian Securities Exchange (**ASX**) take responsibility for the contents of this Cleansing Notice.

### 1 Background

1.1 As announced on 13 August 2020, the Company entered into a definitive agreement (**Purchase Agreement**) to acquire six minority ownership interests in leading established alternative asset managers (the **Portfolio**) from investment funds managed by NB Dyal Advisors LLC (**Dyal**), which funds are part of Dyal Capital Partners, a division of Neuberger Berman (the **Transaction**). Two of the Company's wholly owned subsidiaries entered into the Purchase Agreement with NB Dyal Associates LP and certain of its controlled affiliates which are entities affiliated with Dyal (**Dyal Sellers**).

The Portfolio includes minority ownership interests in Bardin Hill Investment Partners, Capstone Investment Advisors, Capital Funds Management S.A., MKP Capital Management, Pinnacle Asset Management and Waterfall Asset Management. The Portfolio represents a well-diversified group of established firms with strong leadership and long track records of delivering results to their clients through multiple market cycles.

Under the terms of the Purchase Agreement, the Transaction has been structured so that Navigator acquires the Portfolio in two parts:

At closing of the Transaction:

- Navigator will be entitled to receive the first \$17.0 million of cash distributions of the Portfolio annually (indexed at 3.0% per annum and subject to a cumulative catch up mechanism), plus 20% of any cash distributions of the Portfolio in excess of this amount (the Dyal Sellers will be entitled to the remaining 80% of any excess cash distributions).
- In exchange, Navigator will issue the Dyal Sellers a 40% economic interest (on a fully diluted basis) at closing through a combination of the issuance of Shares (representing a 19.99% interest of issued capital as at closing of the Transaction) (**Share Consideration**) and Convertible Notes (**Note Consideration**).

- 1.2 Following 1 January 2026, Navigator will acquire the remainder of the Dyal Sellers' interests in the cash distributions for a single redemption payment linked to the Portfolio's financial performance over that time, based on an agreed formula but subject to a maximum cap of US\$200m.
- 1.3 At the Company's Annual General Meeting on 18 November 2020, the Company obtained the approval of its shareholders for the Transaction, including for the issue of the Share Consideration and Note Consideration to the Dyal Sellers. The Transaction closed today. In connection with the closing of the Transaction, Navigator has today issued 102,283 convertible notes to the Dyal Sellers as the Note Consideration for the acquisition of the Portfolio.
- 1.4 The key terms of the Convertible Notes are summarised in Section 4 of this Cleansing Notice, which was also disclosed in the Explanatory Memorandum of the Notice of Meeting for the Company's Annual General Meeting dated 14 October 2020. The full Convertible Note Deed Poll is attached as Schedule 2.

## 2 Contents of this Cleansing Notice

### 2.1 This Cleansing Notice sets out the following:

- (a) In relation to the Convertible Notes:
- (i) the effect of the issue of Convertible Notes and the conversion of the Convertible Notes into Shares on the Company; and
  - (ii) a summary of the rights and liabilities attaching to the Convertible Notes; and
  - (iii) a summary of the rights and liabilities attaching to the Shares that will be issued on the conversion of the Convertible Notes; and
- (b) any information that:
- (i) has been excluded from continuous disclosure notices in accordance with the ASX Listing Rules; and
  - (ii) is information that investors and their professional advisors would reasonably require for the purpose of making an informed assessment of:
    - a. the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
    - b. the rights and liabilities attaching to the Shares; and
  - (iii) other information relating to the Company's status as a disclosing entity.

## 3 The effect of the issue on the Company

### 3.1 Effect of the issue on the Company

The principal effect of the issue of the Convertible Notes issued today on the Company will be to:

- increase the Company's investments on the balance sheet by approximately US \$102.3 million;
- decrease the Company's cash reserves by approximately US \$1 million due to costs attributable to the issue of the Convertible Notes;
- increase the number of unquoted Convertible Notes on issue from nil to 102,283;
- give rise to a liability of approximately US \$3.6 million and an increase in the share capital of the Company of approximately US \$97.7 million;
- increase the number of Shares on issue by up to 67,574,292 Shares<sup>1</sup> if the Convertible Notes are converted, either wholly or in part, to Shares.

<sup>1</sup> Assumes that no permitted conversion adjustments occur (refer to Section 4 for details of conversion adjustments).

### 3.2 Pro forma consolidated statement of financial position

A pro-forma illustrative Consolidated Statement of Financial Position is shown in Schedule 1 to this Cleansing Notice and has been prepared on the following basis:

- (a) The audited 30 June 2020 Consolidated Statement of Financial Position of the Company and its subsidiary entities (**Navigator Group**) has been used as a base position to illustrate the impact of the issue of the Convertible Notes. The pro forma entries related to other aspects of the Transaction are also set out in Schedule 1.
- (a) For accounting purposes, the Convertible Notes are hybrid instruments which are separated into a debt component and an equity component. The allocation of the aggregated principal amount of the Convertible Notes between the debt and equity components may change in the future.
- (b) The pro-forma financial information is presented in an abbreviated form in so far as it does not include all the disclosures required by Australian accounting standards as issued by the Australian Accounting Standards Board (**AASB**). It has been prepared in accordance with the Company's normal accounting policies, or the accounting policies and various elections which are expected to be adopted in relation to the transaction.
- (c) The illustrative pro forma financial information is not audited and is provided solely for inclusion in this Cleansing Notice.

### 3.3 Potential effect on capital structure

A table setting out the effect of the Transaction, including the issue of the Shares and the Convertible Notes as consideration for the Transaction, on the capital structure of the Company is set out below:

Type of security	Immediately prior to the issue of Share Consideration and Convertible Notes	On the date of this Cleansing Notice	Number assuming full conversion of the Convertible Notes
Shares	162,147,897	202,672,203 <sup>1</sup>	270,246,495
Convertible Notes	0	100,283 <sup>2</sup>	0

1 Includes the 40,524,306 Shares issued today which constitute the Share Consideration for the Transaction

2. The 102,283 Convertible Notes issued today which constitute the Note Consideration and are the subject of this Cleansing Notice.

The Convertible Notes are convertible into 67,574,292 Shares based on the conversion number formula set out in Section 4 below.

Whilst the Convertible Notes are intended to be equity like, the actual number of Shares issued to the Dyal Sellers will depend on a number of factors, including:

- whether the holder of Convertible Notes (**Convertible Noteholder**) elects to convert the Convertible Notes,
- subject to the terms of the Convertible Notes, whether the Company elects to convert the Convertible Notes,
- if there are any conversion adjustments made in accordance with the term of the Convertible Notes,
- whether any remaining Convertible Notes are able to be converted at the maturity date, and if not whether the Company elects to repurchase the remaining Convertible Notes or the parties negotiate an alternative solution.

Other than the Shares and Convertible Notes issued as consideration pursuant to the Transaction the Dyal Sellers do not hold any Shares or interests in the Company prior to the date of this Cleansing Notice.

## 4 Summary of the rights and liabilities attaching to the Convertible Notes

### Status and rights of Convertible Notes

The Convertible Notes:

- (a) are unsecured;
- (b) rank pari passu amongst themselves and any present, future, unsubordinated, unconditional and unsecured obligations of the Company; and
- (c) rank ahead of any subordinated liabilities expressed in their terms to rank behind the Convertible Notes (including preference shares, if any).

### Conversion number

The number of Shares to which a Convertible Noteholder will be entitled upon conversion of any of its Convertible Notes is equal to the sum of the principal amount (being the face value) of those Convertible Notes and any other amount owing to the Convertible Noteholder under that Convertible Note, divided by the Conversion Price (as defined below), rounded to the nearest whole number (or, in the case of a fraction of a Share that is exactly one half, down).

<b>Potential Shares issued pursuant to Convertible Notes</b>	<b>67,574,292</b>
20-day VWAP at Completion	AU\$1.96046656
<b>Conversion Price</b>	<b>US\$1.51363776</b>
<b>Estimated value of Note Consideration</b>	<b>US\$102.3 million</b>
Face value of each Convertible Note	US\$1,000
<b>Number of Convertible Notes to be issued</b>	<b>102,283</b>

### Ordinary shares issued on conversion

Each Convertible Note will be convertible into Shares ranking equally with other existing fully paid ordinary shares in the Company.

The Company must procure official quotation of the Shares issued on conversion.

### Convertible Noteholder conversion rights

A Convertible Noteholder may, at any time, require the conversion of all or some of its outstanding Convertible Notes, subject to the following regulatory restrictions:

- (a) where such conversion is a notifiable action for the Convertible Noteholder under the FATA and that Convertible Noteholder has not received FIRB approval in respect of such conversion;
- (b) where such conversion would contravene section 606 of the Corporations Act;
- (c) such conversion is subject to the expiration of a waiting period under the HSR Act, until the expiration of such waiting period; or
- (d) where such conversion is prohibited by any applicable law or regulation.

### Company Conversion Rights

On an annual basis from the seventh anniversary of the issue date, the Company may require conversion of all or some of the Convertible Notes. Where the Company requires the conversion for some of the Convertible Notes:

- (a) the aggregate face value of all Convertible Notes to be converted on that date must be at least US\$1 million; and
- (b) if there is more than one Convertible Noteholder, the conversion must be pro rata for each Convertible Noteholder based on the number of Convertible Notes held by that Convertible Noteholder as a proportion of all Convertible Notes on issue.

<b>Face value</b>	The face value of each Convertible Note will be US\$1,000
<b>No prepayment</b>	<p>The Company may not prepay any Convertible Note prior to the Maturity Date (defined below) without prior written consent of:</p> <p>(a) for such time as Dyal or any of its affiliates hold any Convertible Notes, Dyal and its affiliates; or</p> <p>(b) if Dyal or any of its affiliates do not hold any Convertible Notes, Convertible Noteholders who hold at least 51% in aggregate of the outstanding principal amount of the Convertible Notes.</p>
<b>Conversion Price</b>	The Conversion Price will be the prior 20-day VWAP per Share at Completion, converted to a USD amount at the then prevailing exchange rate (subject to a pro-rata adjustment for certain dilution events).
<b>Conversion adjustments</b>	<p>The conversion price will be adjusted in the event of a bonus, rights and other issues of securities, off-market buy backs, return of capital, or capital reconstructions.</p> <p>The effect of the adjustment will be to ensure that the Convertible Noteholder is in an economic position in relation to their Convertible Notes as they were prior to the occurrence of the adjustment event (as far as possible as allowed by the ASX Listing Rules).</p>
<b>Interest</b>	<p>Interest will be payable on each Convertible Note in accordance with the following formula:</p> $\text{Interest} = (FV / CP) \times DA$ <p>where:</p> <p>FV = the face value</p> <p>CP = the Conversion Price as at the time immediately before the relevant dividend is determined or declared</p> <p>DA = the amount of the dividend determined or declared per Share in respect of that Interest Period calculated and converted (as necessary) to USD at the rate published by the Reserve Bank of Australia on the Business Day immediately prior to that day</p>
<b>Maturity Date</b>	<p>The Convertible Notes will mature on the Maturity Date (being the date falling on the tenth anniversary of the issue date, subject to extension where a regulatory approval or consent in respect of the conversion of Convertible Notes is required).</p> <p>On the Maturity Date the Convertible Notes will be converted or redeemed for cash in certain circumstances.</p>
<b>Redemption right in control transaction</b>	The Convertible Notes may be redeemed for cash and/or non-cash consideration equal to the price payable by the relevant third party or bidder per Share if a control transaction (i.e. scheme of arrangement or takeover) becomes effective.
<b>Voting rights</b>	Except as required by the Corporations Act, Convertible Noteholders will not have any right to vote at general meetings of Shareholders.
<b>Participation rights</b>	<p>Each Convertible Noteholder will be entitled to participate in any pro rata equity raising by the Company (but not issues under any employee or executive share schemes, conversion of Convertible Notes, exercise of any options, or as a result of any dividend reinvestment). The Convertible Noteholder can apply for as many securities as necessary to maintain its pre-issuance ownership.</p> <p>If under applicable law, the Listing Rules or other regulatory requirements, a Convertible Noteholder is unable to subscribe for, or if the Company is unable to</p>

issue securities to the Convertible Noteholder, the Conversion Price may be adjusted or, where not permitted under applicable law, the Listing Rules or other regulatory requirements, the Convertible Noteholder may subscribe for and be issued additional convertible notes to ensure that the Convertible Noteholder will be in the same economic position. If the issuer is prohibited under applicable law, the Listing Rules or other regulatory requirements from adjusting the Conversion Price and from offering further convertible notes, the Issuer must pay a cash adjustment amount to the Convertible Noteholders.

**Restrictions on transfer**

The Convertible Notes are transferrable:

- (a) without the prior written consent of the Company, provided that if such transfer is a notifiable action under the FATA, that the Convertible Noteholder has received FIRB approval in respect of such transfer and such transfer is not or would not otherwise be prohibited or restricted pursuant to any applicable law or regulation; or
- (b) otherwise, subject to the prior written consent of the Company (such consent may be given or withheld at the absolute discretion of the Company).

US law transfer restrictions also apply to the transfer of Convertible Notes.

**Registration of transfer of Convertible Notes**

The Company must register the transferee in the register as the holder of the Convertible Notes if transferred in accordance with the terms of transfer. The Company may refuse to register any transfer if it were to breach any of the terms and conditions of the Convertible Notes or any applicable law.

**Governing law**

The Convertible Notes are governed by the laws of New South Wales.

## 5 Summary of the rights and liabilities attaching to the Shares issued on conversion of the Convertible Notes

- 5.1 The Shares issued upon conversion of the Convertible Notes will rank equally in all respects with all of the Company's existing Shares. The rights attaching to the Shares, including new Shares to be issued to the Convertible Noteholders on the conversion of the Convertible Notes, are set out in the Company's constitution (**Constitution**), and, in certain circumstances, regulated by the Corporations Act, the ASX Listing Rules and the general law.
- 5.2 The Company intends to apply to the ASX for quotation of the Shares issued on conversion of any Convertible Notes.
- 5.3 Full details of the rights and liabilities attaching to the Shares are set out in the Constitution, a copy of which can be found on ASX's market announcements platform and on the Company's website at <http://www.navigatorglobal.com.au/site/file/151/view/NavigatorGlobalInvestmentsConstitution6November2017.pdf>.
- 5.4 The following is a summary of the rights, privileges and restrictions attaching to all Shares. This summary is not exhaustive and does not constitute a definitive statement of the rights and liabilities of Shareholders.

	<b>Constitution reference</b>	
<b>General meetings</b>	Rule 7.9	Shareholders are entitled to receive notice of, be present in person, or by proxy, attorney or representative to attend and vote at general meetings of the Company. Each Shareholder is entitled to receive all notices, accounts and other documents required to be sent to Shareholders under the Constitution, the Corporations Act and the ASX Listing Rules. The Company must give at least 28 days' written notice of a general meeting.
	Rue 7.1(a)	Shareholders may requisition meetings in accordance with section 249D of the Corporations Act and the Constitution.
<b>Voting rights</b>	Rule 7.8(a)	Subject the Constitution and to any rights or restrictions attached to any Shares or classes of shares, at general meeting: <ul style="list-style-type: none"> <li>(1) on a show of hands, every Shareholder present has one vote;</li> <li>(2) on a poll, every Shareholder present has one vote for each share held as at the record time by the member entitling the</li> </ul>

	<b>Constitution reference</b>	
		<p>member to vote, except for partly paid shares, each of which confers on a poll only the fraction of one vote which the amount paid (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited) on the share. An amount paid in advance of a call is disregarded for this purpose; and</p> <p>(3) where the board has determined other means (including electronic) permitted by law for the casting and recording of votes by members (or their proxies or attorneys) on any resolution to be put at a meeting of members, each member having a right to vote on the resolution has one vote for each share held as at the record time by the member entitling the member to vote, except for partly paid shares, each of which confers on a poll only the fraction of one vote which the amount paid (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited) on the share. An amount paid in advance of a call is disregarded for this purpose.</p>
<b>Dividend rights</b>	Rule 4.1(a) & (b)	<p>The directors may pay any interim and final dividends that, in their judgment, the financial position of the company justifies.</p> <p>The directors may rescind a decision to pay a dividend if they decide, before the payment date, that the company's financial position no longer justifies the payment.</p>
	Rule 4.1(e)	<p>Subject to any rights or restrictions attached to any Shares or class of shares:</p> <p>(1) all dividends must be paid equally on all shares, except that a partly paid share confers an entitlement only to the proportion of the dividend which the amount paid (not credited) on the share is of the total amounts paid and payable (excluding amounts credited);</p> <p>(2) for the purposes of rule 4.1(e)(1), unless the directors decide otherwise, an amount paid on a share in advance of a call is to be taken as not having been paid until it becomes payable; and</p> <p>(3) interest is not payable by the company on any dividend.</p>
<b>Winding up</b>	Rule 11.1(a)	<p>Subject to any rights or restrictions attached to any Shares or class of shares, if the Company is wound up and the property of the Company available for distribution among the members is more than sufficient to pay:</p> <p>(1) all the debts and liabilities of the company; and</p> <p>(2) the costs, charges and expenses of the winding up,</p> <p>the excess must be divided among the Shareholders in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares.</p>
	Rule 11.2(a)	<p>If the company is wound up, the liquidator may, with the sanction of a special resolution:</p> <p>(1) divide amongst the members the whole or any part of the company's property; and</p> <p>(2) decide how the division is to be carried out as between the members or different classes of members.</p>
<b>Shareholder liability</b>	Rule 3.1	<p>As the Shares to be issued on the conversion of the Convertible Notes will be fully paid shares, they will not be subject to any calls for money by the Directors and will therefore not become liable for forfeiture.</p>
<b>Transfer of Shares</b>	Rule 5.1	<p>Subject to the Constitution and to any restrictions attached to any Share, Shares may be transferred by proper ASTC transfer (effected in accordance with the ASX Settlement Operating Rules, the Corporations Regulations and the ASX Listing Rules) or by a written transfer in any usual form or in any other form approved by the Board and permitted by the relevant laws and ASX requirements. The Board may, in accordance</p>

	<b>Constitution reference</b>	
		with the Corporations Act or the ASX Listing Rules, decline to register, or prevent registration of, a transfer of Shares or apply a holding lock to prevent a transfer.
		Shares held by the Dyal Sellers are subject to a shareholders agreement entered into between the Company and the Dyal Sellers.
<b>Future increase in capital</b>	Rule 2.1	Subject to restrictions on the issue or grant of securities contained in the ASX Listing Rules, the Constitution and the Corporations Act (without affecting any special right previously conferred on the holder an existing Share or class of Shares), the Directors may issue, allot or otherwise dispose of Shares.
<b>Variation of rights</b>	Rule 2.5	If at any time the share capital is divided into different classes of Shares, the rights attached to any class may, unless their terms of issue state otherwise, be varied: <ol style="list-style-type: none"> <li>(1) with the consent in writing of the holders of three-quarters of the issued shares of that class; or</li> <li>(2) by a special resolution passed at a separate meeting of the holders of the shares of that class.</li> </ol>
<b>Alteration of Constitution</b>		In accordance with the Corporations Act, the Constitution can only be amended by a special resolution passed by at least 75% of Shareholders present (in person or by proxy, attorney or representative) and voting at the general meeting. In addition, at least 28 days written notice specifying the intention to propose the resolution as a special resolution must be given.

5.5 The Dyal Sellers have entered into a Shareholder Agreement with the Company, which contains additional rights and restrictions related to their holding of Shares and Convertible Notes. The material terms of the Shareholders Agreement are:

<b>Nominee director</b>	The Dyal Sellers have the right to nominate a director to the Board, so long as the combined holding of Shares by Dyal entities is at least 10% of the total shares of the Company on a fully diluted basis ( <b>Dyal Share Entitlement</b> ).
<b>Disposal of Shares and Notes</b>	The Dyal Sellers may only dispose of the Share Consideration and the Note Consideration representing in aggregate up to 8.4 million Shares in the first two years after Completion and representing in aggregate up to 40,524,306 Shares in the first five years after Completion, other than where Dyal or its affiliates make a change of control offer in connection with the Company receiving a third party change of control offer.  Navigator will provide reasonable assistance to the Dyal Sellers in certain circumstances to assist with a sell-down of Convertible Notes or Shares.
<b>Voting Power</b>	The Dyal Sellers must not acquire voting power in the Company of 20% or more, other than as permitted under items 9, 10, 11 or 19 of Section 611 of the Corporations Act and Dyal Sellers' voting power in the Company must not in any circumstances exceed 24.9%, in each case other than where Dyal Sellers or its Affiliates make a change of control offer in connection with the Company receiving a third party change of control offer.
<b>Voting on the election of Navigator directors</b>	For so long as the Dyal Sellers maintain the Dyal Share Entitlement, the Dyal Sellers must vote in favour of the election of a director who is supported by a majority of the Board. Such requirement only applies to votes attaching to up to 19.99% Shares.



- Other restrictions** For so long as the Dyal Sellers maintain the Dyal Share Entitlement, the Dyal Sellers must not:
- (a) initiate any resolutions, convene any Shareholder meetings or support any action which seeks to remove a Director or appoint a new director unless supported by the majority of the Board;
  - (b) make itself, or assist another person to make, a shareholder proposal, or undertake itself or enter into with another person arrangement which would result in any person holding a relevant interest in 50.1% or more of the Company, other than where Dyal Sellers or its Affiliates make a change of control offer in connection with the Company receiving a third party change of control offer;
  - (c) make, initiate, assist with or solicit a change of control offer, other than where Dyal Sellers or its Affiliates make a change of control offer in connection with the Company receiving a third-party change of control offer.

The Dyal Sellers remain free to vote their shares either in favour of against any change of control offer from a third party.

## 6 Compliance with disclosure obligations

- 6.1 The Company is a disclosing entity under the Corporations Act and as such is subject to regular reporting and disclosure requirements under both the Corporations Act and the ASX Listing Rules.
- 6.2 These obligations require the Company to notify the ASX of information about specific events and matters as they arise. In particular, the Company is obliged to continuously disclose to the market immediately any information which a reasonable person would expect to have a material effect on the price or value of the Shares.
- 6.3 As at the date of this notice, the Company has complied with:
  - (a) the provisions of Chapter 2M of the Act as they apply to the Company; and
  - (b) section 674 of the Act.
- 6.4 As at the date of this notice, there is no excluded information of the type referred to in sections 708A(7) and 708A(8) of the Act that is required to be set out in this notice under section 708A(6)(e) of the Act.
- 6.5 The Company is also required to prepare and lodge with ASIC yearly and half-yearly financial reports, including an audit report or review report from its auditor. These documents are available on the Company's website at <http://www.navigatorglobal.com.au/site/company-updates-reports/financial-reports>.
- 6.6 Copies of documents that the Company has lodged with ASIC may be obtained from, or inspected at, an ASIC office.
- 6.7 The Company makes available on its website, and will upon request provide a hard copy, free of charge, to any person on request:
  - (a) The annual financial report most recently lodged by the Company with ASIC, being the financial report of the Company for the year ended 30 June 2020; and
  - (b) Any continuous disclosure notices given by the Company to the ASX after lodgement of the annual financial report referred to in paragraph (a) and before the lodgement of this Cleansing Notice with ASX (listed in the table below).

Date	Price Sensitive	Announcement
15 January 2021	Yes	<a href="#">December 2020 AUM Update</a>
11 January 2021	Yes	<a href="#">December 2020 performance update</a>
18 November 2020	No	<a href="#">Results of Annual General Meeting</a>
18 November 2020	No	<a href="#">AGM - Chairman and CEO Address</a>
6 November 2020	No	<a href="#">Ceasing to be a substantial holder</a>
4 November 2020	No	<a href="#">Becoming a substantial holder</a>
14 October 2020	Yes	<a href="#">September 2020 AUM Update and earnings guidance</a>
14 October 2020	No	<a href="#">Notice of Annual General Meeting/Proxy Form</a>
14 October 2020	No	<a href="#">Annual Report</a>
14 October 2020	No	<a href="#">Shareholder Letter - 2020 AGM</a>
8 October 2020	No	<a href="#">Initial Director's Interest Notice</a>
8 October 2020	No	<a href="#">Director Appointment</a>
24 September 2020	No	<a href="#">Navigator 2020 AGM details</a>
8 September 2020	No	<a href="#">Proposed issue of Securities - NGI</a>
20 August 2020	No	<a href="#">FY20 Final Dividend Conversion Rate</a>
20 August 2020	No	<a href="#">Update - Dividend/Distribution - NGI</a>
17 August 2020	No	<a href="#">Change in substantial holding</a>

## 7 Information excluded from Continuous Disclosure Notices

7.1 As at the date of this Cleansing Notice, the Company advises that it has fully complied with its disclosure obligations under the ASX Listing Rules and the Corporations Act, and, in particular, there is no information which the Company has excluded from any of its continuous disclosure notices given in accordance with ASX Listing Rules and the Corporations Act as at the date of this Cleansing Notice which it would be reasonable for investors and their professional advisors to require for the purpose of making an informed assessment of:

- (a) the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
- (b) the rights and liabilities attaching to the Convertible Notes or the Shares.

***For further information please contact:***

Amber Stoney  
Chief Financial Officer & Company Secretary  
07 3218 6200

***Approved for release by: Board of Directors***

## Schedule 1

### Pro Forma illustrative consolidated statement of financial position

	Reported Statement of financial position <sup>1</sup> US\$ millions 30 June 2020	Pro Forma adjustments		Pro Forma Statement of financial position <sup>2</sup> US\$ millions 30 June 2020
		Convertible Notes	Other Transaction Components	
<b>Assets</b>				
Cash and cash equivalents	27.0	(1.0)	(5.8)	20.2
Trade and other receivables	16.1			16.1
<b>Total current assets</b>	<b>43.1</b>			<b>36.3</b>
Investments	14.7	102.3	139.3	256.3
Plant and equipment	7.4			7.4
Right of use (lease) assets	19.3			19.3
Deferred tax assets	46.0		0.8	46.8
Intangible assets	94.5			94.5
Other non-current assets	2.5			2.5
<b>Total non-current assets</b>	<b>184.4</b>			<b>426.8</b>
<b>Total assets</b>	<b>227.5</b>			<b>463.1</b>
<b>Liabilities</b>				
Trade and other payables	2.9			2.9
Lease liabilities	2.4			2.4
Employee benefits	0.5			0.5
<b>Total current liabilities</b>	<b>5.8</b>			<b>5.8</b>
Trade and other payables	0.2			0.2
Lease liabilities	20.8			20.8
Employee benefits	0.1			0.1
Convertible Note liability	-	3.6		3.6
Redemption Payment liability	-		75.5	75.5
<b>Total non-current liabilities</b>	<b>21.1</b>			<b>100.2</b>
<b>Total liabilities</b>	<b>26.9</b>			<b>106.0</b>
<b>Net Assets</b>	<b>200.6</b>			<b>357.1</b>
<b>Equity</b>				
Share capital	257.3		62.8	320.1
Non-share capital		97.7		97.7
Reserves	13.7			13.7
Accumulated losses	(70.4)		(4.0)	(74.4)
	<b>200.6</b>			<b>357.1</b>

Notes:

- 1 The consolidated statement of financial position has been extracted from the audited financial statements of the Company as at 30 June 2020.
- 2 The Pro Forma Statement of financial position has been adjusted to reflect the acquisition of the Portfolio assets and the issue of Shares and the Convertible Notes in relation to the Transaction as if this would have occurred as at 30 June 2020. The pro forma adjustments to reflect the estimated financial effect of accounting for the business combination are illustrative only. The Company will have until its next financial reporting date following Completion to finalise the purchase accounting.

The pro-forma illustrative consolidated Statement of Financial Position shown above has been prepared on the following basis:

- The audited 30 June 2020 Consolidated Statement of Financial Position of the Company and its subsidiary entities (**Navigator Group**) has been used as a base position to illustrate the impact of the issue of the Convertible Notes. The pro forma entries related to other aspects of the Transaction are also set out in this Schedule 1;
- For accounting purposes, the Convertible Notes are hybrid instruments which are separated into a debt component and an equity component. The allocation of the aggregated principal amount of the Convertible Notes between the debt and equity components may change in the future;
- The pro-forma financial information is presented in an abbreviated form in so far as it does not include all the disclosures required by Australian accounting standards as issued by the Australian Accounting Standards Board (**AASB**). It has been prepared in accordance with the Company's normal accounting policies, or the accounting policies and various elections which are expected to be adopted in relation to the transaction.
- The illustrative pro forma financial information is not audited and is provided solely for inclusion in this Cleansing Notice.

The pro forma adjustments for the Transaction and the issue of the Convertible Notes are as follows:

Balance sheet item		Convertible Note pro forma impact	Other Transaction pro forma impacts
<b>Cash</b>	<p>Navigator expects to incur additional transaction costs for the 2021 financial year of approximately US\$6.8 million.</p> <ul style="list-style-type: none"> <li>▪ Approximately 70% or US\$4.8 million of these costs are estimated to relate to the acquisition of assets and will be expensed;</li> <li>▪ Approximately 15% or US\$1.0 million of these costs are estimated to relate to the issue of shares and will be deducted from equity;</li> <li>▪ Approximately 15% or US\$1.0 million of these costs are estimated to relate to the issue of the Convertible Notes will be deducted from equity;</li> <li>▪ Costs related to the debt component of the Convertible Note are expected to be nominal.</li> </ul> <p>The above % allocations may change when acquisition accounting for the transaction is finalised.</p>	Decrease of US \$1.0 m	Decrease of US \$5.8 m
<b>Investments</b>	<p>Represents an estimate of the expected fair value of the Portfolio assets to be acquired at Completion of US\$241.6 million based on:</p> <ul style="list-style-type: none"> <li>▪ the value of the Note Consideration to be issued at Completion of US\$102.3 million</li> <li>▪ an estimate of the fair value of the Redemption Payment liability at Completion of US\$75.5 million</li> <li>▪ the value of the Share Consideration to be issued at Completion of US\$63.8 million</li> </ul> <p>The combined value of these components is expected to be equivalent to fair value at Completion</p>	Increase of US \$102.3 m	Increase of US \$139.3 m
<b>Deferred tax assets</b>	<p>A portion of the expensed transaction costs are expected to result in a deferred tax asset of approximately US\$0.8 million as they will not be immediately deductible in the jurisdiction in which they are incurred.</p>	-	Increase of US \$0.8 m

Balance sheet item	Convertible Note pro forma impact	Other Transaction pro forma impacts									
<p><b>Convertible Note liability</b></p>	<p>The debt component of the Convertible Note is estimated to be US\$3.6 million, representing the discounted value of the estimated amount that Navigator may have to pay to redeem the Convertible Notes for cash at Maturity Date. The Convertible Notes are only redeemable for cash at Maturity Date if conversion of the Convertible Notes to Shares is not possible due to regulatory reasons. The likelihood of this occurring is considered very small, and the probability has been estimated at 5%. This probability also takes into account the likely reduction in the Convertible Notes over the 10 year term of the Convertible Notes given the conversion rights of both parties.</p>	<p>Increase of US \$3.6 m</p>	<p>-</p>								
<p><b>Redemption payment liability</b></p>	<p>This represents an estimate of the net present value of the Redemption Payment for the retained interest in the cash distributions from the Portfolio payable to the Dyal Sellers under the Purchase Agreement to be paid in 2026.</p> <p>The estimated fair value of the Redemption Payment liability at Completion in the pro forma statement of financial position has been estimated based on the below assumptions and applying the contractual terms for calculating the Redemption Payment.</p> <p>The Redemption Payment liability is the discounted value of the estimated Redemption Payment payable in 2026, calculated as:</p> <ul style="list-style-type: none"> <li>▪ 2.25 times the average amount in excess of the Preferred Distribution Base Amount for calendar years 2021 to 2023</li> </ul> <p>plus</p> <ul style="list-style-type: none"> <li>▪ 2.25 times the average amount in excess of the Preferred Distribution Base Amount for calendar years 2024 and 2025</li> </ul> <table data-bbox="375 1400 941 1688" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Estimated total cash distributions<sup>1</sup></td> <td style="text-align: right;">US\$36.0m indexed at 3% pa</td> </tr> <tr> <td>Preferred Distribution Base Amount</td> <td style="text-align: right;">US\$17.0m indexed at 3% pa</td> </tr> <tr> <td>Estimated discount rate<sup>2</sup></td> <td style="text-align: right;">3.58% pa</td> </tr> <tr> <td><b>Estimated Redemption Payment liability</b></td> <td style="text-align: right;"><b>US\$75.5m</b></td> </tr> </table>	Estimated total cash distributions <sup>1</sup>	US\$36.0m indexed at 3% pa	Preferred Distribution Base Amount	US\$17.0m indexed at 3% pa	Estimated discount rate <sup>2</sup>	3.58% pa	<b>Estimated Redemption Payment liability</b>	<b>US\$75.5m</b>	<p>Increase of US \$75.5 m</p>	
Estimated total cash distributions <sup>1</sup>	US\$36.0m indexed at 3% pa										
Preferred Distribution Base Amount	US\$17.0m indexed at 3% pa										
Estimated discount rate <sup>2</sup>	3.58% pa										
<b>Estimated Redemption Payment liability</b>	<b>US\$75.5m</b>										

Balance sheet item	Convertible Note pro forma impact	Other Transaction pro forma impacts						
<p><b>Share capital</b></p> <p>Share capital will be increased for the issue of the Share Consideration, less a deduction of related transaction costs.</p> <p>The estimated net change to share capital is comprised of the following:</p> <table data-bbox="359 488 949 683"> <tr> <td>Shares issued</td> <td style="text-align: right;">US \$63.8m</td> </tr> <tr> <td>Share issue transaction costs</td> <td style="text-align: right;">(US \$1.0m)</td> </tr> <tr> <td><b>Pro forma adjustment to share capital</b></td> <td style="text-align: right;"><b>US \$62.8</b></td> </tr> </table>	Shares issued	US \$63.8m	Share issue transaction costs	(US \$1.0m)	<b>Pro forma adjustment to share capital</b>	<b>US \$62.8</b>		<p>Increase of US \$62.8 m</p>
Shares issued	US \$63.8m							
Share issue transaction costs	(US \$1.0m)							
<b>Pro forma adjustment to share capital</b>	<b>US \$62.8</b>							
<p><b>Non-share capital</b></p> <p>Non-share capital will be increased for the issue of the equity portion of the Note Consideration, less a deduction of related transaction costs.</p> <p>The estimated net change to non-share capital is comprised of the following:</p> <table data-bbox="359 913 949 1160"> <tr> <td>Equity component of convertible note</td> <td style="text-align: right;">US \$98.7</td> </tr> <tr> <td>Convertible note issue transaction costs</td> <td style="text-align: right;">(US\$1.0m)</td> </tr> <tr> <td><b>Pro forma adjustment to non-share capital</b></td> <td style="text-align: right;"><b>US\$97.7m</b></td> </tr> </table>	Equity component of convertible note	US \$98.7	Convertible note issue transaction costs	(US\$1.0m)	<b>Pro forma adjustment to non-share capital</b>	<b>US\$97.7m</b>	<p>Increase of US \$97.7 m</p>	
Equity component of convertible note	US \$98.7							
Convertible note issue transaction costs	(US\$1.0m)							
<b>Pro forma adjustment to non-share capital</b>	<b>US\$97.7m</b>							
<p><b>Retained earnings</b></p> <p>Transaction costs which are not directly attributable to the issue of Shares or the equity component of the Convertible Notes will be expensed, with the tax-effected amount reflected as a reduction in profit and hence retained earnings.</p>		<p>Decrease of US \$4.0 m</p>						

# Convertible Note Deed Poll

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# Convertible Note Deed Poll

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**Date** February 1, 2021

**Parties** **Navigator Global Investments Limited ACN 101 585 737** of Level 21, 10 Eagle Street, Brisbane, Queensland, 4000 (**Issuer**)

In favour of the Convertible Noteholders from time to time.

## Background

- A. The Issuer proposes to issue Convertible Notes on the terms and conditions contained in the Convertible Note Conditions.
- B. The Convertible Notes will be issued in uncertificated registered form by inscription in the Register.
- C. If the Issuer issues Convertible Notes it is intended that the Convertible Noteholders will have the benefit of this Deed Poll.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed Poll, unless the contrary intention appears:

- (a) **Convertible Note Conditions** means, generally, the terms and conditions contained in Schedule 1 as amended, varied or replaced from time to time; and
- (b) words and expressions defined, or incorporated by reference into, the Convertible Note Conditions have the same meanings when used in this Deed Poll.

#### 1.2 Interpretation

Condition 1.2 of the Convertible Note Conditions applies to the interpretation of this Deed Poll as if every reference to "these Convertible Note Conditions" is replaced with "this Deed Poll" and every reference to a "Condition" is replaced with a "clause". For the avoidance of doubt, a reference to "this Deed Poll" is a reference to this Deed Poll and any annexure or schedule to it.

---

### 2. Nature and status of Notes

#### 2.1 Constitution of Notes

Each Convertible Note is a debt obligation of the Issuer constituted by, and owing under, this Deed Poll.

#### 2.2 Terms of Notes

Each Convertible Note is issued on, and subject to, the provisions of this Deed Poll and the Convertible Note Conditions.

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### 2.3 Form of Convertible Notes

Each Convertible Note will be uncertificated and issued in registered form by entry in the Register.

### 2.4 Creation of Convertible Notes

Each Convertible Note will be created and issued immediately upon the entry in the Register.

### 2.5 Undertaking to pay

The Issuer unconditionally and irrevocably undertakes with each holder of a Convertible Note:

- (a) **(Make all payments):** to pay, in respect of that Convertible Note, all payments of principal, interest and other amounts in respect of the Convertible Note in accordance with this Deed Poll and the Convertible Note Conditions; and
- (b) **(Perform other obligations):** otherwise to observe its obligations under, and to comply with, the Convertible Note Conditions.

### 2.6 Register of Convertible Noteholders

The Issuer will establish and maintain an up to date register in relation to the Convertible Notes.

### 2.7 Assignment

- (a) **(Issuer):** The Issuer may not assign or otherwise deal with its rights under this Deed Poll except as expressly contemplated by, and in accordance with, the Convertible Note Conditions.
- (b) **(Noteholders):** Each Convertible Noteholder may not assign or otherwise deal with any of its rights under this Deed Poll except as expressly contemplated by, and in accordance with, the Convertible Note Conditions.

### 2.8 No Meetings of Convertible Noteholders

Under this Deed Poll and the Convertible Note Conditions, there will be no meetings of the Convertible Noteholders. Any matters affecting the interests of the Convertible Noteholders including, the variation of this Deed Poll or the Convertible Note Conditions, the giving of notices and the granting of approvals, consents and waivers under this Deed Poll or the Convertible Note Conditions will be dealt with on behalf of the Convertible Noteholders by the Representative of the Convertible Noteholders appointed under the Convertible Note Conditions.

---

## 3. Rights and obligations of Convertible Noteholders

### 3.1 Benefit and entitlement

This Deed Poll is executed as a deed poll. Each Convertible Noteholder has the benefit of, and is entitled to enforce, this Deed Poll even though it is not a party to, or is not in existence at the time of execution and delivery of, this Deed Poll.

### 3.2 Convertible Noteholders bound

Each Convertible Noteholder, and each person claiming through each Convertible Noteholder, is taken to have notice of, and is bound by, this Deed Poll and the Convertible Note Conditions, and this Deed Poll must be read together with the Convertible Note Conditions.

### 3.3 Rights independent

Each Convertible Noteholder may enforce its rights under this Deed Poll independently from each other Convertible Noteholder and any other person.

### 3.4 Provision of copies to Holders

Within 14 days of the Issuer receiving a written request from a Convertible Noteholder to do so, the Issuer must provide to that Convertible Noteholder a certified copy of this Deed Poll if the Convertible Noteholder requires such copy in connection with any legal proceeding, claim or action brought by the Convertible Noteholder in relation to its rights under a Convertible Note.

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## 4. Governing law and jurisdiction

### 4.1 Governing law

This Deed Poll is governed by, and must be construed in accordance with, the laws applying in the State of New South Wales.


### 4.2 Jurisdiction

The Issuer and each Convertible Noteholder irrevocably:

- (a) **(Non-exclusive jurisdiction)**: submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Deed Poll and the Convertible Notes; and
- (b) **(Waiver of objection)**: waives any objection it may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 4.2(a).

Executed as a deed poll.

Signed sealed and delivered by Navigator  
Global Investments Limited ACN 101 585 737  
in accordance with section 127 of the  
Corporations Act 2001 (Cth):



Signature of director

Michael Henry Shepherd  
Full name of director

Signature of company secretary/director

Amber Jane Stoney  
Full name of company secretary/director

Executed as a deed poll.

**Signed sealed and delivered by Navigator  
Global Investments Limited ACN 101 585 737**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

**Michael Henry Shepherd**  
\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
  
Signature of company secretary/director

**Amber Jane Stoney**  
\_\_\_\_\_  
Full name of company secretary/director

## Schedule 1 – Convertible Note Conditions

The following are the terms and conditions of each Convertible Note.

### 1. Definitions and interpretation

#### 1.1 Definitions

In these Convertible Note Conditions:

**Affiliate** means, in relation to any person or entity:

- (a) a Subsidiary of that person or entity or a holding company (as defined for the purposes of the Corporations Act) of that person or entity or any other Subsidiary of that holding company;
- (b) current and former officers, directors, employees and consultants of a person or entity referred to in paragraph (a) and members of the immediate family of any such person, or any estate planning vehicle formed for any such persons and/or members of their family, and transferees pursuant to charitable bequest of any such persons; and
- (c) a person or entity Controlled by or that Controls or is under common Control with such person or entity or a person or entity referred to in paragraphs (a) or (b),

and, without limiting the foregoing:

- (d) in relation to each of the initial Convertible Noteholders, the other of them; and
- (e) for the avoidance of doubt an Affiliate need not exist or be an Affiliate at the Issue Date.

**Adjusted Redemption Amount** in relation to a Convertible Note means a cash amount equal to:

$$A = N \times VW$$

where:

A = the Adjusted Redemption Amount

N = the number of Ordinary Shares that would, but for the non-satisfaction or waiver of Conditions 5.2(b)(i) to 5.2(b)(iv) (inclusive) on the Maturity Date, have been issued on conversion of that Convertible Note on the Maturity Date in accordance with Condition 5.6

VW = the 20 day VWAP of Ordinary Shares as at the Maturity Date

with the "Maturity Date" for the purposes of this definition being the Maturity Date before any extension of the Maturity Date in accordance with Condition 5.5(a) if applicable.

**ASIC** means Australian Securities and Investments Commission.

**ASX** means ASX Limited ACN 008 624 691, or, where the context requires, the financial market operated by it.

**Authorisation** means:

- (a) any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing or registration required by any Government Authority or any law; and
- (b) in relation to any act, matter or thing which will be prohibited or restricted either in whole or in part by any law if a Government Authority intervenes or acts in any way within a specified period after lodgement, filing, registration, notification or any other event, the expiry of that period without intervention or action.

**Authorised Officer** in relation to the Issuer or any Convertible Noteholder, means any Director of the Issuer or that Convertible Noteholder (as applicable) or any person appointed by the Issuer or that Convertible Noteholder to act as an Authorised Officer of the Issuer or that Convertible Noteholder for the purposes of the Convertible Note Deed Poll and these Convertible Note Conditions.

**Board** means the board of Directors of the Issuer.

**Business Day** means a day (other than a Saturday or Sunday) on which banks in the cities of New York, Sydney and Brisbane are generally open for business.

**Capital Raising** means an issue of equity securities in the capital of the Issuer to Ordinary Shareholders that is a pro rata issue as defined in the ASX Listing Rules (including an issue treated as a pro rata issue under the ASX Listing Rules even though offers are not sent to overseas security holders under ASX Listing Rule 7.7) but for the avoidance of doubt excludes any other issue of securities to holders of Ordinary Shares or an issue pursuant to any employee or executive share, option or performance right scheme, or any substitute, replacement or additional scheme, or any grants of Ordinary Shares or Other Securities to a Convertible Noteholder or Affiliate, a conversion of any Convertible Note or the exercise of any option or an issue in lieu of dividends or by way of dividend reinvestment pursuant to any election by a holder of Ordinary Shares.

**Control** has the meaning given to that term in section 50AA of the Corporations Act.

**Conversion Date** in respect of a Convertible Note means:

- (a) subject to paragraph (b), the Maturity Date; and
- (b) the date on which the Convertible Note must be converted into Ordinary Shares in accordance with Condition 5.

**Conversion Notice** means a notice given by a Convertible Noteholder to the Issuer pursuant to Condition 5.1 and in substantially the same form as that contained in Schedule 2.

**Conversion Price** per Convertible Note means US\$1.5136377600 as adjusted from time to time in accordance with Condition 2.7(e) and Condition 6.

**Convertible Note** means an obligation of the Issuer to a Convertible Noteholder in respect of indebtedness of the Issuer to that Convertible Noteholder under the Convertible Note Deed Poll and these Convertible Note Conditions which is recorded in or evidenced by an entry in the Register.

**Convertible Note Conditions** means these terms and conditions.

**Convertible Note Deed Poll** means the deed entitled "Convertible Note Deed Poll" to which these Convertible Note Conditions are attached as Schedule 1.

**Convertible Note Documents** means, together, the Convertible Note Deed Poll and the Convertible Note Conditions.



**Convertible Noteholder** in relation to a Convertible Note means the person or persons registered as the holder of that Convertible Note in the Register.

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

**Director** means a person from time to time appointed to, or acting in the capacity of, the office of director of the Issuer, and includes any alternate director duly appointed and acting as a director.

**Dividend Declaration Date** means a date on which the Issuer declares a dividend in respect of Ordinary Shares.

**Dyal** means Dyal Capital Partners I (A) LP, Dyal Capital Partners I (B) LP, NB Dyal Associates LP or Neuberger Berman Australia Limited as trustee for Dyal Trust I.

**Event of Default** means any event specified in Condition 11.1.

**Face Value** of a Convertible Note means the face value as described in clause 3(a).

**FATA** means the Foreign Acquisitions and Takeovers Act 1975 (Cth).

**FIRB Approval** means the Treasurer has either:

- (a) provided written notice that there is no objection under the FATA to the proposed acquisition of the relevant interest in securities, with the notice of no objection being either unconditional or subject only to conditions which are accepted by the proposed acquirer of the relevant interest in securities; or
- (b) become precluded from exercising any power to make an order under the FATA in relation to the proposed acquisition by the Convertible Noteholder of the relevant interest in securities;

**Government Authority** means any government or any governmental, semi-governmental or judicial entity or authority having relevant jurisdiction. It also includes any self-regulatory organisation established under statute or any stock exchange.

**HSR Act** means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976.

**Independent Accountant** means:

- (a) an independent accountancy firm of international standing and repute (acting as an expert) elected by the Issuer in its sole discretion and notified in writing by or on behalf of the Issuer to the Representative; or
- (b) if within 3 clear Business Days of being notified of the Issuer's election, the Representative notifies the Issuer in writing that it does not agree to the accountancy firm so notified, any independent accountancy firm of international standing and repute elected, at the Issuer's request, by the Chief Executive Officer of the Australian Disputes Centre (**ADC**) and notified in writing by or on behalf of ADC to the Issuer and the Representative.

**Insolvency Event** means, in relation to any entity:

- (a) the entity resolving or applying to court for an order that it be wound up or a court making an order for the winding up or dissolution of the entity, in each case other than where the application or order (as the case may be) is withdrawn, dismissed or set aside within 7 days;

- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or trustee being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened, a resolution is passed or any negotiations are commenced for the purpose of implementing or agreeing:
  - (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
 or any agreement or other arrangement of the type referred to in this paragraph (b) is ordered, declared or agreed to;
- (d) the entity is or becomes insolvent or unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or
- (e) the entity being deregistered as a company or otherwise dissolved.

For the avoidance of doubt, the limitations in (e) above shall not apply to any immaterial Subsidiary of the Issuer.

**Interest Period** means all of the following periods:

- (a) the first Interest Period commences on (and includes) the Issue Date and ends on (and includes) the immediately following Dividend Declaration Date;
- (b) subject to paragraph (c), each subsequent Interest Period commences on (but excludes) a Dividend Declaration Date on which the previous Interest Period ends and ends on (and includes) the immediately following Dividend Declaration Date; and
- (c) the final Interest Period ends on (but excludes) the date on which interest ceases to payable on the Convertible Notes pursuant to Condition 4(a).

**Issue** means an issue of Convertible Notes and **Issued** has a corresponding meaning.

**Issue Date** means the date on which the Convertible Notes are Issued.

**Issuer Conversion Notice** means a notice given by the Issuer to the Convertible Noteholders pursuant to Condition 5.2 and in substantially the same form as that contained in Schedule 3.

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

**Maturity Date** means the date falling on the tenth anniversary of the Issue Date (as may be extended in accordance with Condition 5.5(a) if applicable).

**Ordinary Shares** means one or more fully paid ordinary shares in the capital of the Issuer.

**Other Security** means an option, security or other financial product, other than an Ordinary Share, issued by or contractual commitment entered into by the Issuer and convertible or exchangeable or settleable in or into one or more Ordinary Shares.

**Outstanding** in relation to the Convertible Notes means all issued Convertible Notes other than those redeemed, or deemed to be redeemed, in full in accordance with Condition 5.3(a)

**Principal Amount** in relation to a Convertible Note means the Face Value of that Convertible Note recorded in the Register at that time to the extent not repaid or reduced in accordance with these Convertible Note Conditions.

**Purchase Agreement** means the agreement entitled "Purchase Agreement" dated on or about 12 August 2020 between NGI Strategic Holdings LP, NGI Strategic Holdings II, Inc., Dyal Capital Partners I (A) LP, Dyal Capital Partners I (B) LP, Dyal Capital Partners (A) LP, Dyal Capital Partners (B) LP and NB Dyal Associates LP.

**Record Date** in relation to a Conversion Date for a Convertible Note means the date which is 5 Business Days before the Conversion Date.

**Register** means the register of Convertible Noteholders established and maintained by the Issuer under the Convertible Note Deed Poll and these Convertible Note Conditions.

**Regulation S** means Regulation S under the Securities Act.

**Related Body Corporate** has the meaning given to that term in section 9 of the Corporations Act.

**Relevant Interest** has the meaning given to that term in section 9 of the Corporations Act.

**Representative** means the Convertible Noteholder for the time being appointed to the role of Representative pursuant to Condition 14.

**Securities Act** means the U.S. Securities Act of 1933, as amended.

**Shareholder** means a person whose name is entered in the register of members of the Issuer from time to time as the holder of Ordinary Shares.

**Significant Convertible Noteholder** means a Convertible Noteholder that would, on a fully diluted basis following conversion of all of the Convertible Notes on issue, hold a Relevant Interest in at least 15% of the voting shares of the Issuer.

**Status Notice** has the meaning given to that term in clause 5.4.

**Subsidiary**, in relation to any person, has the meaning given in the Corporations Act but as if "body corporate" included any person and for the purposes of which any beneficial interests will be deemed shares. A determination by the auditors of a person as to whether a person is a Subsidiary of another person will be evidence of the same until the contrary is proved.

**Tax** means any present or future tax, goods and services tax, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any government agency, other than any imposed on overall net income and **Taxes** should be construed accordingly.

**Tax Event** occurs in respect of a Convertible Noteholder and the Convertible Notes that it holds if:

- (a) on a date falling on or after the Issue Date (**Relevant Date**) (i) any change in, or amendment to, any law (or in the application or official interpretation of any law) or the enactment, promulgation, execution or ratification of any law occurs or (ii) a determination by the Australian Tax Office that the Convertible Notes shall be treated that, in each case, results in a material increase in the rate of deduction or withholding in respect of Taxes on a payment which the Issuer is obliged to make with respect to such Convertible Noteholder in respect of any Convertible Notes; and

- (b) the Issuer does not, within 3 clear Business Days of the relevant payment date in respect of such Convertible Notes, notify the Convertible Noteholder in writing that it shall pay such additional amount (**Additional Amount**) that may be necessary to ensure that the Convertible Noteholder receives when due a net amount (after any deduction or withholding in respect of Taxes in relation to each Additional Amount) equal to the full amount it would have received if the rate of deduction or withholding had not been increased on the Relevant Date.

**Transfer and Acceptance** means an instrument for the transfer of a Convertible Note in the form specified by the Issuer from time to time, which shall, without limitation, include such representations and certifications that the Issuer may require to confirm compliance with Condition 9.1

**U.S. Person** means U.S. person as defined in Regulation S.

**Voting Power** has the meaning given in and is to be determined in accordance with the Corporations Act.

**VWAP** means, on any day, the average, calculated and converted to USD at the rate published by the Reserve Bank of Australia on the Business Day immediately prior to that day, of the daily volume weighted average sale prices (rounded to the nearest full cent) of Ordinary Shares sold on ASX during a specified period of days prior to that day but does not include any transaction defined in the ASX Operating Rules as "special" crossings, any crossings during any Session State of the ASX Trading Platform for Cash Market Transactions (each as defined in the ASX Operating Rules) other than an Open Session State (as defined in the ASX Operating Rules), overnight crossings, or any overseas trades or trades pursuant to the exercise of options or warrants over Ordinary Shares or conversion of Convertible Notes.

## 1.2 Interpretation

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a person includes that person's executors, administrators, successors, and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including these Convertible Note Conditions) is a reference to that document as amended, varied, novated, ratified or replaced from time to time;
- (e) a reference to amending a term, condition or a document includes supplementing, deleting or replacing the term, condition or document (as the case may be);
- (f) a reference to **the Register** in relation to a Convertible Note is to the Register on which that Convertible Note is entered;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a condition, clause, schedule, exhibit, attachment or annexure is a reference to a condition, clause, schedule, exhibit, attachment or annexure to or of these Convertible Note Conditions, and a reference to these Convertible Note Conditions includes all schedules, exhibits, attachments and annexures to it;

- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) the expression **certified** by a corporation or person means certified in writing by 2 Authorised Officers of the corporation or by that person respectively;
- (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (l) where any day on which a payment is due to be made or a thing is due to be done is not a Business Day, that payment must be made or that thing must be done on the immediately succeeding Business Day;
- (m) a reference to time is to local time in Brisbane, Australia;
- (n) where time is to be determined by reference to a day or event, that day or the day of that event is to be excluded;
- (o) **includes** in any form is not a word of limitation; and
- (p) a reference to **A\$** or **Australian dollar** is to Australian currency and a reference to **US\$** or **US dollar** is to the currency of the United States of America.

### 1.3 Business Day Convention

When the date on or by which any act, matter or thing is to be done under these Convertible Note Conditions is not a Business Day, the act, matter or thing must (unless expressly provided otherwise) be done on the next Business Day unless that day falls in the following calendar month, in which case, on the immediately preceding Business Day.

### 1.4 Listing Rules

Any provision of these Convertible Note Conditions to which the Listing Rules apply is subject to the Listing Rules and in the event of any inconsistency the Listing Rules prevail.

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## 2. The Convertible Notes

### 2.1 Acknowledgment of indebtedness

The Issuer acknowledges its indebtedness in respect of, and promises to pay all amounts due in relation to, each Convertible Note on the terms contained in the Convertible Note Deed Poll and these Convertible Note Conditions.

### 2.2 Covenant to perform obligations

The Issuer covenants in favour of each Convertible Noteholder from time to time that it will perform its obligations in full, and by the due dates, referred to in the Convertible Note Deed Poll and these Convertible Note Conditions.

### 2.3 Status and Rights of Convertible Notes

- (a) (**Direct, unsecured obligations**): Each Convertible Note constitutes direct and unsecured obligations of the Issuer and, subject to paragraph (b) below, will rank at all times *pari passu* and rateably without any preference among themselves and at least *pari passu* with all present and future direct, unsubordinated (as further set out in Condition 10), unconditional and unsecured obligations of the Issuer, save for

such obligations as may be preferred by provisions of law that are both mandatory and of general application.

- (b) **(Ranking):**
- (i) all claims of a Convertible Noteholder in respect of its Convertible Notes are subordinated in right of payment in accordance with Condition 10;
  - (ii) claims in respect of the Convertible Notes will rank in priority to the rights and claims of holders of subordinated liabilities which by their terms rank or are expressed to rank in right of payment junior to the Convertible Notes and of all classes of equity securities of the Issuer, including holders of preference shares, if any; and
  - (iii) claims in respect of any Convertible Notes may not be set-off, or be the subject of a counterclaim, by the holder against or in respect of any obligations of the holder to the Issuer or to any other persons and the holder of any Convertible Note shall by virtue of being the holder of any Convertible Note, be deemed to have waived all such rights of set-off and counterclaim to the fullest extent permitted by applicable law.
- (c) **(Issue of Securities):**
- (i) except as provided in Condition 2.7, the Convertible Notes carry no right to participate in any offering of securities by the Issuer; and
  - (ii) the Issuer reserves the right at all times to issue securities to any person in any manner.
- (d) **(Voting Rights):** Except as required by the Corporations Act, Convertible Noteholders will not have any right to vote at general meetings of the Issuer.
- (e) **(Rights upon Event of Default):** The sole and exclusive remedy of each Convertible Noteholder against the Issuer following the occurrence of an Event of Default is to require a conversion of its Convertible Notes pursuant to Condition 11.3.

## 2.4 Sales of the Convertible Notes

- (a) **(Australian law restrictions):** Every offer for issue or sale, or invitation to apply for the issue or sale, of the Convertible Notes to any person where the offer or invitation is received by that person in Australia may not be made, unless:
- (i) the aggregate consideration payable for such Convertible Notes on acceptance of the offer is at least A\$500,000 or its equivalent in any other currency (calculated in accordance with both section 708(9) of the Corporations Act and regulation 7.1.18 of the *Corporations Regulations 2001* (Cth)) or the offer or invitation does not otherwise require disclosure to that person under Parts 6D.2 or 7.9 of the Corporations Act; and
  - (ii) the offer or invitation is not made to a person who is a "retail client" within the meaning of section 761G of the Corporations Act; and
  - (iii) the offer or invitation complies with all other applicable laws, regulations and directives.
- (b) **(Other jurisdiction restrictions):** Every offer for issue or sale, or invitation to apply for the issue or sale, of the Convertible Notes to any person where the offer or invitation is received in a jurisdiction outside of Australia may not be made,

unless the offer or invitation is made in compliance with all applicable laws, regulations and directives of all relevant jurisdictions.

## 2.5 Convertible Notes not invalid if improperly issued

No Convertible Note is invalid or unenforceable on the ground that it was issued in breach of these Convertible Note Conditions.

## 2.6 Location of the Convertible Notes

The property in a Convertible Note for all purposes is situated in the location of the Register in which that Convertible Note is registered.

## 2.7 Participation Rights

- (a) **(Application):** Any agreement to issue, or any issuance of, securities under this Condition 2.7 will be subject to and conditional on all necessary regulatory and shareholder approvals and compliance by the Issuer and the Convertible Noteholders with these Convertible Note Conditions, all Listing Rules and other regulatory requirements and the granting of the participation rights hereunder.
- (b) **(Security Issue):** Each Convertible Noteholder shall have a right to participate in any Capital Raising in accordance with this Condition 2.7.
- (c) **(Exercise):** A Convertible Noteholder must exercise its right under this Condition 2.7 by written notice (the **Security Notice**) to the Issuer within 5 Business Days of the Issuer providing the Convertible Noteholder with details of the Capital Raising. The Security Notice by the Convertible Noteholder is irrevocable, except that it will lapse if the issue of securities from the Issuer to the Convertible Noteholder is not completed for any reason other than as a result of default by the Issuer.
- (d) **(Security Issue):** Following receipt of a Security Notice, the Issuer will issue, and the relevant Convertible Noteholder will subscribe for, to the maximum extent permitted by applicable law and the Listing Rules, such number of securities the subject of the Capital Raising that would allow the Convertible Noteholder to maintain its pre-issuance ownership of the Issuer (on an as-converted basis) following such issuance, at the same price per security offered to other subscribers to the Capital Raising and at the same time as other subscribers to the Capital Raising (or if the Issuer permits, within 2 Business Days after the issue of securities to other subscribers to the Capital Raising).
- (e) **(Adjustment):** If under applicable law, the Listing Rules or other regulatory requirements, a Convertible Noteholder is unable to subscribe for, or the Issuer is unable to issue, any securities the subject of the Capital Raising in accordance with this Condition 2.7, then, to the maximum extent permitted by applicable law, the Listing Rules and other regulatory requirements, the Conversion Price relating to the Convertible Notes held by that Convertible Noteholder will be adjusted or, where such an adjustment of the Conversion Price is not permitted under applicable law, the Listing Rules or other regulatory requirements, the Convertible Noteholder may subscribe for and be issued additional convertible notes on such terms as to ensure that the Convertible Noteholder is in an economic position in relation to its Convertible Notes that is as similar as reasonably practicable to the economic position if the Convertible Noteholder were able to fully subscribe for the securities that are the subject of the Capital Raising in accordance with this Condition 2.7 provided that the Convertible Noteholder pays an amount equivalent to the subscription price to the Issuer. Condition 7 applies in respect of an adjustment pursuant to this Condition 2.7(e).

Where the Issuer is prohibited under applicable law, the Listing Rules or other regulatory requirements from adjusting the Conversion Price and from offering

further Convertible Notes to the Convertible Noteholder as contemplated under this Condition 2.7(e), the Issuer must, subject to first obtaining the consent of the Representative, within 5 Business Days of the completion of the Capital Raising, pay to the Convertible Noteholders in cash, an amount that is equal to:

$$(VWAP - I) \times n$$

where:

**VWAP** means the 5-day VWAP of the Issuer's Ordinary Shares on the Business Day immediately prior to the announcement of the Capital Raising;

**I** means the issue price per security offered under the Capital Raising; and

**n** means the number of Ordinary Shares (or in the case of convertible securities, Ordinary Shares those convertible securities would have converted into) that the Convertible Noteholder was precluded from subscribing for under the Capital Raising in accordance with this Condition 2.7.<sup>1</sup>

## 2.8 Limitation on Obligations

Nothing in the Convertible Note Deed Poll or these Convertible Note Conditions shall require a Director or an officer, trustee, responsible entity, custodian of, or investor in the Issuer or a fund or trust managed by the Issuer to breach any fiduciary duty applicable to the Issuer or any such Director, officer, trustee, responsible entity, custodian or investor, as the case may be. Accordingly, each Convertible Noteholder acknowledges and agrees that:

- (a) **(Restriction)**: the Issuer may be prevented from performing or complying with any of its duties or obligations under the Convertible Note Deed Poll, these Convertible Note Conditions as a result of such restriction; and
- (b) **(No obligation to comply)**: the Issuer shall not be required to perform or comply with any such duties or obligations so long as any such restriction applies.

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## 3. Terms of Convertible Notes

### 3.1 Convertible Note Terms

Each Convertible Note:

- (a) **(Face value)**: will have a face value of an amount equal to US\$1,000; and
- (b) **(Fully paid)**: must be fully paid for on application.

### 3.2 No Prepayment

The Issuer acknowledges and agrees that, nothing in these Note Conditions (excluding, for the avoidance of doubt, any provisions relating to the redemption of Convertible Notes) permits the Issuer to, and the Issuer may not, without the prior written consent of:

- (a) for such time as Dyal or any of its Affiliates hold any Convertible Notes, Dyal and its Affiliates; or

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<sup>1</sup> Note: Cash out mechanism subject to consultation with ASX.



- (b) if Dyal or any of its Affiliates do not hold any Convertible Notes, Convertible Noteholders holding 51% or more of the aggregate Principal Amount Outstanding of Convertible Notes,

prepay any Convertible Note, in full or in part.

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## 4. Interest on the Convertible Notes

- (a) **(Interest to be paid on Convertible Notes):** Interest shall be payable on each Convertible Note during the period commencing from (and including) the Issue Date and ending from (and including) the earlier to occur of the Conversion Date and the Maturity Date for a Convertible Note.
- (b) **(Payment of Interest):** Any interest that is payable on the Convertible Notes in respect of an Interest Period in accordance with this Condition 4 shall be due and payable in USD on the due date of payment for dividends paid on Ordinary Shares in respect of that same period.
- (c) **(Calculation of Interest):** Interest on each Convertible Note for an Interest Period is calculated as follows:

$$\text{Interest} = (FV / CP) \times DA$$

where:

FV = the Face Value

CP = the Conversion Price as at the time immediately before the relevant dividend is determined or declared

DA = the amount of the dividend determined or declared per Ordinary Share in respect of that Interest Period calculated and converted (as necessary) to USD at the rate published by the Reserve Bank of Australia on the Business Day immediately prior to that day

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## 5. Conversion of Convertible Notes

### 5.1 Noteholder Conversion rights

- (a) **(Conversion):** A Convertible Noteholder may, at any time, subject to any applicable laws and this deed, require the conversion of all or some of its Outstanding Convertible Notes by giving to the Issuer, in respect of such Convertible Notes, a duly completed Conversion Notice setting out, amongst other things, the applicable Conversion Date.
- (b) **(Regulatory restrictions):** A Convertible Noteholder is not entitled to require the conversion of any Outstanding Convertible Notes by the Issuer to the extent that:
- (i) such conversion is a notifiable action for the Convertible Noteholder under the FATA and that Convertible Noteholder has not received FIRB Approval in respect of such conversion;
  - (ii) such conversion would contravene section 606 of the Corporations Act;
  - (iii) such conversion is subject to the expiration of a waiting period under the HSR Act, until the expiration of such waiting period; or
  - (iv) such conversion is prohibited by any applicable law or regulation,

provided that if paragraphs (i), (iii) or (iv) above apply, the Issuer must provide all information and assistance reasonably requested by the Convertible Noteholder to make any relevant filings and obtain any applicable approval or consent, except to the extent that providing such information or assistance may result in a waiver of privilege in relation to any document or information.

- (c) **(Notice to Issuer):** Each Conversion Notice must be received by the Issuer:
- (i) subject to paragraph (ii) below, at least 10 Business Days prior to the Conversion Date; or
  - (ii) in respect of a Conversion Notice issued following an Event of Default, at least 1 Business Day prior to the Conversion Date.
- (d) **(Notice is irrevocable):** A Conversion Notice, once received or deemed to be received by the Issuer, is irrevocable.

## 5.2 Issuer Conversion rights

- (a) **(Conversion):** Subject to this deed, the Issuer may:
- (i) on the date which is the seventh anniversary of the Issue Date; and
  - (ii) on each date that occurs every 12 months after the date which is the seventh anniversary of the Issue Date,

require the conversion of all or some of the Convertible Notes by giving to a Convertible Noteholder at least 20 Business Days prior to such date a duly completed Issuer Conversion Notice setting out, amongst other things, the applicable Conversion Date.

Where any Issuer Conversion Notice is for some of the Convertible Notes:

- (iii) the aggregate Face Value of all Convertible Notes to be converted on that date must be at least USD 1 million; and
  - (iv) if there is more than one Convertible Noteholder, the conversion must be pro rata for each Convertible Noteholder based on the number of Convertible Notes held by that Convertible Noteholder as a proportion of all Convertible Notes on issue.
- (b) **(Regulatory restrictions):** A Convertible Noteholder is not required to convert Outstanding Convertible Notes to the extent that:
- (i) such conversion is a notifiable action for the Convertible Noteholder under the FATA and that Convertible Noteholder has not received FIRB Approval in respect of such conversion;
  - (ii) such conversion would contravene section 606 of the Corporations Act;
  - (iii) such conversion is subject to the expiration of a waiting period under the HSR Act, until the expiration of such waiting period; or
  - (iv) such conversion is prohibited by any applicable law or regulation,

provided that, if a conversion required by the Issuer requires or would require approval of or filing with any Government Authority or the expiration of a waiting period (including under or pursuant to the FATA or HSR Act) (in this Condition 5.2(b), **Regulatory Condition**), the Convertible Noteholder shall, within 20 Business Days of a request by the Issuer, apply for such approval or make such

filing, in each case, on terms and in a form approved by the Issuer acting reasonably and use all reasonable endeavours to ensure that such Regulatory Condition is satisfied as soon as practicable, including to provide all information and assistance, agree to any reasonable or otherwise customary conditions and/or take any other steps reasonably required by the Government Authority. The Issuer must also provide all information and assistance reasonably requested by the Convertible Noteholder to make any relevant filings and obtain any such applicable approval or consent, except to the extent that providing such information or assistance may result in a waiver of privilege in relation to any document or information.

- (c) **(Notice to Convertible Noteholder):** Each Issuer Conversion Notice must be received by the relevant Convertible Noteholder at least 20 Business Days prior to the Conversion Date.
- (d) **(Notice is irrevocable):** An Issuer Conversion Notice, once received or deemed to be received by the relevant Convertible Noteholder, is irrevocable.

### 5.3 Entitlement to Ordinary Shares on conversion

Subject to Condition 5.4, on the Conversion Date of any Convertible Notes held by a Convertible Noteholder:

- (a) **(Redemption):** each such Convertible Note that remains Outstanding on the Conversion Date which is the subject of a Conversion Notice or an Issuer Conversion Notice (and, where the relevant Issuer Conversion Notice has been issued solely as a result of a Tax Event, that Tax Event is subsisting on the relevant Conversion Date) will be redeemed, or deemed to be redeemed, in full by the Issuer for an amount equal to its Principal Amount and any other amount owing to the Convertible Noteholder under that Convertible Note in accordance with these Convertible Note Conditions.

The Issuer shall apply the whole of such amount in respect of the redemption of such Convertible Note in accordance with the direction in Condition 5.3(b)(ii), and the redemption or deemed redemption of each Convertible Note in accordance with this Condition 5.3(a) is conditional on, and occurs concurrently with, the Issuer complying with its obligations under this Condition 5.3, including the obligation to issue the number of Ordinary Shares in respect of the Principal Amount and any other amount owing to the Convertible Noteholder under that Convertible Note in accordance with these Convertible Note Conditions as calculated in accordance with Condition 5.6.

- (b) **(Convertible Noteholder consent):** the relevant Convertible Noteholder irrevocably and unconditionally:
  - (i) consents to be a member of the Issuer and agrees to be bound by the constitution of the Issuer; and
  - (ii) directs the Issuer to apply, and the Issuer must apply, the whole of the Principal Amount and any other amount owing to the Convertible Noteholder under that Convertible Note in accordance with these Convertible Note Conditions payable to that Convertible Noteholder on redemption in subscribing on behalf of the Convertible Noteholder for the number of Ordinary Shares calculated in accordance with Condition 5.6;
- (c) **(Issue of Ordinary Shares):** the Issuer will:
  - (i) issue to that Convertible Noteholder the number of Ordinary Shares calculated in accordance with Condition 5.6, and, except following the occurrence of an Issuer Change of Control Event where all of the Ordinary Shares of the Issuer are no longer quoted on ASX, all of which

are quoted on ASX and which are, on the Conversion Date, freely tradeable in the ordinary course on ASX (and must apply to ASX for quotation of those Ordinary Shares); and

- (ii) deliver to that Convertible Noteholder a certificate from the Issuer stating that:
  - A. there has been issued to the Convertible Noteholder (or to such person as the Convertible Noteholder may direct) the number of Ordinary Shares calculated in accordance with Condition 5.6;
  - B. except following the occurrence of an Issuer Change in Control Event where all of the Ordinary Shares of the Issuer are no longer quoted on ASX, those Ordinary Shares are all quoted on ASX; and
  - C. and any such issue or delivery will have effect on and from, and be deemed to have been made on, the Conversion Date.

#### 5.4 Status Notice

- (a) A Significant Convertible Noteholder must, during the 20 Business Day period preceding the date that is one year prior to the Maturity Date, give to the Issuer a notice (**Status Notice**) setting out the following information as at the date of that notice:
  - (i) the number of Convertible Notes held by that Significant Convertible Noteholder and its "associates" (as that term is defined in the Corporations Act) and the identity and jurisdiction of the holders of such Convertible Notes and of such associates; and
  - (ii) the number of Ordinary Shares in which that Significant Convertible Noteholder has a Relevant Interest.
- (b) A Significant Convertible Noteholder must, if requested by the Issuer at any time after the date of a Status Notice, promptly provide to the Issuer all reasonable or otherwise customary information (other than commercially sensitive information) and assistance reasonably requested by the Issuer to make any relevant filings and obtain any applicable approval or consent to enable the conversion of all of the Convertible Notes held by that Significant Convertible Noteholder and corresponding acquisition of Ordinary Shares by that Convertible Noteholder (including for the purposes of seeking the approval described in item 7 of the table set out in section 611 of the Corporations Act).
- (c) Failure of a Convertible Note Holder to comply with this Condition 5.4 does not affect a Convertible Noteholders rights or interests under these Convertible Note Conditions (including under Condition 5.5 below).

#### 5.5 Treatment of Convertible Notes on Maturity

To the extent that Conditions 5.2(b)(i) to 5.2(b)(iv) (inclusive) apply to the conversion of any Convertible Notes held by a Convertible Noteholder that remain outstanding on the Maturity Date, then:

- (a) the Maturity Date will be extended until the process for making any relevant filing and obtaining such approval or consent as contemplated by Condition 5.2 is completed and Condition 5.2 is satisfied; or

- (b) if, following completion of the process contemplated by Condition 5.2, the Issuer and the Representative agree, acting reasonably, that Condition 5.2 cannot be satisfied or waived, the Issuer must immediately redeem and pay to each Convertible Noteholder the Adjusted Redemption Amount for each Convertible Note that remains outstanding at that time in cash in accordance with Condition 12.

## 5.6 Conversion number

Subject to Condition 6, the number of Ordinary Shares to which a Convertible Noteholder is entitled upon conversion of any of its Convertible Notes is equal to the sum of the Principal Amount of those Convertible Notes and any other amount owing to the Convertible Noteholder under that Convertible Note in accordance with these Convertible Note Conditions, divided by the Conversion Price, rounded to the nearest whole number (or, in the case of a fraction of an Ordinary Share that is exactly one half, down).

## 5.7 Ordinary Shares issued on conversion

- (a) **(Date of issue):** The Ordinary Shares to which a Convertible Noteholder is entitled on conversion of any of its Convertible Notes must be issued on the relevant Conversion Date and that issue will have effect on and from, and be deemed to have been made on, that Conversion Date.
- (b) **(Ranking of issued Ordinary Shares):** Each Ordinary Share issued on conversion of any Convertible Notes ranks equally in all respects and forms one class with the Ordinary Shares on issue at the relevant Conversion Date, provided that where the Conversion Date occurs after the record date for a dividend declared by the Board to be payable to holders of Ordinary Shares, that Ordinary Share will not participate in the relevant dividend.
- (c) **(Procurement of Quotation):** The Issuer must use all reasonable endeavours to, and must furnish all such documents, information and undertakings as may be reasonably necessary in order to, procure official quotation of the Ordinary Shares issued on conversion of any Convertible Notes on the financial market conducted by ASX on the Conversion Date, and to procure that such quotation is maintained.
- (d) **(U.S. Transfer Restrictions):** The offer and sale of the Ordinary Shares issuable upon conversion of the Convertible Notes have not been, and will not be, registered under the Securities Act, and such Ordinary Shares can only be offered, sold, pledged, transferred or otherwise disposed of if such Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii)(A) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. Each transferor of the Ordinary Shares shall provide notice of the transfer restrictions set out herein to the transferee.

## 6. Conversion Adjustments

### 6.1 Adjustments for bonus, rights and other issues

- (a) **(Bonus, rights and other issues):** Subject to Conditions 2.7(e), 6.1(b) and 6.1(c), if the Issuer:
- (i) makes a pro rata bonus issue or a rights issue of Ordinary Shares to holders of Ordinary Shares (in this Condition 6.1, **Pro Rata Issue**); or
  - (ii) issues Ordinary Shares or Other Securities (other than under a Pro Rata Issue) to any person at any time (in this Condition 6.1, **New Issue**),

the Conversion Price will be adjusted immediately in accordance with the following formula:

$$CP = CP_0 \times \left[ \frac{P \times RD + A \times RN}{P \times (RD + RN)} \right]$$

where:

CP: means the Conversion Price applying immediately after the application of this formula (rounded to the nearest four decimal places);

CP<sub>0</sub>: means the Conversion Price applying immediately before the application of this formula;

P: means:

- A. in the case of a Pro Rata Issue, the VWAP calculated in respect of the period from (and including) the first Business Day after the announcement of the Pro Rata Issue to ASX to (and including) the last Business Day of trading cum rights or bonus issue (or, if there is no period of cum rights or bonus issue trading, an amount (if any) reasonably agreed by the Issuer and the Representative as representing the value of an Ordinary Share cum the rights or bonus issue); and
- B. in the case of a New Issue, the VWAP calculated in respect of the period of 20 Business Days immediately prior to the announcement of the issue to ASX;

A: means:

- A. in the case of an issue of Ordinary Shares, the cash subscription price per new Ordinary Share (including the amount payable on subscription and the amount of any uncalled amount in respect of the Ordinary Shares);
- B. in the case of an issue of Other Securities, the effective cash subscription price per new Ordinary Share issuable on exercise or conversion of the Other Securities (taking into account the amount payable on subscription and the amount of any uncalled amount in respect of the Other Security) plus the cash amount per Ordinary Share payable to the Issuer on exercise or conversion of the Other Security (ignoring the terms of any adjustments in the terms of issue of the Other Security);

C. in the case of a bonus issue, zero;

RN: means:

A. in the case of an issue of Ordinary Shares, the number of Ordinary Shares issued pursuant to the issue of Ordinary Shares; and

B. in the case of an issue of Other Securities, the number of Ordinary Shares issuable on exercise or conversion of the Other Securities (ignoring the terms of any adjustments in the terms of issue of the Other Security);

RD: means the number of Ordinary Shares on issue immediately prior to the issue of new Ordinary Shares pursuant to the issue.

(b) **(No adjustment):** No adjustment to a Conversion Price will occur if, in the formula in Condition 6.1(a), A exceeds P.

(c) **(No application):** Condition 6.1(a) does not apply to:

- (i) Ordinary Shares issued as part of a bonus share plan in lieu of dividends or a dividend reinvestment plan;
- (ii) grants of Ordinary Shares or Other Securities pursuant to employee or executive plans of the Issuer, or any substitute, replacement or additional plan, or any grants of Ordinary Shares or Other Securities to a Convertible Noteholder or Affiliate, or those issued on exercise or conversion of the Other Securities under any such plans;
- (iii) issues of Ordinary Shares or Other Securities pursuant to a Capital Raising in respect of which Convertible Noteholders have a right to participate under Condition 2.7 or in respect of which an adjustment is made under Condition 2.7(e);
- (iv) issues of Ordinary Shares pursuant to a conversion of any Convertible Note or the exercise of any option;
- (v) issues of Ordinary Shares pursuant to the exercise or conversion of Other Securities on issue at the date of the Convertible Note Deed Poll; or
- (vi) issues of Ordinary Shares pursuant to the exercise or conversion of Other Securities to which this Condition 6.1(c) applied or in respect of which an adjustment was made under this Condition 6.1.

## 6.2 Adjustments for off-market buy-backs

(a) **(Buy-Back):** Subject to Condition 6.2(b), if the Issuer undertakes a buy-back of Ordinary Shares that is not an on-market buy-back, the Conversion Price will be adjusted immediately in accordance with the following formula:

$$CP = CP_0 \times \left[ \frac{P \times BD - A \times BN}{P \times (BD - BN)} \right]$$

where:

CP: means the Conversion Price applying immediately after the application of this formula (rounded to the nearest four decimal places);

- CP<sub>0</sub>: means the Conversion Price applying immediately before the application of this formula;
- P: means the VWAP calculated in respect of the period of 15 Business Days immediately prior to the announcement of the buy-back to ASX;
- A: means the buy-back price per Ordinary Share;
- BN: means the number of Ordinary Shares bought back pursuant to the buy-back; and
- BD: means the number of Ordinary Shares on issue immediately prior to the buy-back.

- (b) **(No adjustment)**: No adjustment to a Conversion Price will occur if, in the formula in Condition 6.2(a), P exceeds A.

### 6.3 Adjustments for return of capital

If the Issuer makes a return of capital to holders of Ordinary Shares (other than by way of a buy-back of Ordinary Shares), the Conversion Price will be adjusted immediately in accordance with the following formula:

$$CP = CP_0 \times \frac{P - C}{P}$$

where:

- CP: means the Conversion Price applying immediately after the application of this formula (rounded to the nearest four decimal places);
- CP<sub>0</sub>: means the Conversion Price applying immediately before the application of this formula;
- P: means the VWAP calculated in respect of the period from (and including) the first Business Day after the announcement of the return of capital to ASX to (and including) the last Business Day of trading cum the return of capital; and
- C: means, in the case of a return of capital, the amount of the cash and/or the value (as reasonably determined by the Board) of any other property distributed to holders of Ordinary Shares per Ordinary Share (or such lesser amount as ensures that the difference between P and C is not less than zero).

### 6.4 Adjustments for capital reconstructions

If at any time there is a reconstruction of the Ordinary Shares (including but not limited to any consolidation, subdivision, reduction, reclassification, return or on-market buy-back) which is not dealt with under Conditions 6.1 to 6.3 (inclusive), then:

- (a) **(Adjustment)**: the Conversion Price shall be adjusted by the Issuer accordingly; or
- (b) **(Reconstruction)**: the Convertible Notes will be reconstructed on the same basis and the Principal Amount (for the purpose of calculating interest on the Convertible Notes) shall be adjusted by the Issuer accordingly,

to ensure that the Convertible Noteholders are in an economic position in relation to their Convertible Notes that is as similar as reasonably practicable to the economic position prior to the occurrence of the event that gave rise to the need for the adjustment. Any adjustment made in accordance with this Condition 6.4 will constitute an alteration to these Convertible



Note Conditions and will be binding on all Convertible Noteholders. Condition 7 applies in respect of an adjustment pursuant to this Condition 6.4.

## 6.5 Control Transactions

- (a) If a Control Transaction becomes effective in respect of the Issuer and if, upon such transaction becoming effective, any Convertible Notes remain on issue:
- (i) the Issuer may, on or before the date that is 30 Business Days after the date on which such Control Transaction became effective, subject to any applicable laws and this deed, redeem all such outstanding Convertible Notes for payment in cash and/or non-cash consideration per Convertible Note equal to the price (in cash and/or non-cash consideration) payable by the relevant third party or bidder per Ordinary Share pursuant to such Control Transaction multiplied by the number of Ordinary Shares which would be issued upon conversion of the Convertible Note (based on the formula in Condition 5.6) by giving to Convertible Noteholders a duly completed redemption notice setting out, amongst other things, the applicable redemption date (which, for the avoidance of doubt, may be specified as any one or more dates within a range of dates or period of time) not ending more than 30 Business Days after the date on which such Control Transaction became effective; and
  - (ii) if a redemption notice is given, in accordance with Condition 6.5(a)(i), all rights of Convertible Noteholders to convert or transfer such Convertible Notes shall immediately cease, provided that all rights to convert or transfer such Convertible Notes resume if such Convertible Notes are not redeemed on an applicable redemption date in accordance with Condition 6.5(a)(i).
- (b) In this Condition 6.5, **Control Transaction** means:
- (i) a scheme of arrangement in respect of which the Issuer is the target entity and, in respect of such transaction, effective means a third party has become entitled to acquire all of the issued ordinary shares in the Issuer; or
  - (ii) a takeover pursuant to the Corporations Act in respect of which the Issuer is the target entity and, in respect of such transaction, effective means the bidder has become entitled to compulsorily acquire all of the ordinary shares in the Issuer in accordance with the Corporations Act.

## 6.6 Fractions

Where the number of Ordinary Shares to which a Convertible Noteholder is entitled under these Convertible Note Conditions is a number which includes a fraction of an Ordinary Share, that fraction must be rounded to the nearest whole number (or, in the case of a fraction that is exactly one half, down) and the Convertible Noteholder has no further claim or right to that fraction of an Ordinary Share

## 6.7 Listing Rules not to be contravened

Notwithstanding any provision of Conditions 6.1 to 6.6 (inclusive):

- (a) **(No contravention)**: no adjustment under those Conditions may contravene any Listing Rule; and
- (b) **(Similar economic position)**: if an adjustment under those Conditions would contravene paragraph (a), the Convertible Notes are to be adjusted so far as possible without contravention of the Listing Rules to ensure that the Convertible

Noteholders are in an economic position in relation to their Convertible Notes that is as similar as reasonably practicable to the economic position prior to the occurrence of the event that gave rise to the need for the adjustment, except to the extent required by the Listing Rules. Any adjustment made in accordance with this Condition 6.7 will constitute an alteration to these Convertible Note Conditions and will be binding on all Convertible Noteholders. Condition 7 applies in respect of an adjustment pursuant to this Condition 6.7.

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## 7. Adjustment notification and dispute resolution

### 7.1 Application

This Condition 7 applies if any adjustment is required pursuant to Condition 2.7(e), Condition 6.4 or Condition 6.7.

### 7.2 Notification

Within 2 Business Days of:

- (a) **(Capital Raising)**: in the case of an adjustment pursuant to Condition 2.7(e), the issue of equity securities under the Capital Raising;
- (b) **(Reconstruction)**: in the case of an adjustment pursuant to Condition 6.4, the reconstruction occurring; or
- (c) **(Listing Rules)**: in the case of an adjustment pursuant to Condition 6.7, the event that would give rise to an adjustment that offends the Listing Rules occurring,

the Issuer shall give notice to the Convertible Noteholders setting out its calculation of the relevant adjustments (**Adjustment Notice**).

### 7.3 Dispute

Within 10 Business Days of an Adjustment Notice, the Representative must give notice to the Issuer:

- (a) **(Agreement)**: that it agrees that the adjustments proposed in the Adjustment Notice are those required by Condition 2.7(e), Condition 6.4 or Condition 6.7 (as the case may be); or
- (b) **(Dispute Notice)**: that it does not agree that the adjustments proposed in the Adjustment Notice are those required by Condition 2.7(e), Condition 6.4 or Condition 6.7 (as the case may be), and setting out its calculation of the adjustment required by the relevant Condition (**Dispute Notice**).

### 7.4 Adjustment binding in absence of Dispute Notice

Unless the Representative gives a Dispute Notice, the adjustments set out in the Adjustment Notice shall be final and binding on the Issuer and each Convertible Noteholder, with effect from the date the adjustment is required pursuant to Condition 2.7(e), Condition 6.4 or Condition 6.7.

### 7.5 Dispute Notice procedure

- (a) **(Binding)**: If at any time after the Representative gives a Dispute Notice the Issuer and the Representative agree the appropriate adjustments in writing those adjustments shall be final and binding on the Issuer and each Convertible Noteholder, with effect from the date the adjustment is required pursuant to Condition 2.7(e), Condition 6.4 or Condition 6.7.

- (b) **(Independent Accountant):** If the Representative gives a Dispute Notice and the Representative and the Issuer have not agreed in writing the appropriate adjustments within 10 Business Days of that Dispute Notice the Issuer must submit the Adjustment Notice and the Dispute Notice to the Independent Accountant within 2 Business Days (and if it does not then the Representative may).
- (c) **(Procedure):** The Issuer must:
- (i) instruct the Independent Accountant to determine the adjustments required by Condition 2.7(e), Condition 6.4 or Condition 6.7 (as the case may be);
  - (ii) supply the Independent Accountant with any information, assistance and cooperation reasonably requested by it;
  - (iii) procure that the Independent Accountant gives each of the Issuer and the Representative opportunities to make written submissions, and provides copies of the submissions of and all correspondence to or from each to the other; and
  - (iv) use reasonable endeavours to ensure that the Independent Accountant determines the adjustments required by Condition 2.7(e), Condition 6.4 or Condition 6.7 (as the case may be) within 10 Business Days of being engaged.
- (d) **(Expert):** The Independent Accountant will act as an expert, not an arbitrator.
- (e) **(Binding determination):** In the absence of manifest error, the Independent Accountant's determination of the adjustments required by Condition 2.7(e), Condition 6.4 or Condition 6.7 shall be final and binding on the Issuer and each Convertible Noteholder, with effect from the date the adjustment is required pursuant to Condition 2.7(e), Condition 6.4 or Condition 6.7.
- (f) **(Costs of Independent Accountant):** If the Issuer submits the Adjustment Notice and the Dispute Notice to the Independent Accountant and the Independent Accountant determines that:
- (i) no adjustment to the terms of the Convertible Notes is required, the costs of the Independent Accountant shall be at the cost of the Representative; or
  - (ii) an adjustment to the terms of the Convertible Notes is required, the appointment of the Independent Accountant shall be at the cost of the Issuer.

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## 8. The Register

### 8.1 Establishment of Register

The Issuer will establish and maintain the Register at its registered office in Brisbane, Queensland.

### 8.2 Details on the Register

The Issuer must promptly enter in the Register:

- (a) **(Name and address of Convertible Noteholder):** the name and address of:
- (i) each initial Convertible Noteholder and of such Convertible Noteholder's nominee as notified to the Issuer by such Convertible Noteholder; and

- (ii) of each transferee to whom the Convertible Noteholder are subsequently transferred in accordance with these Convertible Note Conditions as stated in the relevant Transfer and Acceptance;
- (b) **(Account details)**: the account to which payments to each Convertible Noteholder are to be credited as notified to the Issuer by such Convertible Noteholder;
- (c) **(Number of Convertible Notes and Conversion Price)**: the number of Convertible Notes held by each Convertible Noteholder and the Conversion Price in respect of each such Convertible Notes on the Issue Date and following any adjustment to that Conversion Price in accordance with Conditions 2.7(e), 6 or 7;
- (d) **(Date entered on Register)**: the date on which each Convertible Noteholder was first registered in the Register as a Convertible Noteholder in respect of the Convertible Notes held by it;
- (e) **(Date ceases to be a Convertible Noteholder)**: the date on which any person ceases to be a Convertible Noteholder; and
- (f) **(Other particulars)**: such other particulars that the Issuer considers to be desirable.

The Issuer must not alter the number of Convertible Notes registered in the name of a Convertible Noteholder except to reflect a transfer of Convertible Notes by that Convertible Noteholder.

### 8.3 Title

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

### 8.4 Effect of entries in Register

Each entry in the Register in respect of a Convertible Note constitutes:

- (a) **(Undertaking by Issuer)**: an unconditional and irrevocable undertaking by the Issuer to the Convertible Noteholder to pay principal, (if applicable) interest and any other amount to the Convertible Noteholder in accordance with these Convertible Note Conditions; and
- (b) **(Other benefits)**: an entitlement to the other benefits given to Convertible Noteholders under these Convertible Note Conditions in respect of the Convertible Notes.

### 8.5 Register conclusive as to ownership

Entries in the Register in relation to a Convertible Note constitute conclusive evidence that the person so entered is absolute owner of the Convertible Note subject to correction for fraud or error. Convertible Notes shall not be lodged or held in any clearing system and title to the Convertible Notes will only pass upon registration of transfers in the Register in accordance with the procedure set out in Condition 9.

### 8.6 Non-recognition of interests

Except as required by law, the Issuer must treat the person whose name is entered in the Register as the holder of a Convertible Note as the absolute owner of that Convertible Note. This Condition 8.6 applies whether or not a Convertible Note is overdue and despite of any notice of ownership, trust or interest in the Convertible Note.

## 8.7 Joint holders

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

## 8.8 Notification of change by Convertible Noteholders

Any change of name or address on the part of any Convertible Noteholder must promptly be notified by that Convertible Noteholder to the address of the Issuer who must alter the Register within 5 Business Days of receipt of that notice.

## 8.9 Inspection of the Register

Upon written request, each Convertible Noteholder is entitled to inspect, but not copy, the Register in respect of a Convertible Note at such time as the Issuer's principal office is accessible to the public. A Convertible Noteholder is entitled to inspect the Register only in respect of information relating to that Convertible Noteholder.

## 8.10 Closure of the Register

The Issuer may from time to time subject to at least 5 Business Days prior notice to the Convertible Noteholders close the Register but no part of the Register may be closed for more than 5 consecutive Business Days or 20 Business Days in aggregate in any calendar year.

## 8.11 Non-recognition of Equitable Interests

Except as otherwise provided in the Convertible Note Documents, and except as required by statute or as ordered by a court of competent jurisdiction, no notice of any trust, whether express, implied or constructive, is to be entered in the Register and except as required by statute or as ordered by a court of competent jurisdiction, the Issuer is not to be affected by or compelled to recognise (even when having notice of it) any right or interest in any Convertible Notes other than the registered Convertible Noteholder's absolute right to the entirety of them and the receipt of a registered Convertible Noteholder is a good discharge to the Issuer.

## 8.12 Rectification of Register

Following a request in writing from a Convertible Noteholder, the Issuer must promptly rectify the Register to the extent that:

- (a) **(Entry omitted)**: an entry is omitted from the Register;
- (b) **(Entry made otherwise than in accordance with these Convertible Note Conditions)**: an entry is made in the Register otherwise than in accordance with these Convertible Note Conditions;
- (c) **(Wrong entry exists)**: an entry wrongly exists in the Register;
- (d) **(Error or defect exists in Register)**: there is an error or defect in any entry in the Register; or
- (e) **(Default made)**: default is made or unnecessary delay takes place in entering in the Register that any person ceased to be the holder of Convertible Notes.

### 8.13 Non-resident Convertible Noteholders

Where Convertible Notes are held by or on behalf of a person resident outside Australia, then, despite anything to the contrary contained in or implied by these Convertible Note Conditions, it is a condition precedent to any right of the Convertible Noteholder:

- (a) **(Principal Amount)**: to receive payment of the Principal Amount represented by those Convertible Notes; or
- (b) **(Interest)**: to receive payment of any interest on those Convertible Notes,

that all necessary authorisations (if any) and any other statutory requirements which may then be in existence are obtained and satisfied at the cost of the Convertible Noteholder.

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## 9. Transfer of Convertible Notes

### 9.1 Restrictions on Transfer of Convertible Notes

- (a) **(General Transfer Restrictions)**: Convertible Notes are transferable:
  - (i) without the prior written consent of the Issuer, provided that:
    - A. if such transfer is notifiable action under the FATA, that Convertible Noteholder has received FIRB Approval in respect of such transfer; and
    - B. such transfer is not or would not otherwise be prohibited or restricted pursuant to any applicable law or regulation; or
  - (ii) otherwise, subject to the prior written consent of the Issuer (such consent may be given or withheld at the absolute discretion of the Issuer).
- (b) **(U.S. Transfer Restrictions)**: The offer and sale of the Convertible Notes have not been, and will not be, registered under the Securities Act, and the Convertible Notes can only be offered, sold, pledged, transferred or otherwise disposed of if such Convertible Notes are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii) to a person located outside the United States that is neither a U.S. Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Convertible Notes in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. Each transferor of the Convertible Notes shall provide notice of the transfer restrictions set out herein to the transferee.

### 9.2 Transfer of Convertible Notes

Subject to these Convertible Note Conditions, any proposed transfer of Convertible Notes must be effected by a Transfer and Acceptance. The Issuer will promptly on the request of a Convertible Noteholder make available to that Convertible Noteholder a Transfer and Acceptance form.

The Transfer and Acceptance must be completed and stamped (if applicable), executed by the transferor and the transferee and lodged for registration with the Issuer

### 9.3 Registration of transfer

- (a) **(Normal course):** Subject to these Convertible Note Conditions, on receipt of a Transfer and Acceptance the Issuer will register the transferee in the Register as the holder of the Convertible Notes referred to in it.
- (b) **(Non-Business Day):** If the Issuer receives a Transfer and Acceptance for registration on a day which is not a Business Day or on which the Register is closed, it must register the Transfer and Acceptance on the first Business Day thereafter on which the Register is open.
- (c) **(No Effect until registered):** A Transfer and Acceptance does not take effect until registered and, until the transferee is inscribed in the Register as the holder of the relevant Convertible Notes, the transferor remains the holder of those Convertible Notes.

### 9.4 Refusal to register Transfer and Acceptance

**(Issuer may refuse to register):** The Issuer may refuse to register any Transfer and Acceptance which would result in:

- (a) a breach of these Convertible Note Conditions or any applicable law; or
- (b) the Issuer being required to take any action on or following registration to avoid any such breach.

### 9.5 Notice of refusal to Register

If the Issuer refuses to register a Transfer and Acceptance, it must as soon as practicable (and in any event not later than 7 days after the date the Transfer and Acceptance was lodged with it) send to the transferor and the transferee notice of its refusal to register the Transfer and Acceptance.

### 9.6 Payments to transferee

A transferee will be treated as the Convertible Noteholder from the date of the entry of the name of the transferee in the Register and, in particular but without limitation, the transferee will be entitled to receive any payments then due or to become due to the Convertible Noteholder (including payments of principal) and the Issuer will fully discharge its obligations under the Convertible Note Deed Poll and these Convertible Note Conditions by making those payments to the transferee even if the payments may have wholly or partly accrued before the date on which the transferee is entered on the Register.

### 9.7 Warranty on transfer

On the transfer of a Convertible Note under these Convertible Note Conditions, the transferor and transferee are deemed to have warranted to the Issuer that neither as a result of the transfer, or the surrounding circumstances, will the Convertible Notes or the Convertible Note Deed Poll require registration with, or the approval of, any Government Authority nor is there any requirement in connection with the transfer for shareholder approval of the Issuer, the preparation of a disclosure document or other regulated offer document or the registration of any offer or transfer document with any Government Authority.

### 9.8 Specimen signatures

The Issuer may (but need not) require each Convertible Noteholder to submit specimen signatures, authenticated, in the case of a body corporate Convertible Noteholder, by a

secretary or director of that Convertible Noteholder, of persons authorised to execute transfers on behalf of that Convertible Noteholder and will be entitled to assume (until notified to the contrary) that the authority has not been revoked.

## 9.9 No fee for registration of a Transfer and Acceptance

No fee will be charged for the registration of any Transfer and Acceptance.

## 9.10 Marking of transfers

- (a) **(Convertible Noteholder may request marking):** The Issuer must, on the request of a Convertible Noteholder, mark a Transfer and Acceptance with a certificate to the effect that the Convertible Notes referred to in that Transfer and Acceptance are registered in the name of that Convertible Noteholder, and that no transfer of those Convertible Notes will be registered other than by the marked Transfer and Acceptance for the period specified in the certificate.
- (b) **(Limits on transfer):** Where any Transfer and Acceptance is marked under Condition 9.10(a), the Issuer must not, during the specified period, register any transfer of the Convertible Notes referred to in that Transfer and Acceptance except as effected by the marked Transfer and Acceptance.
- (c) **(Statement by Issuer):** The marking of a Transfer and Acceptance under Condition 9.10(a) represents a statement only by the Issuer as to the status of the Register as at the time of the marking.
- (d) **(Not a certificate):** A Transfer and Acceptance (whether marked or not) is not a certificate or other document of title to any Convertible Notes.

## 9.11 Certificates

No certificate or other evidence of title will be issued by or on behalf of the Issuer to evidence title to a Convertible Note unless the Issuer determines that certificates should be made available or it is required to do so under any applicable law or regulation. Any such certificate will, for so long as the Convertible Notes are “restricted securities” (as defined in Rule 144(a) (3) under the Securities Act), bear the legend set forth in Annex A to these Convertible Note Terms; provided, that if the requirement for such legend is no longer applicable because the Convertible Notes are freely transferable under the Securities Act, the Issuer shall remove such legend upon request from a holder thereof.

## 9.12 Transmission of Convertible Notes

Subject to these Convertible Note Conditions, any person becoming entitled to a Convertible Note as a result of the insolvency of a Convertible Noteholder may, on producing such evidence as the Issuer requires of that entitlement, elect to be either registered as the Convertible Noteholder or transfer the Convertible Note in the manner specified in these Convertible Note Conditions.

## 9.13 Partial transfers

If a transferor executes a transfer of less than all Convertible Notes registered in its name, and the specific Convertible Notes to be transferred are not identified, the Issuer may register the transfer in respect of such of the Convertible Notes registered in the name of the transferor as the Issuer thinks fit, provided that the aggregate Principal Amount of the Convertible Notes registered as having been transferred equals the aggregate Principal Amount of the Convertible Notes expressed to have been transferred in the transfer and the transfer is otherwise in accordance with those Convertible Note Conditions.



## 9.14 Taxes

- (a) **(On issue)**: The Issuer must bear any stamp duty and any loan, transaction, registration or similar Taxes payable in Australia on the issue, subscription and conversion of any Convertible Note.
- (b) **(On transfer)**: A Convertible Noteholder is responsible for any stamp duties and any loan, transaction, registration or similar Taxes payable in any jurisdiction in connection with any transfer, assignment or other dealing (other than conversion) with its Convertible Notes.
- (c) **(Tax Classification)**: It is the intention of the parties hereto that the Convertible Notes be treated as equity for all tax purposes. As a result, the Issuer, the Convertible Noteholders and their respective Affiliates shall treat the Convertible Notes as equity for all tax purposes, except as otherwise required pursuant to a final determination of a court of competent jurisdiction.

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## 10. Subordination

### 10.1 Subordination

- (a) This Condition 10 shall apply on and from the time at which any person holds any liability which by its terms ranks or is expressed to rank in right of payment senior to the Convertible Notes.
- (b) The Convertible Notes are and will be subordinated and subject in right of payment and repayment to all claims for payment of money and amounts (in any currency) that the Issuer is or may become liable at any time (presently, prospectively or contingently) to pay to or for the account of a creditor under or in connection with an agreement for the provision of financial accommodation from that creditor to the Issuer (or a Related Body Corporate of the Issuer) which by their terms rank or are expressed to rank in right of payment senior to the Convertible Notes (**Senior Debt**) on the terms of this Condition 10.
- (c) In this Condition 10:
  - (i) **Liquidation** includes receivership or other appointment of a controller, deregistration, compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy.
  - (ii) **Liquidator** of the Issuer means any person who may be charged with the Liquidation of the Issuer (whether by contract, statute or otherwise). It includes a liquidator, administrator, receiver and receiver and manager.
  - (iii) **Satisfaction Date** means the date on which all Senior Debt has been fully and finally paid and the commitments of Senior Creditors cancelled.
  - (iv) **Senior Creditor** means a holder of Senior Debt.
  - (v) **Senior Debt** as defined in Condition 10.1(b) includes all money which the Issuer or any of its Related Bodies Corporate (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of a Senior Creditor (whether alone or not) for any reason whatever.

It includes money by way of principal, interest, fees, costs, guarantee, indemnity, charges, duties or expenses or payment of liquidated or

unliquidated damages, or as a result of a breach of or default under or in connection with a document.

It also includes money that Issuer or any of its Related Bodies Corporate would have been liable to pay but for its Liquidation, or some other reason.

- (vi) **Subordinated Debt** means all present or future debt of the Issuer to a Convertible Noteholder in respect of the Convertible Notes, including all amounts payable in respect of interest, costs, fees, losses, damages, indemnity, charges and expenses which the Issuer is or at any time may become liable to pay to a Convertible Noteholder in respect of or in connection with such debt, whether or not currently contemplated, provided that the debt shall not include issued shares in the Issuer, to the extent the debt shall have been converted into shares in the Issuer.

## 10.2 Subordinated debt

- (a) Subject to Conditions 10.6 to 10.9, except for the purpose of allowing interest or other amounts to accrue, or the discharge of Subordinated Debt by the issue of shares in the Issuer in accordance with the Convertible Note, no Subordinated Debt will be due and payable or recoverable until the Satisfaction Date.
- (b) Subject to Conditions 10.6 to 10.9, the Issuer shall not make, whether directly or indirectly, any payment of or in reduction of the Subordinated Debt until the Satisfaction Date.

## 10.3 Competing proof

Except to the extent stated in a notice under Condition 10.9, until the Satisfaction Date a Convertible Noteholder may only lodge a conditional or contingent proof or claim in connection with the Subordinated Debt in the Liquidation of the Issuer.

## 10.4 Distribution

Subject to Condition 10.9, on any distribution of assets of the Issuer, as a direct or indirect result of a Liquidation or any other total reorganisation of the Issuer, all Senior Debt shall first be paid in full before any payment is made on account of any Subordinated Debt. The Liquidator of the Issuer will distribute the assets of the Issuer accordingly.

## 10.5 No Security Interest

Nothing in the Convertible Note Documents creates a Security Interest.

## 10.6 Subordinated Creditor

- (a) Subject to Condition 10.7, without the prior consent of the Senior Creditors, a Convertible Noteholder shall not:
- (i) **(accept payment)** require or accept payment or otherwise allow satisfaction or discharge of any Subordinated Debt;
  - (ii) **(exercise of rights or powers)** take any step to enforce any guarantee or Security Interest held by it in relation to any Subordinated Debt;
  - (iii) **(Liquidation)** take any step for the purpose of or towards:
    - A. levying any execution or obtaining any judgment against the Issuer; or

- B. the appointment of a Liquidator of the Issuer;
- (iv) **(vote)** vote in any meeting or other decision making body in relation to, or in any way seek to control or influence, the Liquidation of the Issuer;
- (v) **(proof)** prove or lodge any proof of debt in the Liquidation of the Issuer except as permitted under Condition 10.3;
- (vi) **(set-off)** exercise any right of set-off, deduction or combination of accounts or similar right or procedure in relation to any Subordinated Debt; or
- (vii) **(deposit)** accept any deposit from or otherwise incur any monetary obligation to the Issuer which may be the subject of any set-off, deduction or combination of accounts or similar right or procedure (whether or not compulsory),

until after the Satisfaction Date.

- (b) Subject to Condition 10.7, without the prior consent of the Senior Creditors, the Issuer shall not and shall ensure that each obligor in connection with any Senior Debt will not:
  - (i) **(payment)** pay any Subordinated Debt;
  - (ii) **(set-off)** exercise any right of set-off, deduction or combination of accounts or similar right or procedure in relation to any Subordinated Debt; or
  - (iii) **(deposit)** make any deposit with or allow a Convertible Noteholder to incur any monetary obligation to it which may be the subject of any set-off, deduction or combination of accounts or similar right or procedure (whether or not compulsory),

until after the Satisfaction Date.

## 10.7 Permitted payments

- (a) **(Interest)** As long as no Event of Default subsists:
  - (i) the Issuer may pay; and
  - (ii) a Convertible Noteholder may require and accept payment of, or exercise any right of set-off or combination of accounts or similar right or procedure (whether or not compulsory) in respect of,
 

any interest, costs, fees, charges or expenses forming part of the Subordinated Debt.
- (b) **(Payment out of proceeds of share issue)** The Issuer may pay Subordinated Debt out of subscription money received by it in respect of the issue of non-redeemable shares in its capital to a Convertible Noteholder.

## 10.8 Acknowledgement

Nothing in this Condition 10 affects or prohibits:

- (a) the accrual of interest under the Convertible Note Documents;

- (b) the issue of shares by the Issuer, including the conversion of Subordinated Debt into issued shares in the Issuer, in accordance with the Convertible Note Documents; or
- (c) the Subordinated Creditor in:
  - (i) obtaining an injunction or other order to restrain any breach of any Convertible Note Document; or
  - (ii) obtaining declaratory relief.

## 10.9 Express Permission

If the Senior Creditors notify the Issuer and a Convertible Noteholder in writing that all or part of the Subordinated Debt is payable:

- (a) to the extent stated in that notice, the Subordinated Debt of that Convertible Noteholder will be due and payable by and recoverable from the Issuer;
- (b) to the extent stated in that notice, that Convertible Noteholder shall prove or vote or both in the Liquidation of the Issuer in relation to the Subordinated Debt and shall promptly send to the Senior Creditors a copy of any notice of proof it has given;
- (c) on any payment or distribution of assets of the Issuer as a direct or indirect result of a Liquidation of the Issuer, the Liquidator of the Issuer shall pay any dividend in respect of the Subordinated Debt directly to the Senior Creditors for application to the payment of the Senior Debt until the Senior Debt has been paid in full; and
- (d) Condition 10.10 applies to any amount a Convertible Noteholder receives or recovers in respect of the Subordinated Debt in that Liquidation.

## 10.10 Trust and account

- (a) If, before the Satisfaction Date, a Convertible Noteholder receives or recovers an amount in respect of any Subordinated Debt in breach of Conditions 10.1 to 10.8 or under Condition 10.9, that Convertible Noteholder shall hold the amount on trust for the Senior Creditor except to the extent it exceeds the Senior Debt. That Convertible Noteholder, as trustee, shall immediately account for it and pay it to the Senior Creditor (regardless of whether a demand has been made).
- (b) If, before the Satisfaction Date, the amount of the Subordinated Debt is reduced by any set-off, deduction or combination of accounts or similar right or procedure in breach of Conditions 10.1 to 10.8 or under Condition 10.9, the relevant Subordinated Creditor shall promptly pay to the relevant Senior Creditors an amount equal to the amount by which the Subordinated Debt of that Convertible Noteholder was so reduced up to an amount equal to the Senior Debt.

## 10.11 Guarantees and Security Interests in respect of Subordinated Debt

- (a) The Issuer shall not create or allow to exist; and
- (b) a Convertible Noteholder shall not require the provision of, and if held or provided shall immediately discharge or release,

any guarantee or Security Interest in respect of any Subordinated Debt.

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## 11. Events of default

### 11.1 Events of Default

Each of the following events constitutes an Event of Default:

- (a) **(Failure to pay)**: any failure by the Issuer to pay any amount due under any of the Convertible Note Documents within 5 Business Days of when due;
- (b) **(Material breach)**: the Issuer fails to comply in a material respect with an obligation owed to the Convertible Noteholder under any of the Convertible Note Documents which is for the benefit of a Convertible Noteholder (other than a provision requiring the payment of money as contemplated by Condition 11.1(a) of these Convertible Note Conditions),

and it continues unremedied for 10 Business Days after the earlier of:

- (i) the Issuer becoming aware of the failure to comply; and
- (ii) the Convertible Noteholder giving notice to the Issuer of the failure to comply;
- (c) **(Insolvency Event)**: an Insolvency Event occurs in relation to the Issuer;
- (d) **(Convertible Note Conditions unenforceable)**: if all or any material provision of the Convertible Note Documents is or becomes void, voidable, illegal or unenforceable or of limited force (other than because of equitable principles or laws affecting creditors' rights generally), or the Issuer claims this to be the case;
- (e) **(Failure to convert)**: the Issuer fails to convert any Convertible Note in accordance with these Convertible Note Conditions; and
- (f) **(Misrepresentation)**: any representation, warranty or statement made, repeated or deemed to be made or repeated by the Issuer in any Convertible Note Document is proved to be untrue in any material respect when made or repeated or deemed to be made or repeated (as the case may be).

### 11.2 Notification of Events of Default

The Issuer must promptly notify each Convertible Noteholder in writing of the occurrence of an Event of Default, and in any event within five Business Days after the Issuer becomes aware of any Event of Default, describing the underlying events in sufficient detail to enable the Convertible Noteholders to assess the situation and to take steps to protect their interests.

### 11.3 Consequences of an Event of Default

On the occurrence of an Event of Default, the sole and exclusive remedy of each Convertible Noteholder against the Issuer is to require conversion of all or some of the Outstanding Convertible Notes held by the relevant Convertible Noteholder by giving to the Issuer a duly completed Conversion Notice in respect of such Convertible Notes in accordance with Condition 5.1.

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## 12. Payments

### 12.1 In accordance with these Convertible Note Conditions

Any moneys payable to a Convertible Noteholder will be paid in the manner set out in these Convertible Note Conditions.

## 12.2 How payments are to be made

All payments to a Convertible Noteholder under a Convertible Note will be made on the due date for payment in accordance with these Convertible Note Conditions and:

- (a) **(Currency)**: in US dollars;
- (b) **(No set-off)**: without set-off or counterclaim; and
- (c) **(Payment)**: to an account or an address designated by the Convertible Noteholder to the Issuer not later than the Record Date in relation to the relevant Conversion Date and that Convertible Note.

## 12.3 Default interest

- (a) If any amount under a Convertible Note is not paid on the date when that payment of such amount falls due and payable in accordance with these Convertible Note Conditions, such unpaid amount will bear interest at a rate that is 4% above the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) per annum (compounded daily) **(Default Interest)**.
- (b) Default Interest will accrue on outstanding amounts from the date that the outstanding amount fell due and payable until (but excluding) the date on which the unpaid amount, and the default interest which has accrued on it pursuant to this Condition 12.3, is paid in accordance with this Condition 12.
- (c) Payments in respect of Default Interest and the relevant unpaid amount will be rounded to the nearest one cent (half a cent or less being rounded downward).

## 12.4 Registered Convertible Noteholders

A person whose name (or in the case of joint holders the first person whose name) appears on the Register as the Convertible Noteholder of a Convertible Note at 4.00 pm on the Record Date is the only person entitled to receive payment of moneys in respect of that Convertible Note on the corresponding Conversion Date.

## 12.5 Payment constitutes release

Any payment made by or on behalf of the Issuer in accordance with this Condition 12 will for all purposes constitute an absolute and unconditional release and discharge of the Issuer to the extent of that payment.

## 12.6 Deductions and Withholdings

If at any time an applicable law or a Tax Event obliges the Issuer to make a deduction or withholding in respect of Taxes from a payment under a Convertible Note to any Convertible Noteholder, the Issuer:

- (a) **(Notice)**: must notify the Convertible Noteholder of the obligation promptly after becoming aware of it (and set forth in reasonable detail the nature of the Tax Event, if applicable) and endeavour to give notice at least 10 days prior to making such deduction or withholding;
- (b) **(Not Exceed Minimum)**: must ensure that the deduction or withholding does not exceed the minimum amount required by law;

- (c) **(Obligation to Minimise):** will, subject to Condition 2.8, use its reasonable efforts to minimise the amount of any such deduction or withholding to the extent that doing so is lawful and reasonably commercially practicable;
- (d) **(Pay Government Agency):** must pay to the relevant Government Agency on time the full amount of the deduction or withholding and promptly deliver to the Convertible Noteholder a copy of any receipt, certificate or other proof of payment; and
- (e) **(No Gross-up):** will not be obliged to make any additional payments to the Convertible Noteholders in relation to that withholding or deduction,

provided, however, that Conditions 12.6(b) and (c) shall not apply (i) if no Tax Event exists at that time or (ii) following the conversion of such Convertible Notes.

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## 13. Amendments

### 13.1 Permitted amendments

Subject to these Convertible Note Conditions, the terms of the Convertible Note Deed Poll and these Convertible Note Conditions may only be amended, waived or supplemented with the consent in writing of both the Issuer and the Representative at the time the amendment, waiver or supplement takes effect. Any such amendment, waiver or supplement will only be valid if effected by deed.

### 13.2 Copies of amendments

The Issuer must provide to each Convertible Noteholder, upon the request of that Convertible Noteholder, copies of each deed effecting any amendment to the Convertible Note Deed Poll or these Convertible Note Conditions under Condition 13.1.

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## 14. Representative of the Convertible Noteholders

### 14.1 Appointment of Representative

Pursuant to this Condition 14.1, the Representative under these Convertible Note Conditions is:

- (a) **(Dyal and its Affiliates):** where Dyal or any of its Affiliates hold any Convertible Notes, Dyal and its Affiliates;
- (b) **(Majority Convertible Noteholder):** where, from time to time, neither Dyal nor any of its Affiliates hold any Convertible Notes and a Convertible Noteholder holds 51% or more of the aggregate Principal Amount Outstanding of Convertible Notes, that Convertible Noteholder; or
- (c) **(Elected Convertible Noteholder):** where, from time to time, neither Condition 14.1(a) or 14.1(b) apply, such person as Convertible Noteholders that in aggregate hold 51% or more of the aggregate Principal Amount Outstanding of Convertible Notes agree between themselves from time to time as notified to the Issuer advising the name and address of the Convertible Noteholder which will be the Representative and that Convertible Noteholder's consent to occupy that role.

### 14.2 Issuer may rely on notice of Representative

Where a Representative (or a Convertible Noteholder if there is no Representative) gives notice as contemplated by Condition 14.1(c) the Issuer is entitled to rely on that notice and such notice will be binding on all Convertible Noteholders.

### 14.3 Action of Representative is binding

The appointment of the Representative and its acts and omissions under these Convertible Note Conditions are valid and binding as between:

- (a) **(Issuer)**: the relevant Convertible Noteholder and the Issuer;
- (b) **(Liquidator)**: the relevant Convertible Noteholder and any liquidator of the Issuer; and
- (c) **(Other Convertible Noteholders)**: the relevant Convertible Noteholder and all other Convertible Noteholders.

### 14.4 Representative has no obligation

Except as may otherwise be agreed in writing in respect of a Convertible Noteholder between the Representative and that Convertible Noteholders, the Representative has no obligation to the other Convertible Noteholders and is not obliged to consult with or obtain the consent or approval of the other Convertible Noteholders before giving or not giving any consent, approval or waiver to the Issuer.

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## 15. Obligations of Convertible Noteholders

The Convertible Notes are issued on the condition that each Convertible Noteholder, is bound by and complies with the terms and conditions of the Convertible Note Deed Poll and these Convertible Note Conditions.

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## 16. Listing and Quotation

- (a) For so long as any Convertible Notes remain on issue and any Ordinary Shares of the Issuer are quoted on ASX, the Issuer must:
  - (i) furnish all documents, information and undertakings and do any other thing that is reasonably required by ASX as may be reasonably necessary in order to maintain its listing on, and quotation of its Ordinary Shares on, ASX;
  - (ii) use all reasonable endeavours to comply with each of its obligations under *ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82 (Instrument)* so that each Convertible Noteholder may rely on the relief provided under the Instrument;
  - (iii) do all things reasonably necessary to ensure that any Ordinary Shares issued upon conversion of the Convertible Notes are quoted on ASX including, but not limited to, lodging with ASX, a compliant Appendix 2A in respect of those Ordinary Shares, within one Business Day of their issue.
- (b) Where a Convertible Noteholder gives to the Issuer a Conversion Notice in accordance with Condition 5.1, or the Issuer gives to a Convertible Noteholder an Issuer Conversion Notice in accordance with Condition 5.2, and the Convertible Noteholder is unable to rely on the Instrument, to the extent that any action may be taken by the Issuer in order to facilitate the on-sale of any Ordinary Shares issued upon conversion of the Convertible Notes, the Issuer must, within 20 Business Days (subject to clause 16(c)), take such action (including, where required, issuing a prospectus, cleansing notice or disclosure document in respect of the Shares, as applicable) to ensure that such Shares are freely tradable on ASX.



- (c) If, at the time that a Convertible Noteholder gives to the Issuer a Conversion Notice in accordance with Condition 5.1, the Company considers that it is withholding material non-public price-sensitive information from the market in accordance with ASX Listing Rule 3.1A, then the Company may defer taking any action required under clause 16(b) (including deferring updating the market with such information) for up to 120 days.

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## 17. Discharge and release

The Issuer is immediately discharged and released from its liabilities, obligations and covenants under the Convertible Note Deed Poll and these Convertible Note Conditions in respect of any Convertible Note on the first to occur of the date on which that:

- (a) **(Redemption):** Convertible Note and interest on that Convertible Note is redeemed or deemed to be redeemed and paid in full in accordance with these Convertible Note Conditions; or
- (b) **(Conversion):** Convertible Note is converted in accordance with these Convertible Note Conditions.

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## 18. General

### 18.1 Time limit for claims

Any claim against the Issuer for a payment in respect of a Convertible Note is void unless made within five years of the due date for that payment.

### 18.2 Governing Laws

These Convertible Note Conditions are governed by and shall be construed in accordance with the law in force in New South Wales. The Issuer hereby irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and any court that may hear appeals from the courts of New South Wales.

### 18.3 Severability of Provisions

Any provision of these Convertible Note Conditions which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these Convertible Note Conditions nor the validity or enforceability of that provision in any other jurisdiction.

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## 19. Notices

### 19.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with these Convertible Note Conditions or the Convertible Note Deed Poll:

- (a) must be given:
- (i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post or email; and
- (ii) using the address or other details for the relevant person set out in the below table (or as otherwise notified by the relevant person from time to time under this Condition 19):

Name	Attention	Address (for hand delivery or delivery by courier or post)	Email address
Issuer	Chief Financial Officer/Company Secretary	Level 21, 10 Eagle Street, Brisbane, Queensland, 4000	astoney@navigatorglobal.com.au
Convertible Noteholder	As notified by a Convertible Noteholder to the Issuer from time to time		

- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sending person or by a person duly authorised by the sending person;
- (d) (in the case of email) must:
  - (i) state the name of the sending person or a person duly authorised by the sending person and state that the email is a communication under or in connection with these Convertible Note Conditions or the Convertible Note Deed Poll; and
  - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving person can open, view and download at no additional cost,

and communications sent by email are taken to be signed by the named sender.

**19.2 When notice taken to be received**

Without limiting the ability of a person to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with these Convertible Note Conditions or the Convertible Note Deed Poll is taken to be given by the sender and received by the recipient:

- (e) (in the case of delivery by hand or courier service) on delivery;
- (f) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (g) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
- (h) (in the case of email, whether or not containing attachments) the earlier of:
  - (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the person sending the email receives an automated message that the email has not been delivered;
  - (ii) receipt by the sender of an automated message confirming delivery; and
  - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (i) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
  - (i) the recipient is absent from the place at which the communication is delivered or sent;
  - (ii) the communication is returned unclaimed; and
  - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (j) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (k) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

**19.3 Notices sent by more than one method of communication**

If a communication delivered or sent under this Condition 19 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with Condition 19.2.

**Annex A to Schedule 1 – Convertible Note Legend**

THIS CONVERTIBLE NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED BY THIS LEGEND. THE HOLDER HEREOF, BY ITS ACCEPTANCE OF THIS CERTIFICATE, REPRESENTS, ACKNOWLEDGES AND AGREES THAT IT WILL ONLY OFFER, SELL, PLEDGE, TRANSFER OR OTHERWISE DISPOSE OF THE CONVERTIBLE NOTES IF THE CONVERTIBLE NOTES ARE OFFERED, SOLD, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF (I) TO THE ISSUER OR A SUBSIDIARY OF THE ISSUER; (II) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (III) TO A PERSON LOCATED OUTSIDE THE UNITED STATES THAT IS NEITHER A U.S. PERSON NOR A PERSON ACTING FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON, THAT IS ACQUIRING THE CONVERTIBLE NOTES IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S) MEETING THE REQUIREMENTS OF REGULATION S; (IV) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (V) IN A TRANSACTION OTHERWISE EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE, SUCH OFFER, SALE, PLEDGE OR TRANSFER MUST BE MADE IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ISSUER RESERVES THE RIGHT TO REFUSE TO RECORD ANY TRANSFER OF CONVERTIBLE NOTES THAT ARE SOLD OR OTHERWISE TRANSFERRED IN A MANNER OTHER THAN THAT SPECIFIED IN THIS LEGEND.

## Schedule 2 – Conversion Notice

To: The Directors  
 Navigator Global Investments Limited ACN 101 585 737  
 Level 21, 10 Eagle Street, Brisbane, Queensland, 4000

**NOTICE** is given of the exercise by [*Convertible Noteholder*] of its rights to convert [*number to be converted*] of its Convertible Notes into Ordinary Shares in the Issuer in accordance with Condition 5.1 of the Convertible Note Conditions which appear in Schedule 1 of the Convertible Note Deed Poll dated February 1, 2021 and executed by the Issuer. The Conversion Date nominated for the purposes of such conversion is [*insert date*]

Terms defined in the Convertible Note Conditions shall have the same meaning when used in this Conversion Notice.

The undersigned, [*Convertible Noteholder*] makes the following certifications, representations and warranties with respect to [*insert number of Convertible Notes*] Convertible Notes of the Issuer, which are being exercised by the Convertible Noteholder:

- (a) if the conversion the subject of this notice is a notifiable action for the Convertible Noteholder under the FATA, the Convertible Noteholder has received FIRB Approval in respect of such conversion;
- (b) the conversion the subject of this notice will not result in a contravention of section 606 of the Corporations Act;
- (c) if the conversion the subject of this notice is subject to the expiration of a waiting period under the HSR Act, such waiting period has expired;
- (d) the conversion the subject of this notice is not prohibited by any applicable law or regulation;
- (c) to the Convertible Noteholder's knowledge, no commission or other remuneration has been paid or given, directly or indirectly, for soliciting the conversion the subject of this notice;
- (d) the Convertible Noteholder is aware and acknowledges that, in connection with the Ordinary Shares issued to it on conversion of the Convertible Notes, the Issuer is relying on an exemption from registration under the Securities Act. The Convertible Noteholder understands that the Issuer has no obligation to register the Ordinary Shares under the Securities Act or to comply with the requirements for any exemption from the registration requirements of the Securities Act;
- (e) the Convertible Noteholder acknowledges that the Ordinary Shares may not be offered, sold, pledged, transferred or otherwise disposed of, except pursuant to an exemption from, or in transactions not subject to, the registration requirements of the Securities Act and any other applicable securities laws. The Convertible Noteholder agrees that, in the future, if it or any other person for whose account or benefit it is acquiring the Ordinary Shares, decides to offer, sell, pledge, transfer or otherwise dispose of the Ordinary Shares it will only do so and it will inform such other person that it may only do so, if the Ordinary Shares are offered, sold, pledged, transferred or otherwise disposed of by the holder thereof (i) to the Issuer or a subsidiary of the Issuer; (ii) pursuant to a registration statement that has been declared effective under the Securities Act; (iii)(A) in standard (regular way) transactions on the ASX where neither the seller nor any person acting on its behalf knows, or has reason to know, that the sale has been prearranged with, or that the purchaser is, a person in the United States or is a U.S. Person or is acting for the account or benefit of, a person in the United States or a U.S. Person or (B) otherwise to a person located outside the United States that is neither a U.S.

Person nor a person acting for the account or benefit of a U.S. Person, that is acquiring the Ordinary Shares in an offshore transaction (as defined in Regulation S) meeting the requirements of Regulation S; (iv) to a person the seller reasonably believes is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A, all in compliance with Rule 144A (if available); or (v) in a transaction otherwise exempt from or not subject to the registration requirements of the Securities Act, and, in each case, such offer, sale, pledge or transfer must be made in accordance with all applicable laws and regulations, including any applicable securities laws of any state of the United States. The Convertible Noteholder acknowledges that, notwithstanding anything to the contrary in the foregoing, the Ordinary Shares may not be deposited into any unrestricted American depositary receipt facility unless they no longer constitute "restricted securities" as such term is defined in Rule 144(a)(3) under the Securities Act. The Convertible Noteholder acknowledges that the Ordinary Shares are not transferable except in accordance with the restrictions described herein. The Convertible Noteholder agrees to provide notice of the transfer restrictions set out herein to the transferee. The Convertible Noteholder acknowledges that, to the maximum extent permitted by law, the Issuer reserves the right to refuse to record any transfer of Ordinary Shares that are sold or otherwise transferred in a manner other than that specified in this paragraph (e); and

- (f) the Convertible Noteholder acknowledges that in the event the Ordinary Shares issued upon conversion of the Convertible Notes are held in certificated form, such certificated Ordinary Shares will bear a legend substantially to the following effect, for so long as they are "restricted securities" as defined in Rule 144(a)(3) under the Securities Act:
- (g) THE ORDINARY SHARES EVIDENCED HEREBY (THE "ORDINARY SHARES") HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED BY THIS LEGEND. THE HOLDER HEREOF, BY ITS ACCEPTANCE OF THIS CERTIFICATE, REPRESENTS, ACKNOWLEDGES AND AGREES THAT IT WILL ONLY OFFER, SELL, PLEDGE, TRANSFER OR OTHERWISE DISPOSE OF THE ORDINARY SHARES IF THE ORDINARY SHARES ARE OFFERED, SOLD, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF (I) TO THE ISSUER OR A SUBSIDIARY OF THE ISSUER; (II) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (III)(A) IN STANDARD (REGULAR WAY) TRANSACTIONS ON THE AUSTRALIAN SECURITIES EXCHANGE WHERE NEITHER THE SELLER NOR ANY PERSON ACTING ON ITS BEHALF KNOWS, OR HAS REASON TO KNOW, THAT THE SALE HAS BEEN PREARRANGED WITH, OR THAT THE PURCHASER IS, A PERSON IN THE UNITED STATES OR IS A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT ("REGULATION S")) (A "U.S. PERSON") OR IS ACTING FOR THE ACCOUNT OR BENEFIT OF, A PERSON IN THE UNITED STATES OR A U.S. PERSON OR (B) OTHERWISE TO A PERSON LOCATED OUTSIDE THE UNITED STATES THAT IS NEITHER A U.S. PERSON NOR A PERSON ACTING FOR THE ACCOUNT OR BENEFIT OF A U.S. PERSON, THAT IS ACQUIRING THE ORDINARY SHARES IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S) MEETING THE REQUIREMENTS OF REGULATION S; (IV) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON

RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (V) IN A TRANSACTION OTHERWISE EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND, IN EACH CASE, SUCH OFFER, SALE, PLEDGE OR TRANSFER MUST BE MADE IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF ACKNOWLEDGES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE ORDINARY SHARES MAY NOT BE DEPOSITED INTO ANY UNRESTRICTED AMERICAN DEPOSITARY RECEIPT FACILITY FOR SO LONG AS THEY REMAIN "RESTRICTED SECURITIES" AS DEFINED IN RULE 144(A)(3) UNDER THE SECURITIES ACT. THE HOLDER HEREOF ACKNOWLEDGES THAT THE ORDINARY SHARES ARE NOT TRANSFERABLE EXCEPT IN ACCORDANCE WITH THE RESTRICTIONS DESCRIBED HEREIN. THE HOLDER HEREOF AGREES TO PROVIDE NOTICE OF THE TRANSFER RESTRICTIONS SET OUT HEREIN TO THE TRANSFEREE. THE HOLDER HEREOF ACKNOWLEDGES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ISSUER RESERVES THE RIGHT TO REFUSE TO RECORD ANY TRANSFER OF ORDINARY SHARES THAT ARE SOLD OR OTHERWISE TRANSFERRED IN A MANNER OTHER THAN THAT SPECIFIED IN THIS LEGEND.

The representation, warranties and statements contained in this Certificate are made for the benefit of the Issuer.

**DATED:**

**SIGNED** for and on behalf of [*Convertible Noteholder*]

\_\_\_\_\_  
Director/Secretary

**Schedule 3 – Issuer Conversion Notice**

To: [Name of Convertible Noteholder]  
[ ]

**NOTICE** is given of the exercise by Navigator Global Investments Limited (ACN 101 585 737) of its rights to convert [number to be converted] of your Convertible Notes into Ordinary Shares in the Issuer in accordance with Condition 5.2 of the Convertible Note Conditions which appear in Schedule 1 of the Convertible Note Deed Poll dated February 1, 2021 and executed by the Issuer. The Conversion Date nominated for the purposes of such conversion is [insert date].

Terms defined in the Convertible Note Conditions shall have the same meaning when used in this Issuer Conversion Notice.

**DATED:**

**SIGNED** for and on behalf of Navigator Global Investments Limited

\_\_\_\_\_  
Director/Secretary