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Judo Capital Holdings – Capital Notes Trust Deed

Judo Capital Holdings Limited

ABN 71 612 862 727

Certane CT Pty Ltd

ABN 12 106 424 088

23 October 2023

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THIS TRUST DEED is made on

23 October

2023

BETWEEN:

- (1) **Judo Capital Holdings Limited** ABN 71 612 862 727 whose registered office is at Level 32, 367 Collins Street, Melbourne, VIC 3000 (the **Issuer**); and
- (2) **Certane CT Pty Ltd** ABN 12 106 424 088 whose registered office is at Level 6, 80 Clarence Street, Sydney NSW 2000 (the **Trustee**).

RECITALS:

- (A) The Issuer wishes to issue Capital Notes subject to and under the terms of this document.
- (B) The Trustee has agreed, at the request of the Issuer, to act on the terms set out in this document as trustee for the benefit of persons who are Capital Noteholders from time to time.

THE PARTIES AGREE AS FOLLOWS:

1. **Interpretation**

1.1 **Definitions**

The following definitions apply in this document.

Amendment has the meaning in clause 18.

Application Form means the relevant application form attached to, or accompanying, the Prospectus upon which an application for Offer Securities may be made.

ASIC means the Australian Securities & Investments Commission.

ASX Settlement means ASX Settlement Pty Limited ABN 49 008 504 532.

ASX Settlement Operating Rules means the ASX Settlement Operating Rules and any other operating rules, procedures, directions, decisions, requirements, customs, usages and practices of ASX Settlement, as amended from time to time.

Attorney means an attorney appointed under this document and any attorney's substitute or delegate.

Authorisation means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Authorised Representative means, for a person:

- (a) a company secretary or director of the person or an employee of the person whose title includes the word "manager", "director", "counsel", "chief" or "head";
- (b) a person who is acting temporarily in one of those positions; or
- (c) a person, or a person holding a position, nominated by the person by written notice to the other party to this document.

Authorised Representative's Certificate means a certificate signed by an Authorised Representative of the Issuer.

CHESS means the Clearing House Electronic Subregister System.

CHESS Approved Securities means securities in respect of which approval has been given by ASX Settlement in accordance with the ASX Settlement Operating Rules.

Confidential Information means all information and other material (other than information or material in the public domain) provided to or obtained by the Trustee, or any officer, employee, delegate, adviser or other consultant of the Trustee under, in connection with or related to this document or any obligation, duty or power of the Trustee under this document.

Controller has the same meaning as in the Corporations Act.

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

Excluded Tax means a Tax on net income in any jurisdiction, other than:

- (a) a Tax that is calculated on or by reference to the gross amount of any payment derived by a party under this document or the transactions that this document contemplates (unless the Tax is imposed because the party has not given its tax file number to the person who made the payment); or
- (b) a Tax that is imposed because a party is regarded as being subject to tax in a jurisdiction solely because it is a party to this document or because it is participating in the transactions that this document contemplates.

FATCA means:

- (a) sections 1471 to 1474 of the U.S. Internal Revenue Code of 1986 or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the U.S. and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the U.S. Internal Revenue Service, the U.S. government or any governmental or taxation authority in any other jurisdiction.

FATCA Withholding means any deduction or withholding imposed or required pursuant to FATCA.

Government Agency means:

- (a) a government or government department or other body;

- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

GST Law means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means a guarantee, indemnity, letter of credit, performance bond, binding letter of comfort, or other undertaking or obligation (whether conditional or unconditional) to:

- (a) do any one or more of the following in respect of an obligation of another person (whether or not it involves the payment of money):
 - (i) provide funds (including by the purchase of property), or otherwise to make property available, in or towards payment or discharge of that obligation;
 - (ii) indemnify against the consequences of default in the payment or performance of that obligation; or
 - (iii) be responsible in any other way for that obligation; or
- (b) be responsible for the solvency or financial condition of another person.

Insolvency Event means, in respect of the Trustee (in its personal capacity and not as trustee of any trust):

- (a) an administrator being appointed to the Trustee;
- (b) the following occurring:
 - (i) the Trustee resolving to appoint a Controller or analogous person to the Trustee or any of the Trustee's property;
 - (ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the Trustee or any of the Trustee's property; or
 - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the Trustee's property (including seizing the Trustee's property within the meaning of section 123 of the PPSA);

- (d) the Trustee being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) an application being made to a court for an order for its winding up;
- (f) an order being made, or the Trustee passing a resolution, for its winding up;
- (g) the Trustee:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (h) the Trustee taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (i) a court or other authority enforcing any judgment or order against the Trustee for the payment of money or the recovery of any property; or
- (j) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

Institutional Investor means a person to whom Offer Securities are able to be offered and/or issued under applicable law without the need for any prospectus, registration or other formality (other than a registration or formality with which the Issuer is willing to comply), which in Australia means a "sophisticated investor" (within the meaning of section 708(8) of the Corporations Act) or a "professional investor" (within the meaning of section 708(11) of the Corporations Act).

Investors means both Institutional Investors and Retail Investors who participate in the Offer.

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

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

Meeting Provisions means the provisions for meetings of the Capital Noteholders and related matters contained in Schedule 2.

Moneys Owning means, without double counting, the aggregate of all moneys owing (whether presently, contingently or prospectively) from time to time by the Issuer to the Trustee and the Capital Noteholders under this document and the Capital Notes and, in

relation to a Capital Noteholder, means the foregoing to the extent that it is owing to or relates to that Capital Noteholder.

Note Certificate means a certificate issued by the Issuer in respect of a Capital Note.

Offer means the offer by the Issuer to Investors to subscribe for Offer Securities under the Offer Documents at the Issue Price, to raise up to \$75 million (with the ability for the Issuer to raise more or less).

Offer Documents means all documents issued or published by or issued with the consent of the Issuer in connection with the Offer, including:

- (a) the Prospectus;
- (b) any Application Form;
- (c) any ASX announcements and investor presentation materials in respect of the Offer;
- (d) any other public or media statements, announcements, advertisements, publicity, roadshow materials or marketing presentations in respect of the Offer; and
- (e) all other communications with investors or potential investors, nominees and other parties approved or authorised by or issued with the consent of the Issuer in respect of the Offer.

Offer Securities means the Capital Notes which are to be issued by the Issuer pursuant to the Offer.

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

Official List means the Official List of the ASX.

Ordinary Resolution means a resolution approved by not less than 50% of all votes cast by Capital Noteholders present and entitled to vote on the resolution.

Power means any right, power, authority, discretion or remedy of, or conferred on, the Trustee or a Capital Noteholder, an Attorney or a Controller by this document or the Terms or any applicable law.

PPS Security Interest means a security interest that is subject to the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Proper ASTC Transfer has the meaning given in the *Corporations Regulations 2001* (Cth).

Protected Person means the Trustee and any Authorised Representative, director, officer, employee, agent, delegate, attorney or related body corporate of the Trustee.

Recovered Money means (subject to this document), the net proceeds of all money received or recovered by the Trustee under the Terms, this document and Chapter 2L of the Corporations Act whether by enforcement or otherwise (after deduction of fees, costs, charges, expenses and other amounts paid or incurred in accordance with the Terms, this document and Chapter 2L of the Corporations Act).

Register means the register of Capital Noteholders established and maintained under clause 6 and, where appropriate, includes:

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

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

Retail Investor means a person who is not an Institutional Investor.

Sales Agent means an entity who is authorised by its Australian financial services licence (AFSL) to sell Ordinary Shares (or is an authorised representative of an AFSL holder) and which will sell or procure the sale of Ordinary shares in accordance with clause 11.29 of this Trust Deed in accordance with the Trustee's instructions.

Security Interest means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Terms means the Conditions of the Capital Notes as set out in Schedule 1.

Trust means the trust established under clause 3.2.

Trust Fund means (with none of the following limiting any other):

- (a) the sum of \$10 referred to in clause 3.2(a);
- (b) all right, title and interest vested in the Trustee in, to and under this document and the Terms, including all rights and benefits under them;
- (c) the benefit of all undertakings, covenants, agreements, representations and warranties made or given or agreed to or in favour of, or granted to or for the benefit of, the Trustee under this document and the Terms;
- (d) the right to enforce the Issuer's duty to repay the Moneys Owing;
- (e) the right to enforce any other duties or obligations that the Issuer has under the Terms, this document and Chapter 2L of the Corporations Act;
- (f) all money paid to the Trustee under this document in its capacity as trustee of the Trust;
- (g) all Recovered Money;
- (h) the benefit of all claims, actions and demands arising in respect of the Powers; and
- (i) all other property acquired by the Trustee and intended to be held for the benefit of the Capital Noteholders or the Trustee from time to time on the trusts of this document.

Trustee Company means a body corporate (other than the Issuer or any Related Body Corporate of the Issuer) eligible to be a trustee of the Trust in accordance with section 283AA and 283AC of the Corporations Act.

1.2 **Incorporation of defined terms in Terms**

- (a) Subject to clause 1.1, terms that are defined in the Terms have the same meaning in this document.
- (b) The terms of the Terms prevail over the terms of this document to the extent of any inconsistency, unless otherwise expressly provided.

1.3 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.

- (i) The expressions **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.
- (j) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (k) If a calculation is required under this document, the calculation will be rounded to four decimal places, provided that the amount to be paid to a Capital Noteholder will be rounded down to the nearest whole cent.
- (l) A reference to the **fraud**, **negligence** or **wilful default** of the Trustee, means the fraud, negligence or wilful default of the Trustee and of its officers and employees, and does not include any circumstances where the Trustee, or its officers or employees, fail to act due to lack of instructions or directions or lack of proper or clear instructions or directions from the appropriate Capital Noteholders as required to be given under this document.
- (m) A reference to **wilful default** in relation to the Trustee means any wilful failure to comply with, or wilful breach by, the Trustee of any of its obligations under this document other than a failure or breach which:
 - (i) arises as a result of a breach of this document by a person other than:
 - (A) the Trustee; or
 - (B) any other person referred to in clause 1.3(l) in relation to the Trustee; or
 - (ii) is in accordance with a lawful court order or direction or required by law; or
 - (iii) is in accordance with any proper instruction or direction of the Capital Noteholders given at a meeting of Capital Noteholders convened pursuant to the Meeting Provisions.

1.4 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.5 **Inconsistency**

- (a) **(Corporations Act)**: This document is to be interpreted subject to the Corporations Act. If any provision of this document is or becomes inconsistent with the Corporations Act, as modified by any applicable exceptions or declarations made by ASIC, this document does not operate to the extent of the inconsistency. This provision prevails over all other provisions of this document (including clause 1.5(b)(ii)).
- (b) **(ASX Listing Rules and ASX Settlement Operating Rules)**: This document is to be interpreted subject to the ASX Listing Rules, while the Issuer is admitted to the Official List, and the ASX Settlement Operating Rules while the Capital Notes are CHESS Approved Securities. To the extent that the ASX Listing Rules or the ASX Settlement Operating Rules:

- (i) restrict or prohibit an act from being done, it may not be done;
- (ii) require an act to be done, it must be done;
- (iii) require this document to contain a provision, this document is taken to contain that provision; and
- (iv) require this document not contain a provision, the document is taken not to contain that provision,

and if any provision of this document is or becomes inconsistent with the ASX Listing Rules or the ASX Settlement Operating Rules, this document is taken not to contain that provision to the extent of the inconsistency.

2. **Capital Notes Trust Deed**

2.1 **Capital Notes Trust Deed**

This Trust Deed:

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

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

This Trust Deed is to be interpreted so that no term is rendered void by section 283DB(1) of the Corporations Act.

2.3 **Constitution and status**

The Capital Notes are perpetual, unsecured, subordinated debt obligations of the Issuer constituted by, and owing under, this Trust Deed and issued on the Terms and the other provisions of this Trust Deed. The obligations of the Issuer in respect of each Capital Note:

- (a) constitute separate and individual acknowledgments of the indebtedness of the Issuer;
- (b) are subject to the terms of this Trust Deed;
- (c) are direct and unsecured obligations of the Issuer and are "unsecured notes" for the purposes of section 283BH of the Corporations Act; and
- (d) rank:
 - (i) in priority to Ordinary Shares; equally among themselves and with all Equal Ranking Securities; and
 - (ii) behind the claims of Senior Creditors,

each as described in the Terms.

2.4 **Undertaking to pay**

- (a) In respect of each Capital Note, the Issuer undertakes to the Trustee (as trustee for the relevant Capital Noteholder), subject to any obligation of the Issuer to Convert or Write-Off the Capital Notes, to comply with this document and the Terms and pay the amounts due and payable in respect of that Capital Note under and in accordance with this Trust Deed.

- (b) The Trustee directs the Issuer to pay such amounts under this Trust Deed directly to the Capital Noteholders, unless:
 - (i) a Winding-Up has occurred and is subsisting;
 - (ii) a Controller (as defined in the Corporations Act) has been appointed to the Issuer; or
 - (iii) the Issuer advises the Trustee that it is not likely to meet its obligations under this Trust Deed,

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

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

3. Declaration of trust

3.1 Appointment of Trustee

The Issuer appoints the Trustee to act as trustee of the Trust, on the terms and conditions of this document, and the Trustee accepts that appointment.

3.2 Establishment of the Trust

- (a) The Issuer has settled the sum of \$10 on the Trustee.
- (b) The Trustee declares that it holds the sum of \$10, and will hold the Trust Fund, on trust for the Capital Noteholders from time to time on the terms and conditions of this document.

3.3 Name of the Trust

The Trust is to be known as the "Judo Capital Notes Trust".

3.4 Benefit of the Trust

Each Capital Noteholder from time to time is entitled to the benefit of the Trust Fund on the terms and conditions contained in this document.

3.5 Trust account

The Trustee must promptly credit the sum of \$10 referred to in clause 3.2(a) to a bank account.

3.6 Beneficiaries

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

4. Issue and ownership of notes

4.1 Issue of Capital Notes

The Issuer may issue Capital Notes in accordance with this document by entering the relevant subscriber in the Register as the holder of those Capital Notes on or about the Issue Date. A Capital Note is issued when the relevant Capital Noteholder is registered in the Register as the Capital Noteholder of the Capital Note.

4.2 **Form, constituent documents and denomination of the Capital Notes**

Each Capital Note will:

- (a) **(registered securities)** be in the form of a registered debt security;
- (b) **(denomination)** be denominated in Australian dollars;
- (c) **(not protected accounts)** not represent a protected account of any member of the Group for the purposes of the Banking Act or any similar law of any jurisdiction and nor will it represent a deposit with, or a deposit liability of, any member of the Group for any other purposes of the Banking Act or the laws of any jurisdiction; and
- (d) **(not affiliated with governments)** not be an obligation of the Australian Government or of any other government and, in particular, is not guaranteed or insured by the Commonwealth of Australia or any government, Government Agency or compensation scheme in any jurisdiction or by any other person.

4.3 **Capital Noteholders bound by this document**

- (a) The terms and conditions of this document are binding on each Capital Noteholder and all persons claiming through any Capital Noteholder as if that Capital Noteholder and those persons were a party to this document.
- (b) It is a condition of a Capital Noteholder receiving any of the rights or benefits in connection with this document or Capital Notes that the Capital Noteholder performs all of the obligations and complies with all restrictions and limitations applicable to it under this document.
- (c) Each Capital Noteholder is taken to have irrevocably authorised the Trustee to enter into this document and to perform its obligations and duties, and to exercise its rights, under this document, the Terms and Chapter 2L of the Corporations Act.

4.4 **Subscription for Capital Notes in cleared funds**

No actual or proposed Capital Noteholder or any other person has any right, title or interest in, under or to any Capital Note until the Issuer has received cleared funds in full for the money subscribed for the Capital Note.

4.5 **Payment of commission**

Subject to it complying with applicable law, the Issuer may pay a commission, underwriting fee, brokerage or any other analogous fees to any person for subscribing or underwriting the subscription of or obtaining subscription for the Capital Notes.

4.6 **Capital Notes not invalid if issued in breach**

No Capital Note will be invalid or unenforceable on the ground that it was issued in breach of this document.

5. **Note certificates**

5.1 **No Note Certificates unless required by law etc.**

- (a) No Note Certificate will be issued by the Issuer to evidence title to a Capital Note unless the Issuer determines that such evidence should be made available or is required by law, the ASX Listing Rules or the ASX Settlement Operating Rules.
- (b) If the Issuer determines that a Note Certificate should be issued for the purposes of paragraph (a) above, clauses 5.2, 5.3 and 5.4 will apply.

5.2 **Form of Note Certificates**

A Note Certificate will be in such form as may be agreed from time to time between the Issuer and the Trustee.

5.3 **Execution of Note Certificates**

- (a) A Note Certificate may be engraved, lithographed or printed and must be signed, either manually, mechanically, electronically, by facsimile or by other means agreed between the Issuer and the Trustee, by an Authorised Representative or other delegate of the Issuer.
- (b) A Note Certificate is valid notwithstanding that when the Note Certificate is issued the person whose facsimile signature has been applied to the Note Certificate has died or otherwise ceased to hold office.

5.4 **Worn Out or lost Note Certificates**

If a Note Certificate becomes worn out or defaced, then upon production of it to the Issuer, a replacement will be issued. If a Note Certificate is lost or destroyed, and upon proof of this to the satisfaction of the Issuer and the provision of such indemnity as the Issuer considers adequate, a replacement Note Certificate will be issued. A fee not exceeding \$10 may also be charged by the Issuer for the new Note Certificate if it so requires.

5.5 **Uncertificated holdings and holding statements**

Where no Note Certificate is issued to a Capital Noteholder, such Capital Noteholder will be entitled to receive, and the Issuer or the Registry (as applicable) must provide to such Capital Noteholder, statements of the holdings of Capital Notes of the Capital Noteholder as the Issuer is required to give pursuant to the Corporations Act, the ASX Listing Rules and the ASX Settlement Operating Rules.

6. **The register**

6.1 **Establishment, maintenance and location of the Register**

- (a) The Issuer must establish and maintain, or procure the establishment and maintenance of, a register in relation to the Capital Notes.
- (b) The Register must be located in:
 - (i) Sydney or Melbourne; or
 - (ii) such other Australian city as may be notified from time to time by the Issuer to the Trustee in writing.

The Issuer must notify the Trustee in writing of the location of any register maintained in respect of the Capital Notes.

- (c) If the Issuer is not itself establishing or maintaining the Register, the Issuer must:
 - (i) require the person that is maintaining the Register on its behalf to discharge the Issuer's obligations under this document in relation to the Register; and
 - (ii) give the Trustee notice of the name of the person that the Issuer has appointed from time to time to establish or maintain the Register on the Issuer's behalf, being as at the date of this document, Link Market Services Limited (ABN 54 083 214 537)).

6.2 Information to be entered on the Register

The following information must be entered on the Register in respect of a Capital Note and each Capital Noteholder:

- (a) **(name, email address and address)** the name, address and email address (if notified by the relevant Capital Noteholder) of each Capital Noteholder;
- (b) **(amount of Capital Notes)** the number of Capital Notes then held by each Capital Noteholder;
- (c) **(Australian tax file number)** if provided, the Australian tax file number of each Capital Noteholder or evidence of any exemption from the need to provide an Australian tax file number;
- (d) **(ACN, ABN etc)** if provided, the Australian Company Number, Australian Business Number or other identifying registration number of each Capital Noteholder;
- (e) **(payment instructions)** any payment instructions or account details notified by the relevant Capital Noteholder (or by the Issuer in respect of the relevant Capital Noteholder) to the Registrar for the purpose of receiving payments in relation to the Capital Notes held by such Capital Noteholder;
- (f) **(issue date)** the Issue Date; and
- (g) **(additional required information)** such other information as:
 - (i) is required by this document, the Corporations Act or by any other applicable law; or
 - (ii) the Trustee or the Issuer considers necessary or desirable.

6.3 No notice of any trust or other interests

Except as provided by statute or as required by an order of a court of competent jurisdiction:

- (a) **(No trusts)** no notice of any trust (whether express, implied or constructive or other interest) may be entered in the Register in respect of a Capital Note; and
- (b) **(No other interests)** neither the Issuer nor the Trustee is to be affected by or compelled to recognise (even when having notice of it) any right or interest in any Capital Notes other than the registered Capital Noteholder's absolute right to the entire interest in the Capital Notes and the receipt of the Capital Noteholder is a good discharge to the Trustee and the Issuer.

6.4 Title from Register

Each entry in the Register in respect of a Capital Note:

- (a) **(separate obligations)** evidences a separate and independent obligation owing by the Issuer to the person so entered;
- (b) **(conclusive evidence of title)** evidences conclusively that the person or persons so entered is the absolute owner of, and holder of title to, the Capital Note, except:

- (i) if more than one person is specified in the entry, the persons hold the Capital Note as joint tenants (but no more than four persons may be specified in an entry); and
- (ii) the entry is subject to rectification for fraud or any manifest error made in the entry; and
- (c) **(absolute ownership)** vests absolute ownership in, and title to, the Capital Note in the person specified in the entry, to the exclusion of the previous Capital Noteholder and other persons.

6.5 **Change of details**

- (a) Any change of the name or address of a Capital Noteholder must be notified immediately by the Capital Noteholder in writing to the Issuer. That notice must be accompanied, in the case of a change of name, by any evidence the Issuer requires.
- (b) Upon receipt of a notice pursuant to paragraph (a) above, the Issuer will alter the Register, or procure the alteration of the Register, accordingly.

6.6 **Rectification of Register**

If:

- (a) **(omissions)** an entry is omitted from the Register;
- (b) **(non-compliant entries)** an entry is made in the Register otherwise than in accordance with this document;
- (c) **(incorrect entries)** an entry wrongly exists in the Register;
- (d) **(errors or defects)** there is an error or defect in any entry in the Register; or
- (e) **(default)** default is made or unnecessary delay takes place in entering in the Register that any person has commenced, or ceased, to be the holder of Capital Notes,

then the Issuer may rectify the same.

6.7 **No liability for errors**

- (a) The Issuer is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs (a) to (e) of clause 6.6 occurring provided that it is not as a result of the Issuer's fraud, negligence or wilful default.
- (b) The Trustee is not liable for any loss, costs or liability incurred as a result of the occurrence of any matter referred to in paragraphs (a) to (e) of clause 6.6.

6.8 **Inspection**

The Register will be open, during business hours for the inspection by the Trustee, a Capital Noteholder (to the extent that the inspection or request relates to that part of the Register which contains particulars of that person's holdings), by any persons authorised in writing by the Trustee or the Capital Noteholders, and by any persons as required by the Corporations Act as it applies to the Issuer.

6.9 **Closure of Register**

The Issuer may, subject to the ASX Listing Rules or ASX Settlement Operating Rules, from time to time close the Register for any period or periods not exceeding in total in

any one year the maximum period for the time being permitted by law or 30 days, whichever is the lesser period.

6.10 Location of the Capital Notes

Property in the Capital Notes is located at the place where the Register is kept.

6.11 Copy of Register to the Trustee

The Issuer will give, or procure to be given, to the Trustee a complete copy of the Register within two Business Days after the Trustee so requests.

6.12 Joint Capital Noteholders

- (a) **(registration of address of joint Capital Noteholders)** Subject to clause 6.12(e), if more than one person is registered as the holder of a Capital Note, the address of only one of them will be entered on the Register. If more than one address is notified to the Issuer, the address recorded in the Register will be the address of the joint Capital Noteholder whose name first appears in the Register.
- (b) **(delivery of notices to first joint Capital Noteholder)** The delivery to the joint Capital Noteholder whose name first appears in the Register of a notice or other communication to the joint Capital Noteholders will be an effective discharge by the Issuer or the Trustee of any obligation to deliver that notice or communication to the joint Capital Noteholders, and in that case the notice or communication will be deemed to be given to all those joint Capital Noteholders.
- (c) **(entitlement to a Note Certificate)** Only the joint Capital Noteholder in respect of a Capital Note whose name first appears on the Register is entitled to be issued a Note Certificate (if Note Certificates have or will be issued in respect of that Capital Note).
- (d) **(payment to one joint Capital Noteholder)** The payment to any one joint Capital Noteholder of any moneys from time to time payable or repayable to the joint Capital Noteholders will be an effective discharge to the Issuer or the Trustee from each of the joint Capital Noteholders for the moneys so paid.
- (e) **(maximum number of registered Capital Noteholders)** Subject to the ASX Settlement Operating Rules, the Issuer will not be bound to register more than four persons as the joint holders of any Capital Notes.
- (f) **(all joint Capital Noteholders required)** All joint Capital Noteholders in respect of a Capital Note must join in:
 - (i) any transfer of the Capital Note; and
 - (ii) any application for the replacement of the Note Certificate (if any) relating to the Capital Note that has been lost, destroyed, worn out or defaced.

6.13 CHESS sub-register

If the Capital Notes are lodged in CHESS the rules and regulations of CHESS with respect to any Register prevail to the extent of any inconsistency with this clause 6 (but without limitation to the Terms).

7. Transfer of notes

The Terms contain provisions dealing with the transfer of Capital Notes on the Register.

8. Representations and warranties

8.1 Representations and warranties – Issuer and Trustee

Each of the Issuer and the Trustee represents and warrants that:

- (a) **(status)** it is a company limited by shares incorporated under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and to carry out the transactions that this document contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(Trust Deed effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) **(no Winding-Up)** no Winding-Up has occurred and is subsisting or will result from the issue of Capital Notes;
- (g) **(no contravention)** neither its execution of this document nor the carrying out by it of the transactions that it contemplates, does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any material agreement binding on it or any of its property; or
 - (iv) contravene its constitution or the powers or duties of its directors; and
- (h) **(ensure true and fair accounts)** in respect of the Issuer only, its most recent consolidated audited accounts have been prepared in accordance with current accounting practice (except to the extent disclosed in them) and with the laws of its place of incorporation and give a true and fair view of its consolidated financial position as at the date of those accounts and of its consolidated results of operations for the financial year then ended.

8.2 **Representation and warranty – Offer Documents**

The Issuer represents and warrants that, as at the date of the Offer Documents, the Offer Documents will contain all of the information required to comply with all applicable law and will not be misleading or deceptive or otherwise defective.

8.3 **Repetition of representations and warranties**

The representations and warranties in clause 8.1 are taken to be repeated on each Issue Date and on each Distribution Payment Date, on the basis of the facts and circumstances as at that date.

9. **Issuer's covenants**

9.1 **Issuer's obligations**

The Issuer covenants with the Trustee that, for so long as any Capital Notes remain outstanding, it will:

- (a) **(carry on business)** carry on and conduct its business in a proper and efficient manner;
- (b) **(keep accounts)** keep or cause to be kept proper books of account (in accordance with current accounting practice and standards);
- (c) **(provide accounts)** provide the following:
 - (i) without charge, to the Trustee (within 120 days after 30 June in each year) and to each Capital Noteholder who requests it in accordance with section 318(2) of the Corporations Act, a copy of the issuer's consolidated audited accounts in respect of each financial year and a copy of the Issuer's annual report for that financial year; and
 - (ii) without charge, to the Trustee (within 90 days after 31 December in each year), a copy of the Issuer's consolidated financial report in respect of each financial half year in the form submitted to the ASX;
- (d) **(stamp duty)** where there exists any recurring obligation on the Issuer or the Trustee or both to furnish certain information on the basis of which stamp duty will be payable in any State or Territory or other place, provide such information as is required by the Trustee to properly complete any return required to be lodged under the provisions of any stamp duty legislation which are applicable to this document or any of the Capital Notes or otherwise to enable the Trustee to comply with its obligations with respect to any undertaking given pursuant to any such legislation, such information to be furnished to the Trustee not less than 14 days prior to the time when such return is required to be lodged;
- (e) **(make records available for inspection)** so long as the Corporations Act requires, make all financial and other records of the Issuer and its subsidiaries (insofar as they relate to the Capital Notes) available for inspection by:
 - (i) the Trustee;
 - (ii) any registered company auditor appointed by the Trustee for that purpose;
 - (iii) any officer, employee or auditor of the Trustee authorised by the Trustee to carry out the inspection,

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

- (f) **(make payments)** make all payments in respect of the Capital Notes, as and when due, in accordance with the Terms, to the persons who are entitled to receive such payments;
- (g) **(listing)** use its best endeavours to ensure that the Capital Notes are, upon being issued, quoted on the ASX and that such quotation is maintained (including paying all necessary listing fees), and provide to the ASX such information as the ASX may require in accordance with the ASX Listing Rules and any other ASX requirements (including providing ASX with a copy of this document);
- (h) **(comply with obligations)** comply with its obligations under the terms of this document, the Corporations Act (including Chapter 2L), any other laws binding on it with respect to the Capital Notes, the ASX Listing Rules and the ASX Settlement Operating Rules where a failure to do so would have or would be likely to have a Material Adverse Effect;
- (i) **(information)** give the Trustee (and, in respect of paragraph (v) below, a Capital Noteholder, within 10 Business Days of a request by that Capital Noteholder):
 - (i) **(s283BF quarterly reports)** within one month after the end of each calendar quarter, the report required by section 283BF of the Corporations Act, containing all information required by section 283BF of the Corporations Act;
 - (ii) **(confirm payments)** promptly after redeeming or cancelling any Capital Note in full, details of that redemption or cancellation;
 - (iii) **(copies of notices to Capital Noteholders)** a copy of all documents and notices which it gives to a Capital Noteholder;
 - (iv) **(other information)** promptly, all other information requested the Trustee which is reasonably required for the purposes of the discharge of its duties, trusts and powers under this document or imposed upon it by law; and
 - (v) **(copies of this document)** a copy of this document;
- (j) **(notify breaches)** promptly notify the Trustee after it becomes aware of:
 - (i) an Acquisition Event;
 - (ii) a Winding-Up;
 - (iii) a Non-Viability Trigger Event;
 - (iv) an Inability Event;
 - (v) a Delisting Event;
 - (vi) a Write-Off;
 - (vii) a Mandatory Conversion Condition not been satisfied; or
 - (viii) a breach by the Issuer of Chapter 2L of the Corporations Act or this Trust Deed,

in each case, giving details of that event or breach; and

- (k) **(assist Trustee)** do any other thing reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this document, the Corporations Act (or any other laws binding on the Trustee with respect to the Trust or the Capital Notes), the ASX Listing Rules or the ASX Settlement Operating Rules.

9.2 **Issuer's obligations on execution**

As soon as practicable after execution of this document, the Issuer will attend to all filings and registrations which are required to be effected, and all Taxes which are required to be paid, to ensure that this document is legal, valid, binding and admissible in evidence.

9.3 **Notification obligations when Issuer in liquidation**

If the Issuer or any of its assets are placed in liquidation, then the receiver, receiver and trustee, official trustee, liquidator, administrator or similar official appointed to the Issuer or its assets (as applicable) **(Appointee)** must:

- (a) notify the Capital Noteholders of any event described by clauses 9.1(j)(i) to 9.1(j)(viii) and of the Appointee's appointment; and
- (b) provide regular updates to the Trustee and the Capital Noteholders as to the status of the liquidation and any other material developments affecting the Issuer or its assets.

10. **Trustee's limitation of liability**

- (a) The Trustee is not liable to the Issuer, any Capital Noteholder or any other person in any capacity other than as trustee of the Trust.
- (b) Any liability arising under or in connection with this document or a Capital Note is limited to and can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified out of the Trust Fund for that liability. This limitation of the Trustee's liability applies despite any other provision of this document or the Terms and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or a Capital Note.
- (c) Neither the Issuer nor any Capital Noteholder may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a Controller (except in relation to the Trust Fund), a liquidator, an administrator or any other similar person to the Trustee or prove in any liquidation of or affecting the Trustee (except in relation to the Trust Fund).
- (d) The Issuer and each Capital Noteholder waives each of their rights against the Trustee, and each releases the Trustee from any personal liability, in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this document or a Capital Note, which cannot be paid or satisfied out of the Trust Fund.
- (e) The provisions of this clause 10 will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or wilful default.
- (f) The Issuer and each Capital Noteholder each acknowledge that it is responsible for performing a variety of obligations under this document and the Terms. No

act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this document or the Terms) will be considered fraud, negligence or wilful default of the Trustee for the purposes of this clause 10 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer, a Capital Noteholder or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Issuer, a Capital Noteholder or any other person.

- (g) No Authorised Representative of the Trustee or any other person appointed in accordance with this document has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no such act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purpose of this clause 10.
- (h) The Trustee is not obliged to do or refrain from doing anything under this document or the Terms (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in this clause 10.
- (i) The provisions of this clause 10:
 - (i) are paramount and apply, to the maximum extent permitted by section 283DB of the Corporations Act, regardless of any other provision of this document or the Terms or any other instrument, even a provision which seeks to apply regardless of any other provision;
 - (ii) survive and endure beyond any termination of this document for any reason; and
 - (iii) are not severable from this document.

11. **Trustee's rights and responsibilities**

11.1 **Trustee entitled to exercise all rights**

Subject to this document:

- (a) the Trustee is entitled to exercise all Powers under this document, the Terms and any other document to which it is party in its capacity as trustee of the Trust (including those Powers conferred on trustees generally by statute and those conferred on trustees generally by law or equity) as if the Trustee were the absolute and beneficial owner of the Trust Fund and such documents;
- (b) the Trustee may enter into such other documents in its capacity as trustee of the Trust as it is authorised to from time to time by the Capital Noteholders; and
- (c) (despite clause 11.2 and any other clause operating as between the Trustee and the Capital Noteholders) the Trustee will, as between itself and each Capital Noteholder, have the absolute discretion:
 - (i) as to whether or not to take any steps to enforce the Capital Notes or otherwise seek to recover moneys payable under the Capital Notes; and
 - (ii) as to the manner of any enforcement (including the identity of a Controller to be appointed under this document or the Terms).

11.2 **Trustee's general undertakings**

The Trustee undertakes to the Capital Noteholders that it will:

- (a) act honestly and in good faith in the performance of its functions as Trustee, and show the degree of care and diligence required of a trustee having regard to the extent of its rights and obligations under this document and the Terms;
- (b) act continuously as Trustee until either the Trust is terminated, or it retires or is removed in accordance with clause 12;
- (c) comply with all duties imposed on it under the Corporations Act and satisfy at all times the requirements of a trustee as provided for in sections 283AC(1) and 283AC(2) of the Corporations Act;
- (d) subject to the provisions of this document and the Trustee's general duties as trustee at law, in equity or by statute, not interfere with the conduct of the ordinary business of the Issuer;
- (e) hold, and account for, the Trust Fund separate from any other property owned or administered by it; and
- (f) not sell or otherwise dispose or part with possession of, or create or permit to exist any Security Interest over, any part of the Trust Fund, except to the extent contemplated by this document or the Terms,

without being responsible, or liable to any person, for any loss occasioned by so doing unless the Trustee has been guilty of fraud, wilful default or negligence.

11.3 **Exercise of powers to waive**

- (a) Except where otherwise expressly provided in this document or by the Corporations Act, the Trustee may waive or excuse any breach (whether anticipatory or actual) of any provision under this document or the Terms by the Issuer (in its absolute discretion) provided that where a Winding-Up has occurred and is subsisting the Trustee may waive the breach only if:
 - (i) the Capital Noteholders have by an Ordinary Resolution consented to the waiver; or
 - (ii) the breach has been remedied to the satisfaction of the Trustee,

and, where the waiver may affect the eligibility of the Capital Notes as Additional Tier 1 Capital, only if the prior written approval of APRA has been obtained. The Trustee is entitled to accept an Officer's Certificate delivered to it by the Issuer and attaching evidence that APRA's approval is not required, or if required has been obtained from APRA, as conclusive evidence that APRA approval of the waiver is not required, or if required, has been obtained.

- (b) Each Capital Noteholder will be bound by any such waiver or excusal of breach by the Trustee.

11.4 **Trustee not bound to enforce**

Subject to the Terms and section 283DA(h) of the Corporations Act, the Trustee shall not in any event be bound to take any action referred to in Condition 21.1 (Enforcement by Trustee) of the Terms unless:

- (a) it shall have been so requested by Capital Noteholders holding between them at least 25% of the total Face Value of the Capital Notes then Outstanding or it shall have been so directed by a Special Resolution of the Capital Noteholders; and

- (b) it shall have been indemnified by the Capital Noteholders as contemplated by clause 13.3 of this document.

If the Trustee forms the view that such action is or could be inconsistent with this document, the Terms or the Corporations Act or any other applicable law, it may take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction given by Special Resolution, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take by Special Resolution.

11.5 **No obligation to notify or investigate or monitor**

Subject to section 283DA of the Corporations Act, the Trustee need not:

- (a) notify any person of the execution of this document or the occurrence of any breach of this document;
- (b) take any steps to ascertain whether there has occurred (and will not be deemed to have knowledge that such has occurred until it has received written notice from the Issuer or a Capital Noteholder in relation to such):
 - (i) a Winding-Up;
 - (ii) any Non-Viability Trigger Event;
 - (iii) an Inability Event; or
 - (iv) a Write-Off,or any event which may give rise to any such event;
- (c) enquire as to whether the provisions of this document or the Terms have been complied with;
- (d) notify any Capital Noteholder of any breach by the Issuer of any provision of this document or the Terms;
- (e) request information or otherwise keep itself informed about the circumstances of the Issuer or consider or provide to any person (including a Capital Noteholder) any information with respect to the Issuer (whenever coming into its possession);
- (f) investigate the adequacy, accuracy or completeness of any information provided by the Issuer; or
- (g) assess, investigate or keep under review the business, financial condition, status or affairs of the Issuer.

11.6 **Capital Noteholders' right to enforce**

No Capital Noteholder shall be entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Capital Note unless the Trustee, having become bound to so proceed, fails to do so within 14 days and the failure is continuing, in which case any such Capital Noteholder may itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so. Any such proceedings must be brought in the name of the Capital Noteholder and not the Trustee.

11.7 **Instructions and extent of discretion**

- (a) Except:

- (i) in respect of amounts due to the Trustee in its personal capacity; or
- (ii) to the extent expressly provided to the contrary in this document or the Terms,

in exercising any Power or giving any consent, approval, agreement or waiver or making any determination under this document or the Terms, the Trustee must, and is only obliged to, act if and only if it directed to do so by a Special Resolution of Capital Noteholders, all the Capital Noteholders or by such other number of Capital Noteholder or Capital Noteholders as required by the applicable provision of this document or the Terms.

- (b) Unless this document or the Terms expressly provide to the contrary, any direction by a Special Resolution of Capital Noteholders is binding on all Capital Noteholders except where this document or the Terms provides that instructions must be provided by all the Capital Noteholders or by such other number of Capital Noteholder or Capital Noteholders.
- (c) Each Capital Noteholder authorises the Trustee to give any consent and do any other matter or thing necessary or appropriate for it to give effect to any instructions given under this document or the Terms.
- (d) Any action taken by the Trustee under this document or the Terms is binding, as between the Trustee and the Capital Noteholders, on all the Capital Noteholders.
- (e) Where a direction by way of a Special Resolution of Capital Noteholders is required under this document or the Terms, for the purposes of determining whether the Special Resolution has been given or made:
 - (i) the Trustee will request each Capital Noteholders to provide to it within a reasonable specified period a signed written direction or confirmation of its decision; and
 - (ii) the Trustee will determine whether the Special Resolution has been granted or made.
- (f) Each Capital Noteholder agrees with the Trustee that the Capital Noteholder will act reasonably in giving instructions to the Trustee in respect of any matter in which:
 - (i) the consent or approval of the Trustee is required, the Trustee is required to form an opinion or the Trustee is given powers; and
 - (ii) this document or the Terms provides that the consent or approval of the Trustee may not be withheld unreasonably, that the consent or approval must be given reasonably, that the opinion must be a reasonable opinion, or that the Trustee must act reasonably in the exercise of those powers.
- (g) Any statement by the Trustee to the Issuer that instructions or a direction have been given to the Trustee by any Capital Noteholder, all the Capital Noteholders or by way of a Special Resolution, as the case may be, or as to the terms of those instructions or direction, is sufficient evidence of its contents.
- (h) Despite any other provision of this document or the Terms, the Trustee is not obliged to take any action under this document or the Terms, or exercise any Power until it is first indemnified to its satisfaction in accordance with clause 14 or otherwise.

- (i) The Trustee may apply to a court for directions in relation to any disputes or ambiguity relating to any of its rights, powers, authorities, discretions, remedies and obligations under this document or any applicable law and may comply with any such directions. For so long as the Trustee is using reasonable endeavours to resolve any dispute or ambiguity, the Trustee may (but need not) refuse to do anything in relation to such rights, powers, authorities, remedies or obligations (as the case may be) affected by the dispute or ambiguity until such direction is given by the court.

11.8 **Performance of obligations of Trustee**

The Trustee may:

- (a) refrain from doing anything that would, or in its reasonable opinion might, contravene any applicable law or a directive or request (whether or not having the force of law) of a Government Agency or constitute a breach of trust or of any proper practice relating to secrecy or confidentiality; and
- (b) do anything that, in its reasonable opinion, is necessary to comply with any applicable law or a directive or request (whether or not having the force of law) of a Government Agency.

11.9 **Right to appoint agents and delegates**

- (a) The Trustee, instead of acting personally, may employ an agent to do an act required or permitted to be done under this document or in relation to this document, the Terms or the Capital Notes. The Trustee must notify the Issuer of the appointment or revocation of appointment of any such agent prior to that appointment or revocation.
- (b) The Trustee may delegate any of its Powers, either wholly or partially or subject to any limitations or restrictions, to any person as it thinks fit and may revoke that delegation and may for that purpose execute powers of attorney or other instruments, as it thinks fit. The Trustee must notify the Issuer of the appointment or revocation of appointment of any such delegate prior to that appointment or revocation.
- (c) No person dealing with the Trustee, or any delegate to whom any Powers of the Trustee has been delegated, is bound to enquire whether the delegation remains in force.
- (d) The Trustee may rely and act on the opinion, certificate or advice of or information obtained from, an agent, delegate, expert or legal or other professional adviser appointed by it or by any one or more of the Capital Noteholders. The Trustee is not responsible to a Capital Noteholder for any loss occasioned by so doing if the Trustee has acted in good faith in so acting.

11.10 **Trustee may rely on certain matters**

The Trustee:

- (a) may accept and rely upon an Issuer's Authorised Representative's Certificate as to any fact or matter as conclusive evidence of it including confirmation that any particular dealing or transaction or step or thing is in the opinion of the person so certifying commercially desirable and not detrimental to the interests of the Capital Noteholders as conclusive evidence that it is so;
- (b) may accept, rely upon and act upon any information, statement, certificate, report, balance sheet or account supplied by or on behalf of the Issuer; and

- (c) may accept, rely upon and act upon the statements and opinions contained in any statement, certificate, report, balance sheet or account given pursuant to the provisions of this document as conclusive evidence of the contents of it.

The Trustee is not bound to call for further evidence other than such certificate, statement, report, balance sheet or account nor to enquire as to the accuracy thereof and is not responsible for any loss or damage that may be occasioned by its reliance.

11.11 **Trustee may assume certain matters**

The Trustee may assume that:

- (a) any representation or statement made by a person in this document, the Prospectus or the Terms remains true;
- (b) any deed or information provided to it is genuine and accurate if it believes in good faith that this is the case; and
- (c) (unless it is notified in writing by a Capital Noteholder or the Issuer to the contrary) any right, power, authority or discretion vested in any party has not been exercised.

11.12 **Identity of Capital Noteholders**

The Trustee may assume that each Capital Noteholder is the beneficial owner of its respective rights, and is bound by its obligations, under this document and the Terms, except to the extent that it receives a notice satisfactory to the Trustee (acting reasonably) of the assignment or transfer of those rights.

11.13 **Information to Capital Noteholders**

- (a) Unless this document or the Terms specifically provides otherwise, the Trustee is not required to determine the accuracy or completeness of any document or copy that it receives, or that it gives to another party (including to a Capital Noteholder).
- (b) Nothing in this document or the Terms obliges the Trustee to disclose any information relating to the Issuer if the disclosure would constitute a breach of any law or duty of secrecy or confidence.

11.14 **Capital Noteholders' own investigations**

- (a) As a condition to its holding of Capital Notes, each Capital Noteholder will be deemed to have confirmed that, as between itself and the Trustee, it:
 - (i) has made its own appraisal and investigation of the business, financial condition, status and affairs of the Issuer;
 - (ii) is solely responsible for continuing that appraisal and investigation after the date of this document;
 - (iii) has subscribed for its Capital Notes without any inducement from the Trustee; and
 - (iv) has made its own appraisal of its financial return under each Capital Note that it holds.
- (b) As a condition to its holding of Capital Notes, each Capital Noteholder will be deemed to have confirmed that it has not relied, and will not rely, on the Trustee at any time to:

- (i) give it any information concerning the business, financial condition, status or affairs of the Issuer, other than the provision of any notices, reports, accounts or other documents or information which must be provided to the Capital Noteholders by the Trustee under this document and the Terms;
- (ii) investigate the adequacy, accuracy or completeness of any information given by the Issuer in connection with this document or the Terms (whether or not the information is given to that Capital Noteholder by the Trustee); or
- (iii) assess or keep under review the business, financial condition, status or affairs of the Issuer.

11.15 **Monitoring**

- (a) Except where otherwise expressly provided in this document or by the Corporations Act, the Trustee is not required to:
 - (i) notify any person of the execution of this document;
 - (ii) monitor, enquire or keep itself informed as to whether any party is in breach of its obligations under this document or the Terms or another document or agreement to which the Issuer is a party;
 - (iii) take any steps to ascertain whether there has occurred or is likely to occur:
 - (A) a Winding-Up;
 - (B) any Non-Viability Trigger Event;
 - (C) an Inability Event; or
 - (D) a Write-Off,
 or any event which may give rise to any such event;
 - (iv) inspect the properties or books of the Issuer or to assess or keep under review the business, operations, financial condition, creditworthiness or state of affairs of the Issuer.
- (b) Subject to this document, the Trustee may represent the Capital Noteholders generally in:
 - (i) any investigation, negotiation, action, transaction or proceeding relating to or affecting the interests of the Capital Noteholders; or
 - (ii) the enforcement of the rights of the Capital Noteholders or the Trustee,
 and in representing the Capital Noteholders, has an absolute discretion to act or to refrain from acting and to commence, prosecute, vary or discontinue, abandon, waive or compromise any action, proceeding or claim on any terms or conditions as it thinks fit.

11.16 **Knowledge of the Trustee**

The Trustee will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice of awareness of that matter or thing by virtue of the actual knowledge, actual notice or actual awareness of the officers or

employees of the Trustee who have day to day responsibility for the administration of the Trust.

11.17 Protection of Trustee

- (a) Subject to clause 11.17(b), no Protected Person is liable to a Capital Noteholder or the Issuer for:
- (i) any loss or damage occurring as a result of any of them exercising, failing to exercise or purporting to exercise any Power under this document, the Terms or in relation to a Capital Note;
 - (ii) any negligence or fault of any of them whether or not their employment or appointment was necessary or expedient;
 - (iii) a mistake or omission made by any of them;
 - (iv) any other matter or thing done, or not done, by any of them in relation to this document, the Terms or a Capital Note;
 - (v) the value, validity, effectiveness, genuineness, execution, enforceability or sufficiency of this document, the Terms or a Capital Note or any document or agreement referred to or provided for in, or received by any of them under, this document or the Terms;
 - (vi) an absence of, or defect in, title or for the inability of any of them to exercise any of the Trustee's Powers arising from an absence of, or defect in, title;
 - (vii) a failure by the Issuer to perform its obligations under this document, the Terms or in relation to a Capital Note;
 - (viii) any recital, statement, representation or warranty contained in this document or the Terms, in any information memorandum or in any document or agreement referred to or provided for in, or received by any of them under, this document or the Terms;
 - (ix) the financial condition or solvency of the Issuer;
 - (x) the acts or omissions of a Controller;
 - (xi) any action taken or not taken by the Trustee under this document, the Terms or in relation to a Capital Note:
 - (A) in accordance with any instructions or directions from the appropriate Capital Noteholder(s);
 - (B) in any manner, where this document or the Terms do not require instructions to be given to the Trustee; or
 - (xii) the registration, perfection or priority of any Security Interest in relation to this document or the Terms (or any transaction in connection with that document) under the PPSA. The Trustee is not required to:
 - (A) take any action with respect to the PPSA, other than as directed by the appropriate Capital Noteholders; or
 - (B) monitor the PPSA or the implementation of it.

- (b) This clause 11.17 does not exempt the Trustee from liability to a Capital Noteholder or the Issuer:
 - (i) if the Trustee fails to follow the lawful directions of the appropriate Capital Noteholders given in accordance with this document or the Terms;
 - (ii) if the Trustee fails to seek the required consent of the appropriate Capital Noteholders, in any circumstance where that consent is required under this document or the Terms; or
 - (iii) to the extent that a Protected Person has been guilty of fraud, wilful default or negligence.
- (c) Failure by the Trustee to act due to lack of instructions or directions or lack of proper or clear instructions or directions from the appropriate Capital Noteholders required to be given under this document or the Terms does not amount to fraud, wilful default or negligence of or on the part of the Trustee.
- (d) The Trustee is not bound by any waiver, amendment, supplement or modification of this document or the Terms unless it gives its consent as Trustee under this document or the Terms (as the case may be).
- (e) The Trustee is not liable to the Issuer if a Capital Noteholder fails to perform its obligations under this document or the Terms.

11.18 **Receipts and business activities**

The Trustee may:

- (a) retain for its own benefit any amount received by it for its own account; and
- (b) accept deposits from, lend money or provide services to, and generally conduct any banking or other business with, or enter into any contract or arrangement with, the Issuer or any Capital Noteholder and any person connected with the Issuer or any Capital Noteholder without having to account to the Capital Noteholders or any other person (including in respect of any fee, remuneration or profit received or accruing in connection with any of the above).

11.19 **Other capacities**

- (a) If the Trustee also enters into any document or holds any Capital Note in any capacity other than as Trustee, it may exercise any rights it has in such other capacities as if it were not acting as the Trustee.
- (b) The Trustee, in its capacity as a Capital Noteholder, has the same rights and Powers under this document as any other Capital Noteholder and may exercise the same as if it were not acting as the Trustee.
- (c) In acting as trustee for the Capital Noteholders, the Trustee is regarded as acting through its corporate trust division which will be treated as a separate entity from any other of its divisions or departments. If information is received by another division or department of the Trustee, it may be treated as confidential to that division or department and the Trustee is taken not to have notice of it.

11.20 **Nature of relationship**

The Trustee is not an agent of or fiduciary for the Issuer or any Capital Noteholder, except as provided in this document or the Terms.

11.21 Issuer not concerned with authority of Trustee

The Issuer is not entitled to enquire whether any action by the Trustee has in fact been authorised by the appropriate Capital Noteholders and, as between the Issuer and the Capital Noteholders, any action taken by the Trustee concerning this document, the Terms or any Capital Note is taken to be authorised by the appropriate Capital Noteholders.

11.22 Protection of third parties

No person dealing with the Trustee is bound to enquire as to whether the Trustee has been properly appointed under this document or the Terms or as to whether the Trustee has the requisite Power and may assume that anything purported to be done by the Trustee under this document, the Terms or in relation to any Capital Note has been duly authorised by this document, the Terms and the appropriate Capital Noteholders.

11.23 Application to court for direction

The Trustee may apply to a court for directions in relation to any question relating to its duties under this document, the Terms or in relation to any Capital Note or relating to its Powers.

11.24 Investment of money

The Trustee may invest any money forming part of the Trust Fund in investments in which trustees are authorised to invest funds under the law of any State or Territory of Australia.

11.25 Exclusions of law where permitted

- (a) To the maximum extent permitted by law, the Trustee's obligations, duties and responsibilities are expressly limited to those set out in this document and the Terms.
- (b) All liabilities and responsibilities which may from time to time be imposed on the Trustee at law or in equity are, to the extent permitted at law or in equity, excluded and, except to the extent provided to the contrary in this document, expressly negated and waived by the other parties.

11.26 Evidence of claims

The Trustee is entitled and is authorised by the Issuer to call for (and will be entitled to accept as conclusive evidence) a certificate from any Controller or similar officer of the Issuer as to:

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

Any such certificate given by any such Controller or officer of the Issuer will be conclusive and binding on the Trustee and all Capital Noteholders.

11.27 Foreign Account Tax Compliance Act

The Trustee agrees to comply with any obligations imposed upon it (if applicable) in relation to the Foreign Account Tax Compliance Act (pursuant to the Intergovernmental Agreement between Australia and the United States, as enacted by Division 396 in Schedule 1 of the *Taxation Administration Act 1953* (Cth)), including any identification and reporting obligations, subject to the Issuer providing the Trustee with any information as is required by the Trustee in order to enable it to comply with the

requirements of all relevant laws in carrying out the Trustee's obligations under this document and the transactions contemplated by it, including the *Privacy Act 1988* (Cth) and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

11.28 Binding nature of relationship

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

11.29 Delivery of Ordinary Shares to the Trustee or Eligible Nominee where a Capital Noteholder does not receive Ordinary Shares

- (a) If Capital Notes are required to be Converted and Ordinary Shares are not, because of Condition 10.11 (Issue to the Trustee or an Eligible Nominee) of the Terms, issued to a Foreign Capital Noteholder or a Capital Noteholder, this clause 11.29 applies (except where the Issuer has appointed an Eligible Nominee in place of the Trustee for the purposes of the relevant clause).
- (b) On the date on which Conversion is to occur in accordance with the Terms, instead of issuing Ordinary Shares to the relevant Foreign Capital Noteholder or Capital Noteholder, the Issuer will issue the Conversion Number of Ordinary Shares in respect of each Capital Note to which clause 11.29(a) applies to the Trustee or an Eligible Nominee for no additional consideration to be held by the Trustee or an Eligible Nominee on trust for the benefit of the relevant Foreign Capital Noteholder or Capital Noteholder. In the case of a Conversion upon the occurrence of a Loss Absorption Event, if Conversion has not been effected within five Business Days after the Loss Absorption Event Conversion Date for any reason (including an Inability Event), then the Foreign Capital Noteholder or Capital Noteholder's rights will be Written-Off in accordance with the Terms with effect on and from the Loss Absorption Event Conversion Date.
- (c) For the purposes of this clause 11.29, the Trustee shall sell (or appoint one or more entities on its behalf as Sales Agent to sell) the Ordinary Shares of all relevant Capital Noteholders in one or more marketable parcels and by such manner as it (or any Sales Agent) considers appropriate and upon a sale of the Ordinary Shares occurring must cause the Attributable Proceeds of such sale to be paid to or directed by the Trustee, for payment to each relevant Foreign Capital Noteholder in proportion to the total number of Ordinary Shares that would otherwise have been issued to the relevant Capital Noteholder.
- (d) The Trustee gives no assurance (and is not required to procure the Sales Agent to give such assurance) as to:
 - (i) the appropriateness of the size of the parcels for, the manner of, the timing of, or the price that will be achieved from, the sale of the Ordinary Shares described in clause 11.29(c);
 - (ii) whether a willing buyer for all or some of the Ordinary Shares will be found; or
 - (iii) whether a sale will be achieved or at what price.
- (e) If all or some of the Ordinary Shares have been sold in accordance with this clause 11.29, the Trustee may make payments to the relevant Capital Noteholders and Condition 16 (Payments) of the Terms shall apply to such payment as if it were a payment to be made by the Issuer.

- (f) The Issuer will provide a copy of the Register and all necessary information to enable appropriate deductions for withholding taxes or other deductions required by law to be made to the Trustee within 48 hours of a request by the Trustee for a copy of such Register and such information so that the Trustee may make payments to the relevant Capital Noteholders under clause 11.29(c) or comply with the law relating to unclaimed money. The Trustee is entitled to accept the correctness of all information contained in the Register without investigation for the purpose of the Trustee making payments to the relevant Capital Noteholders under clause 11.29(c).
- (g) For the purposes of this clause 11.29, the Trustee shall provide the Issuer with its security account details in CHESS or such other account to which the Ordinary Shares may be credited and such other information as reasonably requested by the Issuer for the purpose of enabling it to issue the Ordinary Shares.

11.30 **FATCA Withholding**

Where a FATCA Withholding is required to be made in respect of Ordinary Shares issued on Conversion of Capital Notes, or where the Issuer has reasonable grounds to suspect that a FATCA Withholding would be required to be made in respect Ordinary Shares issued on Conversion of Capital Notes, the Ordinary Shares which the Capital Noteholder is obliged to accept will be issued to the Capital Noteholder of the Capital Note only to the extent (if at all) that the issue is net of FATCA Withholding and the Issuer will issue the balance of the Ordinary Shares (if any) to the Trustee or an Eligible Nominee appointed by the Issuer (which must not be a Related Entity of Judo Group) who will sell those Ordinary Shares and pay a cash amount equal to the Attributable Proceeds, net of any FATCA Withholding, to the Capital Noteholder.

11.31 **FATCA**

The Issuer may withhold or make deductions from payments or from the issue of Ordinary Shares to a Capital Noteholder or to the Trustee or other nominee where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Capital Noteholder or a beneficial owner of Capital Notes may be subject to FATCA, and may deal with such payment, and any Ordinary Shares in accordance with FATCA. If any withholding or deduction arises under or in connection with FATCA, the Issuer will not be required to pay any further amounts or issue any further Ordinary Shares on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Capital Noteholder (or, where applicable, the Trustee or other nominee) or a beneficial owner of Capital Notes for or in respect of any such withholding or deduction. A dealing with such payment and any Ordinary Shares in accordance with FATCA satisfies the Issuer's obligations to that Capital Noteholder to the extent of the amount of that payment or issue of Ordinary Shares.

12. **Change of trustee**

12.1 **Resignation of Trustee**

Subject to this clause 12 and any applicable law, the Trustee may resign as trustee by giving at least 90 days' notice (or such other period as the Trustee and the Issuer may agree in writing) in writing to the Issuer.

12.2 **Removal of Trustee**

If:

- (a) **(Trustee in default)** the Trustee has:

- (i) not paid any moneys required to be paid by the Trustee in relation to this document within 10 Business Days of receipt of all relevant information (including bank account details, if applicable) necessary for the Trustee to effect payments; or
 - (ii) not observed or performed of any of its obligations under this document or has otherwise acted fraudulently or with negligence or is in wilful default (and, if such is capable of rectification, it is not rectified within 10 Business Days of notice to the Trustee of its occurrence);
- (b) **(Insolvency Event)** an Insolvency Event occurs in relation to the Trustee;
 - (c) **(ceases to be eligible to be Trustee)** the Trustee ceases to be a person that can continue to act as Trustee due to section 283AC(1) or section 283AC(2) of the Corporations Act;
 - (d) **(ceases to hold authorisation)** any licence, consent, authorisation or similar thing the Trustee is required to hold to carry out its obligations under this document is revoked or is not renewed;
 - (e) **(Special Resolution to remove passed)** a Special Resolution of Capital Noteholders is passed that the Trustee is to be removed from office; or
 - (f) **(section 283BD of the Corporations Act)** the Issuer reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred,

the Issuer may, subject to the provisions of this clause 12 and the Corporations Act, and by at least 15 Business Days' written notice to the Trustee, remove the Trustee from office.

12.3 Appointment of new Trustee

- (a) **(power to appoint vested in Issuer)** Subject to clause 12.3(b), the power to appoint a new Trustee is vested in the Issuer.
- (b) **(in default, Trustee may appoint replacement)** Subject to the Corporations Act, if 60 days (or such other period as the Trustee and the Issuer may agree in writing) after the Trustee has given notice under clause 12.1 a new Trustee has not been appointed by the Issuer pursuant to clause 12.3(a), the Trustee may appoint (or, in its discretion, apply to the court for the appointment of) a new Trustee.
- (c) **(new Trustee must be Trustee Company)** A new Trustee appointed under this clause 12 must be a Trustee Company.
- (d) **(approval of Capital Noteholders not required)** Any appointment of a new Trustee under this clause is effective without the approval of the Capital Noteholders being necessary.
- (e) **(retirement not effective until new Trustee appointed)** The retirement of the Trustee pursuant to this clause 12 will not take effect unless and until a new Trustee has been appointed and has taken office as trustee of the Trust.

12.4 Issuer must assist in replacing the Trustee

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

- (a) has ceased to exist;
- (b) has not been validly appointed;
- (c) is no longer a Trustee Company; or
- (d) has failed or refused to act as Trustee.

12.5 **Outgoing Trustee discharged**

On the retirement or removal of the Trustee taking effect:

- (a) the successor Trustee succeeds to the position of the retiring or removed Trustee;
- (b) the retiring or removed Trustee is discharged from any further obligations under this document and the Terms, but without affecting any accrued rights or obligations;
- (c) the indemnities under this document in favour of the retiring or removed Trustee survive concerning matters occurring before the appointment of the successor Trustee, and the retiring or removed Trustee continues to have the benefit of this clause 12; and
- (d) the successor Trustee, the Issuer and the Capital Noteholders have the same rights and obligations as if the successor Trustee had been a party to this document.

12.6 **ASIC to be advised of new Trustee**

The Issuer must advise ASIC of the name of the new Trustee within 14 days after the appointment of the new Trustee.

13. **Trustee's fees and expenses**

13.1 **Fees**

- (a) Subject to clause 13.3, the Issuer must pay to the Trustee by way of remuneration for its services a fee (exclusive of GST) as may be agreed between the Issuer and the Trustee in writing from time to time. The payment of such fee must be made by the Issuer by transfer to such account nominated from time to time by the Trustee to the Issuer in writing or by such other means notified by the Trustee to the Issuer in writing from time to time.
- (b) If the Trustee is required at any time to:
 - (i) take any enforcement action in relation to this document, the Terms or the Capital Notes, or the occurrence of an event described by clauses 9.1(j)(i) to 9.1(j)(viii); or
 - (ii) undertake duties which are agreed by the Issuer to be of exceptional nature or otherwise agreed by the Issuer to be outside the scope of the normal duties of the Trustee,

the Issuer agrees to pay to the Trustee, on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such action, as shall from time to time be agreed between the Issuer and the Trustee.

- (c) In the absence of agreement in relation to the additional remuneration referred to in clause 13.1(b) above, the Trustee shall be entitled to charge the Issuer reasonable hourly rates for time spent by the Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall:
 - (i) reflect the level of expertise required to perform the work; and
 - (ii) be commensurate with and referable to the hourly rates charged at the relevant time by members of the Insolvency Practitioners Association of Australia for work of the kind performed by the Trustee's officers and employees.

13.2 **Expenses**

- (a) Subject to clause 13.3, the Issuer must indemnify the Trustee against, and must pay the Trustee on demand the amount of all costs, charges and expenses reasonably and properly incurred in connection with each of the following:
 - (i) the preparation, negotiation, execution, stamping and registration of this document;
 - (ii) the transactions that this document contemplates;
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this document;
 - (iv) the carrying out by the Trustee of any right, power, privilege, authority or discretion conferred expressly or impliedly on the Trustee or on any Capital Noteholder by this document or any other document relating to the Capital Notes;
 - (v) any breach or default in the observance or performance by the Issuer of any of its obligations under this document or any other document relating to the Capital Notes;
 - (vi) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this document or any other document relating to the Capital Notes;
 - (vii) the convening and holding of any meeting of Capital Noteholders or the carrying out of any directions or resolutions of any such meeting; and
 - (viii) all actions taken under this document by the Trustee in order to comply with any notice, request or requirement of any Government Agency and any investigation by a Government Agency into the affairs of the Issuer.
- (b) If the Issuer or any of its assets are placed in liquidation or a Controller is appointed to the Issuer or any of its assets, the Trustee is entitled to claim and receive from any Controller amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as Trustee.

13.3 **Indemnity by Capital Noteholders**

The Trustee is not entitled to any additional remuneration (to the extent that this may be referred to in any agreement pursuant to clause 13.1) or to the payment of any additional costs and expenses pursuant to clause 13.2 where the Trustee is separately actually indemnified in relation thereto by the Capital Noteholders or individual Capital

Noteholders pursuant to this document or otherwise. If, following payment by the Issuer to the Trustee of any additional remuneration pursuant to clause 13.1 or any additional costs and expenses pursuant to clause 13.2, the Trustee is indemnified by the Capital Noteholders or individual Capital Noteholders in relation to such remuneration, costs or expenses (as the case may be) the Trustee shall promptly repay any amounts received under clause 13.1 or clause 13.2 in respect of such remuneration, costs or expenses (as the case may be) to the Issuer.

13.4 Priority of entitlement

All amounts payable to the Trustee under this clause 13 will be paid in priority to any claim by any Capital Noteholder and will continue to be payable until paid notwithstanding that this document or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court. This priority of the Trustee will subsist whether or not an external administrator is appointed to the Issuer or any of its assets or the Trust is in the course of administration by or under the order of any court.

14. Trustee's indemnity

14.1 Corporations Act

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

14.2 Indemnity for Trustee

- (a) Subject to clause 14.2(b), and without affecting any right of indemnity given to it by law or equity (and in addition to, and without affecting, another indemnity in this document), each Protected Person is, and is entitled to be, indemnified by the Issuer, in respect of all claims, demands, actions, damages, losses, liabilities, costs, charges, expenses and Taxes (other than Excluded Taxes):
 - (i) incurred by it in the exercise of any Power or the undertaking by it of any obligations, duties or responsibilities, including:
 - (A) moneys paid or to be paid for, or incurred as a result of, the employment or appointment of an agent or Controller; and
 - (B) from acting in good faith or relying in good faith on any notice, request or instruction given by fax or telephone or given in accordance with clause 20, which purports to originate from, or which the Trustee reasonably believes to have originated from, the offices or an Authorised Representative of the Issuer or a Capital Noteholder (as applicable); and
 - (ii) arising in relation to this document.
- (b) The indemnity in clause 14.2(a) does not apply:
 - (i) where the relevant Protected Person (except for an agent which has been appointed by the Trustee at the request of the Capital Noteholders) has been guilty of fraud, wilful default or negligence; or
 - (ii) if the Protected Person is the Trustee, to the extent that the Trustee is actually indemnified by a person other than the Issuer for the matters referred to in clause 14.2(a). If, following payment by the Issuer to the Trustee of any indemnified amount pursuant to this clause 14.2, the Trustee is indemnified by any other person for the matters referred to in

clause 14.2(a), the Trustee shall promptly repay any such indemnified amounts received under this clause 14.2 to the Issuer.

- (c) The Trustee may from time to time retain and pay out of any moneys forming part of the Trust Fund an amount to satisfy the indemnity given by the Issuer under clause 14.2(a) or any other right of indemnity given to a Protected Person under this document or by law or equity. The Trustee must provide details to the Capital Noteholders of amounts so retained or paid out.
- (d) The indemnity contained in clause 14.2 is a continuing additional, separate and independent obligation of the Issuer and survives:
 - (i) the winding up or termination of the trusts under this document; and
 - (ii) the retirement or removal of the Trustee as trustee.
- (e) Any indemnity to which the Trustee is entitled under this document is in addition to, and without prejudice to, any indemnity allowed by law or equity to the Trustee.

15. Substitution of issuer

The Terms contain provisions dealing with the substitution of the Issuer.

16. Application of moneys

16.1 Order of priority

The Trustee must promptly pay all moneys received by it in respect of this document for the following purposes and in the following order of priority:

- (a) first, in payment of all costs charges and expenses incurred by or other amounts owing to, the Trustee under or in connection with this Trust Deed (including all remuneration payable to the Trustee and any amount payable under clause 14.2) or any other liability of the Trustee incurred under or in connection with this Trust Deed;
- (b) second, in or towards payment equally and rateably of all amounts due but remaining unpaid in respect of the Capital Notes; and
- (c) third, in payment of the balance (if any) to the Issuer.

16.2 Moneys received

In applying any moneys towards satisfaction of clause 16.1(b), the Issuer will be credited only with so much of the moneys available for that purpose as the Trustee has actually received and is not required for whatever reason to be disgorged, such credit to date from the time of such receipt.

16.3 Application of moneys

Notwithstanding any principle or presumption of law to the contrary or any direction given at the time of it being received by the Trustee or, the Trustee has, subject to this document, an absolute discretion without the need to communicate its election to any person to apply any payment or credit received by it under this document in reduction of any part of the Moneys Owning.

16.4 **Investment of Funds**

Unless expressly provided in this document, all moneys received by the Trustee and not required to be immediately applied under this document may be invested by the Trustee in such investments as it thinks appropriate.

17. **Meetings of capital noteholders**

17.1 **Meeting procedures**

- (a) The Trustee or the Issuer may call a meeting of Capital Noteholders in the manner provided in the Meeting Provisions.
- (b) All meetings of Capital Noteholders are to be conducted in accordance with the Meeting Provisions.
- (c) Subject to this document, the Capital Noteholders may by Special Resolution:
 - (i) give a direction to the Trustee as to; or
 - (ii) authorise, ratify or confirm anything done or not done by the Trustee in respect of,

the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to this document or the Capital Notes.

17.2 **Approval**

Notwithstanding any other term of this document, the Capital Noteholders may, by Special Resolution, approve the release of the Trustee from liability for anything done or omitted to be done by the Trustee or any other person.

18. **Amendment**

- (a) At any time and from time to time, but subject to compliance with the Corporations Act, all other applicable laws, APRA's prior written approval where the amendment may affect the eligibility of Capital Notes as Additional Tier 1 Capital and any other conditions in the Terms, the Issuer may amend the Terms or other provisions of this Trust Deed if such amendment is approved by a Special Resolution of the Capital Noteholders and by the Trustee or if otherwise permitted by Condition 22.2 (Variations without consent) of the Terms.
- (b) The Issuer must give the Trustee notice of any proposed amendment under Condition 22.2(a)(ix) of the Terms (a **Proposed Amendment Notice**) at least 35 days (or such lesser period as may be acceptable to the Trustee (acting reasonably)) prior to making the amendment. If the Trustee (acting reasonably) has notified the Issuer that it has determined that an amendment proposed to be made by the Issuer under Condition 22.2(a)(ix) of the Terms (taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment) may be materially prejudicial to the interests of Capital Noteholders as a whole, which notice shall be given as soon as practicable and in any event within 35 days of the date of the Proposed Amendment Notice, the Issuer may not make that amendment unless an Ordinary Resolution is passed in favour of the amendment.
- (c) In this Trust Deed, **amend** includes modify, vary, cancel, amend, waive, alter or add to, and **amendment** has a corresponding meaning.

19. **Discharge and release**

19.1 **Termination**

- (a) The Trust will terminate, and the Issuer will be discharged and released from its liabilities, obligations and covenants under this document (subject to this clause 19.1) when:
- (i) each Capital Note has been Redeemed, Converted or Written-Off or has otherwise been satisfied;
 - (ii) the Issuer provides an Officer's Certificate to the Trustee stating that each Capital Note has been Redeemed, Converted or Written-Off or otherwise satisfied;
 - (iii) there are no Capital Notes on issue and the Issuer has furnished to the Trustee a statement in writing that it does not intend to, and will not, create any Capital Notes in the future under this Trust Deed; and
 - (iv) all fees, costs, charges and expenses reasonably incurred by the Trustee and all other amounts which are payable or reimbursable by the Issuer to the Trustee have been paid.
- (b) On the occurrence of all the matters referred to in clause 19.1(a)(i), the Trustee must, if required by the Issuer, execute a confirmation of release in favour of the Issuer.
- (c) On the Trust being terminated, the Issuer must keep the Trustee indemnified in respect of all unpaid fees due to it and all costs, losses, liabilities and expenses reasonably and properly incurred by it in respect of an event which occurred prior to the date of termination (other than such cost, loss, liability or expense to the extent that it arises out of the Trustee's fraud, negligence or wilful default).

19.2 **Disposal and distribution of trust assets on termination**

If the Trust is terminated in accordance with clause 19.1, the Trustee will distribute the balance of the capital and income of the Trust at the direction of the Issuer.

20. **Notices**

20.1 **How to give a notice**

Subject to clauses 20.3 and 20.5, a notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given in one of the following ways:
 - (i) sent by prepaid mail (by airmail, if the addressee is overseas) or delivered to that person's address;
 - (ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full without error;
 - (iii) given personally;
 - (iv) by electronic form (such as email); or

- (v) given in any other manner permitted by law.

20.2 **When a notice is given**

Subject to clause 20.3, a notice, consent or other communication that complies with this clause is conclusively regarded as given and received:

- (a) if it is sent by fax or delivered, if received:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
- (b) if it is sent by mail, when it would be delivered in the ordinary course of post, but in any event:
 - (i) not later than three Business Days after posting within Australia; or
 - (ii) not later than seven Business Days after posting to or from a place outside Australia;
- (c) if given personally, when actually received by that person;
- (d) if it is sent in electronic form, when the addressee's email system logs the email message as having been received;
- (e) if published on a website, on the day following the date on which such notice is published by the Issuer or the Trustee (as applicable) on the website; and
- (f) if it is given in any other manner permitted by law, when actually received by that person, unless a later time of receipt is specified in it.

20.3 **Notices to or from the Capital Noteholders**

- (a) Any notice, consent or other communication to be made or delivered to the Capital Noteholders, or by a Capital Noteholder to the Issuer, must be given in accordance with the Terms.
- (b) A notice may be given by the Trustee to any Capital Noteholder, or in the case of joint Capital Noteholders to the Capital Noteholder whose name appears first in the Register, personally, by leaving it at the Capital Noteholder's address as shown on the Register or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission to the Capital Noteholder's address or fax number (as the case may be) as shown on the Register or, by publishing such notice in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia or by publishing the notice on the Issuer's or the Trustee's website or in any case, by email to an electronic address nominated by the Capital Noteholder for such communication. If the notice is signed, the signature may be original or printed.
- (c) Where a notice is given by the Issuer to Capital Noteholders generally, a copy of the notice must also be given to the ASX and the Trustee.

20.4 **Address for notices**

Subject to clause 20.3, a person's address and fax number are those set out below, or as the person notifies the sender:

Judo Capital Holdings Limited

Address: Queen and Collins, 376 - 390 Collins Street, Melbourne, VIC 3000
Australia

Email: legal@judo.bank

Certane CT Pty Ltd

Address: Level 6, 80 Clarence Street, Sydney NSW 2000

Email: ct.notes@certane.com

20.5 Notices subject to Meeting Provisions requirements

These provisions in this clause 20 are subject to the notice requirements set out in the Meeting Provisions.

21. Recovery of GST

- (a) Unless otherwise indicated all amounts referred to in this document are exclusive of GST.
- (b) If the Trustee makes a taxable supply under or in connection with this document for consideration that is exclusive of GST, the Issuer must:
 - (i) pay to the Trustee an amount equal to any GST for which the Trustee is liable in relation to that supply; and
 - (ii) make that payment as and when the consideration or part of it must be paid or provided.

If an adjustment event arises in respect of a taxable supply made by the Trustee under this document, the amount payable by the Issuer under clause 21(b)(i) will be recalculated to reflect the adjustment event and a payment will be made by the Issuer to the Trustee. The Trustee must issue an adjustment note for the adjustment event within 28 days of becoming aware of the adjustment event.

- (c) If requested by the Issuer, the Trustee must issue a tax invoice for a taxable supply to the person to whom it made the supply.
- (d) The Issuer's obligation to reimburse the Trustee for an amount paid or payable to a third party (including an obligation to pay the Trustee's or another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the Trustee is entitled to an input tax credit for that GST. Unless notified otherwise by the Trustee, the Issuer must assume that the Trustee is not entitled to any input tax credit for that GST. The Trustee will use reasonable endeavours to notify the Issuer where it becomes aware that it is entitled to an input tax credit for that GST.

22. Confidentiality

22.1 Confidential information

The Trustee acknowledges that all Confidential Information is confidential to the Issuer and must not be disclosed to any person except as permitted by clause 22.2.

22.2 **Permitted disclosure**

The Trustee may disclose Confidential Information:

- (a) to the extent required by this document or by law, but only to the extent so required;
- (b) to the extent requested by a Governmental Agency but only to the extent so requested;
- (c) to its officers, employees and professional advisers, but only to the extent that such disclosure is necessary in order for the Trustee to perform its obligations (including exercising the Powers) under this document;
- (d) to the Capital Noteholders if the Trustee reasonably considers that disclosure is necessary for it to fulfil any obligation that it has at law or under this document; and
- (e) with the prior written consent of the Issuer (which may be given or withheld in its absolute discretion).

22.3 **Disclosure to third parties**

The Trustee must use its best endeavours to ensure that every person to whom it provides Confidential Information under clause 22.2 gives a confidentiality undertaking in favour of the Issuer in the same terms as this clause 22 and performs its obligations under such undertaking.

23. **General**

23.1 **Governing law**

- (a) This document is governed by the laws of the State of Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the State of Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.
- (c) Each party irrevocably waives:
 - (i) any objection to the venue of any proceedings on the ground that they have been brought in an inconvenient forum; and
 - (ii) any immunity from set off, suits, proceedings and execution to which it or any of its property may now or in the future be entitled under any applicable law.

23.2 **Liability for own expenses**

The Issuer is liable for its own costs and expenses in complying with this document, including where it does so at the Trustee's request or for the Trustee's benefit.

23.3 **Statutory powers**

The powers of the Trustee under this document and the Terms are in addition to any powers the Trustee has under applicable law.

23.4 **Giving effect to this document**

Each party must do anything, and must ensure that its employees and agents do anything, that the other party may reasonably require to give full effect to this document.

23.5 Variation of rights

The exercise of a right does not prevent any further exercise of that right or of any other right. Neither the exercise of a right nor a failure to exercise, or a delay in the exercise of, a right operates as an election or variation of the terms of this document.

23.6 Operation of this document

- (a) Subject to clause 23.6(b), this document contains the entire agreement between the parties about their subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that the Trustee may have under this document is in addition to, and does not replace or limit, any other right that the Trustee may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

23.7 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) The Trustee may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.
- (c) If a provision of this document is expressed to:
 - (i) indemnify;
 - (ii) exclude or limit any liability of; or
 - (iii) otherwise benefit,

a person who is not a party to this document, the Issuer agrees that the Trustee holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce this document on their behalf and for their benefit.

23.8 Consents

Where this document contemplates that the Trustee may agree or consent to something (however it is described), the Trustee may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

23.9 No merger

Nothing in this document merges with any other Security Interest, or any judgment or other right or remedy, that the Trustee may hold at any time.

23.10 Exclusion of contrary legislation

Any legislation that affects an obligation of the Issuer in a manner that is adverse to the interests of the Trustee or the Capital Noteholders, or adversely affects the exercise by

the Trustee or the Capital Noteholders of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

23.11 Inconsistency with other documents

Subject to clause 1.2, if this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

23.12 Counterparts

This document may be executed in counterparts. Delivery of a counterpart of this document by email attachment or fax constitutes an effective mode of delivery.

23.13 No representation or reliance

Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.

23.14 Stamp duties

The Issuer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this document, the performance of this document and each transaction effected by or made under this document; and
- (b) must indemnify the Trustee against any liability arising from failure to comply with clause 23.14(a).

23.15 Void or voidable transactions

If:

- (a) **(release of Issuer)** the Trustee has at any time released or discharged the Issuer from its obligations under this document in reliance on a payment, receipt or other transaction to or in favour of the Trustee or Capital Noteholders or any payment or other transaction to or in favour of the Trustee or Capital Noteholders has the effect of releasing or discharging the Issuer from its obligations under this document;
- (b) **(payment void)** that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under any law relating to insolvency or the winding up of companies or under the general law; and
- (c) **(claim upheld)** that claim is upheld or the claim is conceded or compromised by the Trustee or a Capital Noteholder,

then:

- (d) **(restitution of rights)** the Trustee and each Capital Noteholder will immediately become entitled against the Issuer to all rights as it had immediately before that release or discharge;
- (e) **(restore position)** the Issuer must immediately do all things and execute all documents as the Trustee may reasonably require to restore to the Trustee and the Capital Noteholders all those rights; and

- (f) **(indemnity)** the Issuer must indemnify the Trustee and each Capital Noteholder against costs, losses and expenses suffered or incurred by the Trustee or Capital Noteholder in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

23.16 **Untraceable Capital Noteholders**

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

- (a) is, in respect of a Capital Note, required to pay any amount to a Capital Noteholder; and
- (b) has made reasonable efforts to locate a Capital Noteholder but is unable to do so, then that amount:
 - (i) if the amount has been paid to the Trustee and the Trustee has actual possession and control of such amount, must be repaid by the Trustee to the Issuer; and
 - (ii) is to be held by the Issuer for the Capital Noteholder in a non-interest bearing deposit with a bank selected by the Issuer until the Capital Noteholder, or any legal personal representative of the Capital Noteholder, claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed amounts.

The Trustee is not liable to any Capital Noteholder for any amounts paid to the Issuer under this clause 23.16. The Issuer indemnifies the Trustee for any and all costs, losses, liabilities, expenses demands or claims suffered or incurred by the Trustee in respect of any moneys paid to the Issuer under this clause 23.16.

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED by **JUDO CAPITAL HOLDINGS LIMITED ABN 71 612 862 727** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



Signature of director

Peter Hodgson

Name



Signature of director/ secretary

Liam Williams

Name

Signed sealed and delivered for and on behalf of **CERTANE CT PTY LTD** ACN 106 424 088 by its two attorneys under power of attorney dated 23 December 2020:



Signature of attorney

Evan Ezra - Relationship Manager

Name of attorney (BLOCK LETTERS)



Signature of attorney

Steven Woods - Senior Client Service Associate

Name of attorney (BLOCK LETTERS)

Schedule 1

Terms

1. Interpretation

1.1 Definitions

In these Conditions, unless the context requires otherwise:

Acquisition Conversion Date has the meaning given in Condition 8 (Conversion on an Acquisition Event).

Acquisition Conversion Notice has the meaning given in Condition 8 (Conversion on an Acquisition Event).

Acquisition Event means any one of the following events:

- (a) a takeover bid is made to acquire all or some of the Ordinary Shares and such offer is, or becomes, unconditional and:
 - (i) the bidder has at any time during the offer period, a relevant interest in more than 50% of the Ordinary Shares on issue; or
 - (ii) the Directors, issue a statement that at least a majority of its directors who are eligible to do so have recommended acceptance of such offer (in the absence of a higher offer); or
- (b) a court approves a scheme of arrangement which, when implemented, would result in a person having a relevant interest in more than 50% of the Ordinary Shares that will be on issue after the scheme is implemented and:
 - (i) all classes of members of the Issuer pass all resolutions required to approve the scheme by the majorities required under the Corporations Act to approve the scheme if the scheme relates to the Issuer; or
 - (ii) all conditions to the implementation of the scheme, including any necessary regulatory approval (but not including approval of the scheme by the court) have been satisfied or waived,provided that none of the events described above will constitute an Acquisition Event if:
 - (c) the event is a NOHC Event;
 - (d) the ordinary shares of the Approved NOHC are listed on an internationally recognised stock exchange; and
 - (e) the Approved NOHC makes the agreements for the benefit of Capital Noteholders contemplated by Condition 25 (Substitution).

Additional Tier 1 Capital means the "Additional Tier 1 Capital" of the Judo Level 1 Group and the Judo Level 2 Group as defined by APRA from time to time.

Alternative Base Rate means a rate other than BBSW that is generally accepted in the market for floating rate securities denominated in Australian dollars of a tenor and interest period comparable to that of the relevant Capital Notes, or if the Issuer is not able, after making reasonable efforts to ascertain such rate, or there is no such rate:

- (a) a reference rate that is, in the Issuer's opinion, appropriate to floating rate debt securities denominated in Australian dollars of a tenor and interest period most comparable to that of the relevant Capital Notes; or
- (b) such other reference rate as the Issuer considers appropriate having regard to available comparable indices.

Applicable Regulation means such provisions of the ASX Listing Rules, the ASX Settlement Operating Rules, the ASX Operating Rules, the Corporations Act and any regulations or rules pursuant under or pursuant to any such provisions as may be applicable to the transfer of a Capital Note.

Approved NOHC means a NOHC of the Group arising from a NOHC Event in circumstances where the proviso to the definition of Acquisition Event will be satisfied.

APRA means the Australian Prudential Regulation Authority.

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

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

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

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

Attributable Proceeds means the net proceeds of sale of Ordinary Shares attributable to the Capital Notes of the relevant Capital Noteholder or, where Condition 10.11 (Issue to the Trustee or an Eligible Nominee) applies, the clearing system participant, actually received after deducting any applicable brokerage, stamp duty and other taxes.

Authorised Officer means a person appointed by the party to act as an authorised officer for the purposes of these Conditions by notice to the Issuer.

Banking Act means the *Banking Act 1959* (Cth) or successor legislation.

BBSW means the BBSW Rate (as defined in Condition 5.4).

BBSW Disruption Event means that, in the Issuer's opinion, the BBSW:

- (a) has been discontinued or otherwise ceased to be calculated or administered; or
- (b) is no longer generally accepted as a reference rate appropriate to floating rate debt securities denominated in Australian dollars of a tenor and interest period comparable to that of that Capital Note.

Bookbuild means the process conducted prior to the opening of the Offer where brokers and investors bid for the Capital Notes and, on the basis of those bids, the Issuer, in consultation with the joint lead managers to the Offer, determines the Margin.

Business Day means a day which is:

- (a) a business day within the meaning of the ASX Listing Rules; and

- (b) for the purpose of determining a Conversion Date (other than a Mandatory Conversion Date) or the calculation or payment of a Distribution or of any other sum, a day on which banks are open for general banking business in Sydney and Melbourne (not being a Saturday, Sunday or public holiday in that place).

Business Day Convention means, in respect of a Capital Note, that the date is adjusted to the first following day that is a Business Day unless that day falls in the next calendar month in which case that date is adjusted to the first preceding day that is a Business Day.

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

Capital Note means the convertible, subordinated, non-cumulative, perpetual debt securities issued in the form of unsecured notes which are to be issued pursuant to the Prospectus by the Issuer and which are constituted by, and owing under, the Trust Deed.

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

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

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd (ACN 008 504 532) or any system that replaces it relevant to the Capital Notes (including in respect of the transfer or Conversion of the Capital Notes).

Common Equity Tier 1 Capital in respect of each of the Judo Level 1 Group and the Judo Level 2 Group has the meaning determined for that term (or its equivalent) by APRA from time to time.

Common Equity Tier 1 Ratio means the ratio of Common Equity Tier 1 Capital:

- (a) in respect of the Judo Level 1 Group to risk weighted assets of the Judo Level 1 Group; and
- (b) in respect of the Judo Level 2 Group to risk weighted assets of the Judo Level 2 Group,

as calculated by the methodology prescribed by APRA from time to time.

Common Equity Trigger Event has the meaning given in Condition 7.2 (Common Equity Trigger Event).

Conditions means, in relation to a Capital Note, these general terms and conditions.

Control has the meaning given in the Corporations Act.

Controlled Entity means, whether presently existing or existing at a future date, in respect of the Issuer (or any NOHC that is the holding company of the Issuer), an entity that the Issuer (or such NOHC) Controls.

Conversion means the Conversion of all, some or a percentage of each Capital Note for Ordinary Shares in accordance with these Conditions and **Convert**, **Converted** and **Converting** have a corresponding meaning.

Conversion Date means a Mandatory Conversion Date, a Loss Absorption Event Conversion Date, an Acquisition Conversion Date or an Optional Conversion Date in respect of a Conversion.

Conversion Number has the meaning given to it in Condition 10.1(b) (Conversion mechanics).

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

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

CS Facility Operator means the operator of a CS Facility.

Defaulting Nominated Purchaser has the meaning given in Condition 13.5 (Effect of a failure by Nominated Purchaser to pay).

Deferred Acquisition Conversion Notice has the meaning given in Condition 8.4 (Deferred Acquisition on Acquisition Event).

Deferred Conversion Date has the meaning given in Condition 9.5 (Deferred Conversion on Optional Conversion Date).

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

- (a) the Issuer has ceased to be listed or Ordinary Shares have ceased to be quoted on the ASX on or before that date (and where the cessation occurred before that date, the Issuer or the Ordinary Shares continue not to be listed or quoted (as applicable) on that date);
- (b) trading of Ordinary Shares is suspended for a period of consecutive days, which includes:
 - (i) at least 5 consecutive Business Days prior to that date; and
 - (ii) that date; or
- (c) the Issuer is prevented by applicable law or order of any court or action of any government authority (including regarding the insolvency, Winding-Up or other external administration of the Issuer) or any other reason from Converting the Capital Notes.

Directors means the directors of the Issuer acting as a board or an authorised committee of the board.

Distribution means a cash distribution calculated in accordance with Condition 5 (Distributions).

Distribution Commencement Date means the Issue Date.

Distribution Payment Date means:

- (a) each 16 February, 16 May, 16 August and 16 November, commencing on 16 February 2024 until (but not including) the date on which the Capital Note is Converted, Resold or Redeemed in accordance with these Conditions; and
- (b) each date on which a Conversion, Redemption or Resale of that Capital Note occurs, other than a Conversion on Loss Absorption Event Conversion Date, in each case in accordance with these Conditions,

and in each case subject to adjustment in accordance with the applicable Business Day Convention.

Distribution Period means each period beginning on (and including) a Distribution Payment Date and ending on (but excluding) the next Distribution Payment Date.

However:

- (a) the first Distribution Period commences on (and includes) the Distribution Commencement Date; and
- (b) the final Distribution Period ends on (but excludes) each date on which a Write-Off, Redemption, Conversion or Resale occurs.

Distribution Rate means the rate calculated in accordance with Condition 5.3 (Calculation of Distribution of Capital Notes).

Early Redemption Date means either a Scheduled Optional Redemption Date or an Optional Redemption Date as the date on which a Capital Note is to be redeemed as specified in the Early Redemption Notice.

Early Redemption Notice means a notice given by the Issuer under Condition 11.3.

Equal Ranking Security means any instrument that ranks in a Winding-Up of the Issuer as the most junior claim in the Winding-Up of the Issuer ranking senior to Ordinary Shares, and includes Preference Shares, Relevant Tier 1 Capital Instruments and any other instruments, present and future, issued as instruments constituting Tier 1 Capital.

Face Value means the Issue Price for Capital Notes, being A\$100 per Capital Note.

FATCA means:

- (a) sections 1471 to 1474 of the US Internal Revenue Code of 1986 or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

First Mandatory Conversion Condition has the meaning given in Condition 6.3 (Mandatory Conversion Conditions).

First Optional Conversion Restriction has the meaning given in Condition 9.4 (Restrictions on election of Conversion).

First Test Date has the meaning given in Condition 6.3 (Mandatory Conversion Conditions).

Foreign Capital Noteholder means:

- (a) a Capital Noteholder whose address in the Register is a place outside Australia; or

- (b) a Capital Noteholder who the Issuer believes may not be a resident of Australia and the Issuer is not satisfied that the laws of the country in which the Issuer believes the Capital Noteholder is resident permit the offer of Ordinary Shares to, or holding or acquisition of Ordinary Shares by, the Capital Noteholder (but the Issuer will not be bound to enquire into those laws), either unconditionally or after compliance with conditions which the Issuer, in its absolute discretion, regards as acceptable and not unduly onerous.

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

Government Agency means any country, state or political subdivision or any government or central bank or any governmental, semi-governmental, international, judicial, administrative, municipal, local governmental statutory, fiscal, monetary or supervisory authority, body or entity.

Group means the Issuer and Judo Bank Pty Ltd ABN 11 615 995 581.

Inability Event means the Issuer is prevented by applicable law or order of any court or action of any government authority (including regarding the insolvency, Winding-Up or other external administration of the Issuer) or any other reason from Converting the Capital Notes.

Issue Date means the date on which the Capital Notes are issued, expected to be 16 November 2023.

Issue Date VWAP means the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Issue Date, as adjusted in accordance with Condition 10 (Conversion mechanics).

Issue Price means for a Capital Note, A\$100.

Issuer means Judo Capital Holdings Limited (ABN 71 612 862 727).

Judo Level 1 Group means the Issuer and those of its controlled entities included by APRA from time to time in the calculation of the Issuer's capital ratios on a Level 1 basis.

Judo Level 2 Group means the Issuer and together with each other Related Entity included by APRA from time to time in the calculation of the Issuer's capital ratios on a Level 2 basis.

Level 1 has the meaning given to that term by APRA from time to time.

Level 2 has the meaning given to that term by APRA from time to time.

Loss Absorption Event has the meaning given in Condition 7.1 (Loss Absorption Event).

Loss Absorption Event Conversion has the meaning given in Condition 7.4 (Loss Absorption Event Conversion).

Loss Absorption Event Conversion Date has the meaning given in Condition 7.4 (Loss Absorption Event Conversion).

Loss Absorption Event Notice has the meaning given in Condition 7.6 (Loss Absorption Event Notice).

Mandatory Conversion means the mandatory conversion of Capital Notes to Ordinary Shares on the Mandatory Conversion Date in accordance with Condition 6 (Mandatory Conversion).

Margin means the rate (expressed as a percentage per annum) determined under the Bookbuild.

Maximum Conversion Number has the meaning given in Condition 10.1 (Conversion).

Meetings Provisions means the provisions relating to meetings of Capital Noteholders and set out as a schedule to the Trust Deed.

NOHC means a “non-operating holding company” within the meaning of the Banking Act.

NOHC Event means an event which would otherwise be an Acquisition Event which is initiated by the Directors, acting as a board, and the result of which is that the ultimate holding company of the Issuer would be a NOHC.

Nominated Purchaser means, subject to Condition 13.3 (Identity of a Nominated Purchaser), one or more third parties selected by the Issuer in its absolute discretion, provided that such party cannot be the Issuer or any Related Entity of the Issuer.

Non-Conversion Notice has the meaning given in Condition 6.4 (Non-Conversion Notices).

Non-Conversion Test Date has the meaning given in Condition 9.4 (Restrictions on election of Conversion).

Non-Viability Trigger Event has the meaning given in Condition 7.3(a).

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

Optional Conversion Date has the meaning given in Condition 9.3 (Contents of Optional Conversion Notice).

Optional Conversion Notice has the meaning given in Condition 9.1 (Optional Conversion by the Issuer).

Optional Conversion Restrictions has the meaning given in Condition 9.4 (Restrictions on election of Conversion).

Optional Redemption Date means the next Distribution Payment Date occurring on or after a Tax Event or Regulatory Event (as applicable).

Optional Resale Notice has the meaning given in Condition 12 (Optional Resale).

Ordinary Resolution has the meaning given in the Meeting Provisions.

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

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

Outstanding means in relation to the Capital Notes, all of the Capital Notes other than:

- (a) a Capital Note which has been redeemed, repaid, resold or satisfied in full by the Issuer;
- (b) a Capital Note for which funds equal to its Face Value are on deposit with the Registry on terms which prohibit the redemption of those Capital Notes or in respect of which the Registry holds an irrevocable direction to apply funds in repayment of Capital Notes to be redeemed on that day;
- (c) a Capital Note in respect of which a Capital Noteholder is unable to make a claim as a result of the operation of Condition 18 (Time limit for claims); or
- (d) a Capital Note which has been Converted or Written-Off in full.

Payment Condition means in respect of Distributions scheduled to be paid on a Distribution Payment Date:

- (a) the payment of Distributions will result in the Issuer or the Group not complying with APRA's then current Prudential Capital Requirements;
- (b) unless APRA otherwise approves in writing, making the Distribution payment would result in the Issuer or the Group exceeding any limit on distributions of earnings applicable under (and calculated in accordance with) APRA's then current capital conservation requirements as they are applied to the Issuer or the Group (as the case may be) at the time;
- (c) APRA otherwise objects to the payment of Distributions; or
- (d) making the Distribution payment would result in the Issuer becoming, or being likely to become, insolvent for the purposes of the Corporations Act.

Preference Share means a notional preference share in the capital of the Issuer conferring a claim in the Winding-Up of the Issuer equal to the Face Value of each Capital Note and ranking equally in respect of return of capital in a Winding-Up with each of the preference shares which is an Equal Ranking Security in respect of payment in a Winding-Up.

Prospectus means the prospectus for the Offer.

Prudential Capital Requirements means at any time the requirements of APRA with respect to the ratio of Common Equity Tier 1 Capital, Tier 1 Capital or Total Capital to total risk weighted assets as applicable to the Issuer or the Group at that time.

Record Date means 5.00 pm in the place where the Register is maintained on:

- (a) the date which is the tenth calendar day before the Distribution Payment Date;
- (b) such other date as is determined by the Issuer, in its absolute discretion, and announced to the Capital Noteholders on ASX and which is before the Record Date which would have been determined under paragraph (a) above; or
- (c) such other date as may be required by, or agreed by the Issuer with, ASX.

Redemption means the redemption of a Capital Note by the Issuer paying to the Capital Noteholder of that Capital Note the Redemption Price for that Capital Note on the Redemption Date in accordance with Condition 11.1 (Redemption) and the words **Redeem**, **Redeemable** and **Redeemed** have a corresponding meaning.

Redemption Date means, in respect of a Capital Note, any Early Redemption Date.

Redemption Price means, in respect of each Capital Note, the amount equal to its Face Value.

Register means a register of Capital Notes maintained by or on behalf of the Issuer in accordance with the Trust Deed and including any sub-register established and maintained in CHESSE under Applicable Regulation.

Registry means Link Market Services Limited (ABN 54 083 214 537) or any other person appointed by the Issuer to maintain the Register.

Regulatory Event means:

- (a) the receipt by the Directors of an opinion from a reputable legal counsel that, as a result of any amendment to, clarification or change (including any announcement of a prospective change) in any law or regulation or any official administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations which amendment, clarification or change is effective, or pronouncement, action or decision is announced, on or after the Issue Date of the Capital Notes (but which the Issuer did not expect at the Issue Date of the Capital Notes) (a **Change in Law**), there is more than an insubstantial risk that more than a de minimis additional requirement would be imposed on the Issuer in relation to or in connection with the Capital Notes which the Directors determine, in their absolute discretion, to be unacceptable; or
- (b) the determination by the Directors that the Issuer is not or will not be entitled to treat some or all Capital Notes as Relevant Capital Instruments as a result of a Change in Law, except where the reason the Issuer is not or will not be entitled to treat some or all Capital Notes as Relevant Capital Instruments is because of a limit or other restriction on the recognition of Relevant Capital Instruments which is in effect on the Issue Date or which on the Issue Date is expected by the Issuer to come into effect.

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

Relevant Capital Instrument means Relevant Tier 1 Capital Instruments.

Relevant Distribution has the meaning given in Condition 5.9 (Restrictions in the case of non-payment).

Relevant Distribution Payment Date has the meaning given in Condition 5.9 (Restrictions in the case of non-payment).

Relevant Mandatory Conversion Date has the meaning given in Condition 6.2 (Mandatory Conversion Date).

Relevant Tax Jurisdiction means Australia or any relevant political sub-division.

Relevant Tier 1 Capital Instrument means a capital instrument forming part of the Tier 1 Capital of the Issuer (on a Level 1 or Level 2 basis) that, in accordance with its terms or by declaration of law, is capable of being converted, exchanged or written-off where APRA makes a determination as referred to in Condition 7.3(a).

Resolution means a Special Resolution or Ordinary Resolution, as the context requires.

Resale means, in relation to a Capital Note, the effect of the rights specified in Condition 12 (Optional Resale) in relation to that Capital Note, and **Resold** and **Resell** have corresponding meanings.

Resale Date has the meaning given in Condition 12 (Optional Resale).

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

Scheduled Mandatory Conversion Date means 16 November 2031.

Scheduled Optional Conversion Date means the Distribution Payment Dates falling on or around:

- (a) 16 February 2029;
- (b) 16 May 2029;
- (c) 16 August 2029; and
- (d) 16 November 2029.

Scheduled Optional Redemption Date means the Distribution Payment Dates falling on or around:

- (a) 16 February 2029;
- (b) 16 May 2029;
- (c) 16 August 2029; and
- (d) 16 November 2029.

Scheduled Optional Resale Date means the Distribution Payment Dates falling on or around:

- (a) 16 February 2029;
- (b) 16 May 2029;
- (c) 16 August 2029; and
- (d) 16 November 2029.

Second Mandatory Conversion Condition has the meaning given in Condition 6.3 (Mandatory Conversion Conditions).

Second Optional Conversion Restriction has the meaning given in Condition 9.4 (Restrictions on election of Conversion).

Senior Creditors means all present and future creditors of the Issuer with Senior Ranking Obligations.

Senior Ranking Obligations means all present and future deposits and other liabilities, securities and other obligations of the Issuer, including depositors and holders of Tier 2 Capital Instruments which would be entitled to be admitted in the Winding-Up of the Issuer other than any Equal Ranking Securities or Ordinary Shares.

Special Resolution means a resolution passed:

- (a) at a meeting of the Capital Noteholders, duly called and held under the Meeting Provisions:
 - (i) by at least 75% of the persons voting on a show of hands (unless paragraph (b) below applies), or
 - (ii) if a poll is duly demanded, then by a majority consisting of at least 75% of the votes cast, or
- (b) by postal ballot or written resolution under the meeting provisions by the Capital Noteholders representing (in aggregate) at least 75% of the aggregate Face Value of the outstanding Capital Notes.

Specified Currency means:

- (a) in the case of the Capital Notes, Australian Dollars; and
- (b) in the case of any other Relevant Tier 1 Capital Instrument (other than the Capital Notes), the currency in which such instruments are denominated.

Subsequent Mandatory Conversion Date has the meaning given in Condition 6.2 (Mandatory Conversion Date).

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) jointly or as applicable.

Tax Authority means any government, state, municipal, local, federal or other fiscal, revenue, customs or excise authority, body or official having power to tax.

Tax Event means the receipt by the Directors of an opinion from a reputable legal counsel or other tax adviser in Australia, experienced in such matters to the effect that, as a result of a change in, or amendment to, the laws of a Relevant Tax Jurisdiction, or any change in their application or official or judicial interpretation or administration, which change or amendment becomes effective on or after the Issue Date of the Capital Notes (but which the Issuer did not expect at the Issue Date of the Capital Notes) there is more than insubstantial risk which the Directors determine to be unacceptable that:

- (a) a Distribution would not be a frankable distribution (within the meaning of division 202 of the Tax Act); or
- (b) the Issuer would be exposed to a more than de minimus adverse tax consequence or increase in its costs.

Tax Rate means (where terms used in this definition that are not otherwise defined in this document have the meaning set out in the *Income Tax Assessment Act 1997* (Cth)):

- (a) where the Issuer is a member of consolidated group or multiple entry consolidated group, the rate at which income tax is assessed on taxable income of the head company of the consolidated group or multiple entry consolidated group; or
- (b) in other circumstances, the rate at which income tax is assessed on taxable income of the Issuer,

on the relevant Distribution Payment Date, expressed as a percentage.

Taxes means taxes, duties, levies, withholdings, deductions, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or

assessed by any Tax Authority together with any related interest, penalties, fines and expenses in connection with them.

Third Mandatory Conversion Condition has the meaning given in Condition 6.3 (Mandatory Conversion Conditions).

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

Tier 2 Capital means Tier 2 capital as defined by APRA from time to time.

Tier 2 Capital Instruments means securities issued by the Issuer which qualify as Tier 2 Capital.

Total Capital means total capital as defined by APRA from time to time.

Transfer Form means a transfer and acceptance form in the form available from the Registry at the relevant time or, if no form is so available, in any usual or common form by which the transferee agrees to be bound by the Trust Deed and the Conditions applicable to the Capital Notes.

Trust Deed means the document entitled "Judo Capital Holdings – Capital Notes Trust Deed" executed by the Issuer and the Trustee dated on or about 23 October 2023.

Trustee means Certane CT Pty Ltd (ABN 12 106 424 088) or any replacement trustee under the Trust Deed from time to time.

VWAP means the average of the daily volume weighted average prices of Ordinary Shares traded on ASX during the relevant VWAP Period, subject to any adjustments made under Condition 10 (Conversion mechanics), but the trades taken into account in determining such daily volume weighted average prices will exclude special crossings, crossings prior to the commencement of normal trading or during the closing phase or after hours adjustment phase, overnight crossings, overseas trades, trades pursuant to the exercise of options over Ordinary Shares, or any other trade determined by the board of the Issuer in its discretion not to be reflective of normal trading in Ordinary Shares.

VWAP Period means:

- (a) in the case of a Conversion resulting from an Acquisition Event, the lesser of:
 - (i) 20 Business Days on which trading in Ordinary Shares takes place; and
 - (ii) the number of Business Days on which trading in Ordinary Shares takes place that the Ordinary Shares are quoted for trading on ASX after the occurrence of the Acquisition Event (as the case may be);in each case immediately preceding (but not including) the Business Day before the Acquisition Conversion Date in respect of that event (as the case may be);
- (b) in the case of a Conversion resulting from a Loss Absorption Event, the period of 5 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Loss Absorption Event Conversion Date;
- (c) in the case of any other Conversion, the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the date on which Conversion is to occur in accordance with these Conditions; or
- (d) otherwise, the period for which VWAP is to be calculated in accordance with these Conditions.

Winding-Up is:

- (a) a court order made for the winding-up of the Issuer (and the order is not successfully appealed within 60 days); or
- (b) an effective resolution passed by members for the winding-up of the Issuer.

Written-Off means, in respect of a Loss Absorption Event Conversion Date and a Capital Note (or the percentage of Capital Notes determined in accordance with Condition 7.4 (Loss Absorption Event Conversion)), that:

- (a) the Capital Note will not be Converted in respect of the Loss Absorption Event Conversion Date and will not be Converted, Redeemed or Resold under these Conditions or on any subsequent date; and
- (b) the immediate and irrevocable termination of a Capital Noteholder's rights in relation to that Capital Note, including to the payment of Distributions and its Face Value and the termination of all obligations of the Issuer in respect of such Capital Note with effect on and from the Loss Absorption Event Conversion Date.

In the case of a Write-Off of a Capital Note, for all purposes the Issuer will consider that Capital Note no longer to be outstanding and the Issuer will instruct the Registry to delete that Capital Note from the Register. **Write-Off** has a corresponding meaning.

1.2 **References to certain general terms**

The following rules apply in interpreting these Conditions, except where the context makes it clear that a rule is not intended to apply.

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation and regulations issued under it;
 - (ii) a directive includes a treaty, official directive, request, regulation, guideline or policy (whether or not having the force of law) with which responsible participants in the relevant market generally comply;
 - (iii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iv) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (vi) anything (including a right, obligation or concept) includes each part of it and any part of it; and
 - (vii) a time of day is a reference to that time in Sydney.
- (c) A singular word includes the plural, and vice versa.

- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) A reference to **A\$, \$, AUD or Australian dollars** is a reference to the lawful currency of the Commonwealth of Australia.
- (i) A reference to the **Corporations Act** is to the Corporations Act 2001 of Australia.
- (j) Any provisions which refer to APRA requirements of or any other prudential regulatory requirements will apply to the Issuer only if the Issuer is an entity, or the holding company of an entity, or is a direct or indirect subsidiary of an entity subject to regulation and supervision by APRA at the relevant time.
- (k) A reference to any term defined by APRA is, if that term is replaced or superseded in any of APRA's applicable prudential regulatory requirements or standards, be taken to be a reference to the replacement or equivalent term.
- (l) Any provisions which require APRA's consent or approval (written or otherwise) will apply only if APRA requires that such consent or approval be given at the relevant time.
- (m) Any provision in these Conditions requiring prior APRA approval for a particular course of action to be taken by the Issuer do not imply that APRA has given its consent or approval to the particular action as at the Issue Date.
- (n) A "winding up" will not occur solely by reason of (i) an application to wind up being made or (ii) the appointment of a receiver, administrator or official with similar powers under section 13A(1) of the Banking Act.

1.3 **References to particular terms**

Unless the contrary intention appears, in these Conditions:

- (a) a reference to the Trust Deed is a reference to the Trust Deed applicable to the Capital Notes; and
- (b) a reference to a particular date is a reference to that date adjusted in accordance with the Business Day Convention, and if an event under these Conditions must occur on a stipulated day which is not a Business Day, then, for an event other than a Non-Viability Trigger Event, a Conversion or a Write-Off (and any action required in connection with such event), the stipulated day will be taken to be the next Business Day.

2. **Form and issue price of Capital Notes**

2.1 **Form**

- (a) Capital Notes are mandatorily convertible, subordinated, unsecured, non-cumulative, perpetual debt securities that may be Written-Off, Redeemed, Converted or Resold by the Issuer in accordance with these Conditions.
- (b) Capital Notes are issued in registered uncertificated form by entry in the Register.

2.2 **Issue Price and Face Value**

Each Capital Note is issued fully paid with a Face Value and an Issue Price of A\$100.

2.3 **Constitution**

- (a) Capital Notes are constituted by, and owing under, the Trust Deed and the details of which are recorded in, and evidenced by entry in, the Register.
- (b) Capital Noteholders are entitled to the benefit of, are bound by, and are deemed to have notice of all the provisions of the Trust Deed.
- (c) Each entry in the Register constitutes a separate and independent obligation of the Issuer to the relevant Capital Noteholder under these Conditions. Without limiting any provision requiring a Special Resolution or an Ordinary Resolution, the Capital Noteholder to whom those obligations are owed is entitled to enforce them without having to join any other Capital Noteholder or any previous Capital Noteholder.

2.4 **CHESS**

The Capital Notes will be lodged into and dealt with in CHESS. While the Capital Notes remain in CHESS:

- (a) the rights and obligations of a person holding the Capital Notes; and
- (b) all dealings (including transfers and payments) in relation to the Capital Notes within CHESS,

will be subject to and governed by the ASX Settlement Operating Rules (but without affecting any provisions of these Conditions which affect the eligibility of the Capital Notes as Additional Tier 1 Capital).

No certificates will be issued to Capital Noteholders unless the Issuer determines that certificates should be available or are required by law.

2.5 **Fully and irrevocably paid**

Capital Notes will be issued fully and irrevocably paid by the Capital Noteholder.

2.6 **ASX quotation**

The Issuer must use all reasonable endeavours to procure that the Capital Notes are, until Redeemed, Converted, Written-Off, Purchased or Resold, quoted on ASX on or as soon as possible after the Issue Date.

3. **Status, ranking and subordination**

3.1 **Status of Capital Notes**

Capital Notes constitute direct and subordinated obligations of the Issuer.

3.2 **Ranking of Capital Notes**

Claims in respect of the Capital Notes, prior to any Conversion, rank for payment of the Redemption Price in a Winding-Up of the Issuer:

- (a) after the claims in respect of Senior Ranking Obligations including claims preferred by applicable laws;
- (b) equally among themselves and with claims in respect of all other Equal Ranking Securities; and
- (c) ahead of Ordinary Shares.

3.3 **Subordination in a Winding-Up**

- (a) If an order is made by a court of a competent jurisdiction in Australia (other than an order successfully appealed or permanently stayed within 60 days), or an effective resolution passed, for the Winding-Up of the Issuer in Australia, the Face Value in respect of each Capital Note is redeemable in accordance with this Condition 3.3 (Subordination in a Winding-Up).
- (b) In a Winding-Up of the Issuer, a Capital Note confers upon a Capital Noteholder, subject to Conditions 7.4 (Loss Absorption Event Conversion) and 7.5 (Write-Off following failure to Convert) the right to payment in cash of the aggregate Face Value of each Capital Note in accordance with this Condition 3.3 (Subordination in a Winding-Up).
- (c) In a Winding-Up of the Issuer, payments on each Capital Note are subject to:
 - (i) all holders of Senior Ranking Obligations being paid in full before any payment is made to Capital Noteholders; and
 - (ii) Capital Noteholders and holders of Equal Ranking Securities being paid on a pro-rata basis,but will rank in priority to all Ordinary Shares being paid.

3.4 **No consent of holders of Senior Ranking Obligations**

Nothing in this Condition 3 is taken to require the consent of any holder of a Senior Ranking Obligation to any amendment of these Conditions.

3.5 **Not deposits or protected accounts**

The Capital Notes are not:

- (a) deposits with, nor deposit liabilities of, the Issuer or any other member of the Group for the purposes of the Banking Act;
- (b) protected accounts for the purposes of the depositor protection provisions of the Banking Act or the financial claims scheme established under the Banking Act; nor
- (c) guaranteed or insured by the Australian Government or under any compensation scheme of the Australian Government, or by any other government, under any other compensation scheme or by any government agency, any other member of the Group or any other party.

3.6 **Unsecured Capital Notes**

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

4. Title and transfer of Capital Notes

4.1 Registered form

Each Capital Note takes the form of an entry in the Register. The Issuer must, in respect of the Capital Notes at all times maintain a Register and a Registry.

4.2 Title

Title to a Capital Note passes when details of the transfer are entered in the Register. The Register will be closed for the purpose of determining entitlements to payments of Distributions at 5.00 pm on the Record Date prior to any relevant Distribution Payment Date.

4.3 Effect of entries in Register

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

- (a) an unconditional and irrevocable undertaking by the Issuer to the Capital Noteholder to:
 - (i) pay any Distributions and any other amounts in accordance with these Conditions; and
 - (ii) otherwise to comply with the Conditions; and
- (b) an entitlement to the other benefits given to Capital Noteholders under these Conditions in respect of the Capital Note.

4.4 Ownership and non-recognition of interests

- (a) Entries in the Register in relation to a Capital Note constitute conclusive evidence that the person so entered is the absolute owner of such Capital Note subject to correction for fraud or proven error.
- (b) No notice of any trust or other interest in, or claim to, any Capital Note will be entered in a Register. Neither the Issuer nor the relevant Registry need take notice of any trust or other interest in, or claim to, any Capital Note, except as ordered by a court of competent jurisdiction or required by any applicable law or directive. This Condition 4.4(b) applies whether or not a Capital Note is overdue.

4.5 Joint holders

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

4.6 Transfer

Capital Noteholders may only transfer Capital Notes in accordance with these Conditions.

4.7 Transfers in whole

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

4.8 Conditions of transfer

Capital Notes may only be transferred if:

- (a) while Capital Notes are registered within CHESSE, such transfer is in accordance with the rules and regulations of CHESSE; or

- (b) at any other time:
 - (i) it is a proper transfer under any other applicable computerised or electronic system recognised by the Corporations Act (or as the Issuer may otherwise accept); or
 - (ii) subject to Condition 2.4 (CHESS), by any proper or sufficient instrument of transfer of marketable securities under applicable law, provided such instrument is delivered to the Registry with any evidence the Registry requires to prove title to or the right to transfer the Capital Notes,

in each case and at all times, the transfer complies with all applicable laws and directives of the jurisdiction where the transfer takes place. A purported transfer otherwise than in accordance with these Conditions and the Trust Deed or grant of an interest in a Capital Note otherwise than by way of transfer is, to the fullest extent permitted by law, void.
- (c) The Capital Noteholder is responsible for any stamp duty or other similar taxes which are payable in any jurisdiction in connection with a transfer, assignment or other dealing with the Capital Notes.
- (d) The Issuer must not charge any fees on the transfer of Capital Notes.
- (e) Subject to Applicable Regulations, the Issuer may determine that transfers of some or all Capital Notes will not be registered during any period reasonably specified by it prior to the Conversion Date, Redemption Date or Resale Date of such Capital Notes.
- (f) Upon registration and entry of the transferee in the Register the transferor ceases to be entitled to future benefits under these Conditions in respect of the transferred Capital Note and the transferee becomes so entitled in accordance with Condition 4.3 (*Effect of entries in Register*). A transferee of, or any person claiming, an interest in a Capital Note takes subject to these Conditions and the Trust Deed.

4.9 **Estates**

Subject to this Condition 4, a person becoming entitled to a Capital Note as a consequence of the death or bankruptcy of a Capital Noteholder or of a vesting order or a person administering the estate of a Capital Noteholder may, upon producing such evidence as to that entitlement or status as the Registry considers sufficient, transfer the Capital Note or, if so entitled, become registered as the holder of the Capital Note.

4.10 **Unincorporated associations**

A transfer of a Capital Note to an unincorporated association is not permitted.

4.11 **Transfer of unidentified Capital Notes**

If a Capital Noteholder transfers some but not all of the Capital Notes it holds and the Transfer Form does not identify the specific Capital Notes transferred, the relevant Registry may choose which Capital Notes registered in the name of Capital Noteholder have been transferred. However, the Face Value of the Capital Notes registered as transferred must equal the Face Value of the Capital Notes expressed to be transferred in the Transfer Form.

4.12 **Issuer may request holding lock or refuse to register transfer**

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

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

4.13 Issuer must request holding lock or refuse to register transfer

- (a) The Issuer must request the CS Facility Operator or the Registry, as the case may be, to apply a holding lock to prevent a transfer of Capital Notes approved by and registered on the CS Facility's electronic subregister or Capital Note registered on an issuer-sponsored subregister, as the case may be, if the Corporations Act or the ASX Listing Rules require the Issuer to do so.
- (b) The Issuer must refuse to register any transfer of any Capital Note if the Corporations Act or the ASX Listing Rules require the Issuer to do so.

4.14 Notice of holding locks and refusal to register transfer

If, in the exercise of its rights under Conditions 4.12 (Issuer may request holding lock or refuse to register transfer) and 4.13 (Issuer must request holding lock or refuse to register transfer), the Issuer requests the application of a holding lock to prevent a transfer of Capital Notes or refuses to register a transfer of Capital Notes, it must, within 2 months after the date on which the transfer was lodged with it, give written notice of the request or refusal to the Capital Noteholder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

4.15 Delivery of instrument

If an instrument is used to transfer any Capital Note according to Condition 4.8 (Conditions of transfer), it must be delivered to the Registry, together with such evidence (if any) as the Registry reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Capital Note.

4.16 Refusal to register

- (a) A transferor of a Capital Note is deemed to remain a Capital Noteholder until the transfer is registered and the name of the transferee is entered in the Register.
- (b) The Issuer may refuse to Register a transfer of any Capital Note if:
 - (i) such registration would contravene these Conditions; or
 - (ii) the Corporations Act or any other law or regulation binding on the Issuer restricts the registration.

If the Issuer refuses to register a transfer, the Registry must give the lodging party notice of the refusal and the reasons for it within 5 Business Days after the date on which notice of the transfer was delivered to it.

4.17 No liability to persons other than Capital Noteholders

The Issuer is not liable to pay any amount to any person claiming an interest in a Capital Note in connection with that Capital Note other than the Capital Noteholder.

5. Distributions

5.1 Entitlement to Distributions

Subject to Condition 5.7 (Conditions to payment of Distributions), each Capital Note entitles the Capital Noteholder listed as the Capital Noteholder of that Capital Note on a Record Date to receive a Distribution in respect of such Capital Note, in arrear on each Distribution Payment Date during the Distribution Period.

5.2 Record Dates

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

5.3 Calculation of Distribution of Capital Notes

The Distribution payable in respect of a Capital Note on a Distribution Payment Date is determined in accordance with the following formula:

$$\text{Distribution} = \text{Distribution Rate} \times \text{Face Value} \times N / 365$$

N = for a Distribution Period, the number of days in that Distribution Period.

5.4 Calculation of Distribution Rate

The Distribution Rate in respect of a Distribution on a Capital Note is the rate (expressed as a percentage per annum) determined in accordance with the following formula:

$$\text{Distribution Rate} = (\text{BBSW Rate} + \text{Margin}) \times (1 - \text{Tax Rate})$$

where

BBSW Rate means:

- (a) for a Distribution Period, the rate for prime bank eligible securities having a tenor closest to the Distribution Period which ASX (or its successor as administrator of that rate) publishes through information vendors at approximately 10.30 am (Sydney time) (or such other time at which such rate customarily appears on that page) on the first Business Day of that Distribution Period; but
- (b) if the Issuer determines that such rate is not published by 12.00 pm (Sydney time) on that day, other than on account of a BBSW Disruption Event, or if it does appear but the Issuer determines that there is an obvious error in that rate, then **BBSW Rate** means the rate determined by the Issuer in good faith, having regard, to the extent possible, to comparable indices then available. The rate calculated or determined by the Issuer will be expressed as a percentage rate per annum and will be rounded up, if necessary, to the next higher one ten-thousandth of a percentage point (0.0001 per cent.).

5.5 BBSW Disruption Event

If a BBSW Disruption Event has occurred, then subject to APRA's prior written approval, the Issuer must:

- (a) use as the "BBSW" such Alternative Base Rate as it may determine in accordance with these Conditions; and

- (b) make such adjustments to the Business Day Convention and other Conditions as it determines are reasonably necessary to calculate the Distribution Rate in accordance with such Alternative Base Rate; and
- (c) in making the determinations under paragraphs (a) and (b) above:
 - (i) must act in good faith and in a commercially reasonable manner;
 - (ii) may consult with such sources of market practice as it considers appropriate; and
 - (iii) may otherwise make such other determination in its discretion.

Capital Noteholders should note that APRA's prior approval may not be given for any Alternative Base Rate if it considers the Alternative Base Rate to have the effect of increasing the Distribution Rate contrary to applicable prudential standards.

5.6 **Franking adjustments**

If a Distribution is not franked to 100% under Part 3-6 of the Tax Act (and any provisions that revise or replace that Part), the Distribution payable under Condition 5.3 (Calculation of Distribution of Capital Notes) will be calculated according to the following formula:

$$\text{Distribution} = D / 1 - [\text{Tax Rate} \times (1 - F)]$$

where:

D = the Distribution calculated under Condition 5.3 (Calculation of Distribution of Capital Notes); and

F = the applicable Franking Rate.

5.7 **Conditions to payment of Distributions**

A Distribution will only be paid if:

- (a) the Directors in their sole discretion resolve to pay the relevant Distribution on the relevant Distribution Payment Date; and
- (b) a Payment Condition does not exist on the relevant Distribution Payment Date.

5.8 **Distributions are non-cumulative**

Distributions are non-cumulative. If all or any part of a Distribution is not paid in full because of the restrictions in Condition 5.7 (Conditions to payment of Distributions) or for any other reason:

- (a) the Issuer has no liability to pay the unpaid amount of the Distribution;
- (b) the Capital Noteholder has no claim or entitlement in respect of such non-payment; and
- (c) such non-payment does not constitute an event of default.

No interest accrues on any unpaid Distributions and a Capital Noteholder has no claim or entitlement in respect of interest on any unpaid Distributions. If all or any part of a Distribution will not be paid in whole or part because of this Condition 5.8 (Distributions are non-cumulative), the Issuer must give notice to the Registry and ASX promptly after determining or becoming aware that payment will not be made.

5.9 **Restrictions in the case of non-payment**

Subject to Condition 5.7 (Conditions to payment of Distributions), if a Distribution on a Capital Note has not been paid in full (a **Relevant Distribution**) on a Distribution Payment Date (a **Relevant Distribution Payment Date**) for any reason (including because of the restrictions in Condition 5.7 (Conditions to payment of Distributions)), the Issuer must not, unless approved by Special Resolution, until and including the Distribution Payment Date following the Relevant Distribution Payment Date, in respect of itself only:

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

unless the Relevant Distribution is paid in full within 3 Business Days of the Relevant Distribution Payment Date.

5.10 **Exceptions to restrictions**

The restrictions in Condition 5.9 (Restrictions in the case of non-payment) do not apply:

- (a) in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants of the Issuer or any member of the Group;
- (b) in connection with the Issuer or any of its Controlled Entities (if applicable) purchasing shares in the NOHC:
 - (i) in connection with transactions for the account of customers of the Issuer or customers of any of its Controlled Entities (if applicable); or
 - (ii) subject to APRA's prior written approval, in connection with the distribution or trading of shares in the Issuer in the ordinary course of business; or
- (c) to the extent that at the time a Distribution has not been paid on the Relevant Distribution Payment Date, the Issuer is legally obliged to pay on or after that date an Ordinary Share Dividend or is legally obliged to complete on or after that date a Buy-Back or Capital Reduction.

5.11 **Notification of Distribution Rate, Distribution payable and other items**

- (a) The Issuer must notify the Registry, the Capital Noteholders and any stock or securities exchange or other relevant authority on which the Capital Notes are listed, quoted and/or traded of:
 - (i) each Distribution Rate, the amount of Distribution payable and each other amount, item or date calculated or determined by it together with the Distribution Payment Date; and
 - (ii) any amendment to any amount, item or date referred to in paragraph (i) arising from any extension or reduction in any Distribution Period or calculation period.
- (b) The Issuer must give notice under this Condition 5.11 as soon as practicable after it makes its determination. However, it must give notice of each Distribution Rate, the amount of Distribution payable and each Distribution Payment Date by the fourth day of the Distribution Period.

- (c) The Issuer may amend its determination of any amount, item or date (or make appropriate alternative arrangements by way of adjustment) as a result of the extension or reduction of the Distribution Period or calculation period without prior notice but must notify, the Registry, the Capital Noteholders and each stock or securities exchange or other relevant authority on which the Capital Notes are listed, quoted and/or traded after doing so.

5.12 **Determination final**

The determination by the Issuer of all amounts, rates and dates falling to be determined by it under these Conditions is, in the absence of wilful default, bad faith or manifest or proven error, final and binding on the Registry and each Capital Noteholder.

5.13 **Rounding**

For the purposes of any calculations required under these Conditions:

- (a) all percentages resulting from the calculations must be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with 0.000005 per cent. being rounded up to 0.00001 per cent.);
- (b) all figures resulting from calculations must be rounded to five decimal places (with 0.000005 being rounded up to 0.00001); and
- (c) all amounts that are due and payable must be rounded (with halves being rounded up) to:
 - (i) in the case of Australian dollars, one cent; and
 - (ii) in the case of any other currency, the lowest amount of that currency available as legal tender in the country of that currency.

6. **Mandatory Conversion**

6.1 **Mandatory Conversion**

Subject to Conditions 7 (Mandatory Conversion on Loss Absorption Event) and 8 (Conversion on Acquisition Event), on the Mandatory Conversion Date, the Issuer must Convert all (but not some only) of the Capital Notes into Ordinary Shares in accordance with Condition 10 (Conversion mechanics) and this Condition 6 (Mandatory Conversion).

6.2 **Mandatory Conversion Date**

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

- (a) the Scheduled Mandatory Conversion Date; or
- (b) the first Distribution Payment Date after the Scheduled Mandatory Conversion Date and each subsequent Distribution Payment Date thereafter (each a **Subsequent Mandatory Conversion Date**).

6.3 **Mandatory Conversion Conditions**

The "**Mandatory Conversion Conditions**" for each Relevant Mandatory Conversion Date are each of the following:

- (a) the VWAP on the 25th Business Day immediately preceding (but not including) the Relevant Mandatory Conversion Date (the **First Test Date**, provided that if

no trading in Ordinary Shares took place on that date, the "**First Test Date**" is the first Business Day before the 25th Business Day immediately preceding (but not including) the Relevant Mandatory Conversion Date on which trading in Ordinary Shares took place) is greater than 56% of the Issue Date VWAP (the **First Mandatory Conversion Condition**);

- (b) the VWAP during the period of 20 Business Days on which trading of Ordinary Shares took place immediately preceding (but not including) the Relevant Mandatory Conversion Date is greater than 50.51% of the Issue Date VWAP (the **Second Mandatory Conversion Condition**); and
- (c) no Delisting Event applies in respect of the Relevant Mandatory Conversion Date (the **Third Mandatory Conversion Condition**).

6.4 **Non-Conversion Notices**

If:

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

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

Failure to give a notice when required by this Condition 6.4 (Non-Conversion Notices) including where in accordance with Condition 26 (Notices) such notice takes effect only after the last date for the giving of that notice does not affect the obligations of the Issuer and the Capital Noteholders to Convert each Capital Note when required in accordance with these Conditions.

7. **Mandatory Conversion on Loss Absorption Event**

7.1 **Loss Absorption Event**

A "**Loss Absorption Event**" means each of the following:

- (a) a Common Equity Trigger Event; and
- (b) a Non-Viability Trigger Event.

7.2 **Common Equity Trigger Event**

- (a) A "**Common Equity Trigger Event**" occurs when either or both of the Common Equity Tier 1 Ratio in respect of the Judo Level 1 Group or the Judo Level 2 Group, as determined by the Issuer or APRA at any time, is equal to or less than 5.125%.
- (b) The Issuer must immediately notify APRA in writing if it makes a determination, to the extent APRA has not itself made such determination, under Condition 7.2(a) (Common Equity Trigger Event) or anticipates that a Common Equity Trigger Event may or will occur.

- (c) If a Common Equity Trigger Event occurs, the Issuer must immediately Convert into Ordinary Shares or otherwise Write-Off:
 - (i) all Relevant Tier 1 Capital Instruments; or
 - (ii) such proportion of the Relevant Tier 1 Capital Instruments sufficient to return each of the Common Equity Tier 1 Ratio of the Judo Level 1 Group and the Common Equity Tier 1 Ratio of the Judo Level 2 Group to a percentage above 5.125%, as determined by the Issuer,

in each case, which must, at a minimum, be no less than the lower of:

 - (iii) the amount required to ensure the Common Equity Trigger Event no longer applies; and
 - (iv) the aggregate Face Value in respect of such Capital Notes.

7.3 **Non-Viability Trigger Event**

- (a) A "**Non-Viability Trigger Event**" occurs on the earlier of, a determination by APRA notified in writing to the Issuer that:
 - (i) the Conversion of Relevant Capital Instruments into Ordinary Shares or the Write-Off of Relevant Capital Instruments is necessary because without the Conversion or Write-Off, APRA considers that the Issuer would become non-viable; or
 - (ii) without a public sector injection of capital into, or equivalent support with respect to, the Issuer, the Issuer would become non-viable.
- (b) The Issuer must immediately notify APRA in writing if it makes a determination, to the extent APRA has not itself made such determination, under Condition 7.3(a) (Non-Viability Trigger Event) or anticipates that a Non-Viability Trigger Event may or will occur.
- (c) If a Non-Viability Trigger Event occurs, the Issuer must immediately Convert into Ordinary Shares or Write-Off:
 - (i) all Relevant Tier 1 Capital Instruments; or
 - (ii) where APRA is satisfied that the Conversion or Write-Off of a proportion of Relevant Tier 1 Capital Instruments will be sufficient, such that the Issuer is viable without further Conversion or Write-Off of Relevant Tier 1 Capital Instruments, that proportion of Relevant Tier 1 Capital Instruments,

in each case, which must, at a minimum, be no less than the lower of:

 - (iii) the amount required to ensure the Non-Viability Trigger Event no longer applies; and
 - (iv) the aggregate Face Value in respect of such Capital Notes.

APRA has stated that it will not approve partial Conversion or partial write off in those exceptional circumstances where a public sector injection of funds is deemed necessary.

7.4 **Loss Absorption Event Conversion**

- (a) On the date on which a Loss Absorption Event occurs (the **Loss Absorption Event Conversion Date**), the Issuer must immediately determine:

- (i) the aggregate Face Value of Capital Notes that will be Converted and the aggregate principal amount of other Relevant Tier 1 Capital Instruments that will Convert into Ordinary Shares or be Written-Off (in accordance with Condition 7.2 (Common Equity Trigger Event) or Condition 7.3 (Non-Viability Trigger Event), as applicable); and
 - (ii) the identity of Capital Noteholders whose Capital Notes will Convert on the Loss Absorption Event Conversion Date, and in making that determination, may make any decisions with respect to the identity of the Capital Noteholders at that time as may be necessary or desirable to ensure Conversion occurs in an orderly manner, including disregarding any transfers of Capital Notes that have not been settled or registered at that time.
- (b) Notwithstanding paragraph (a) above, the aggregate amount of Capital Notes to be Converted must, at a minimum, be no less than the lower of:
- (i) the amount required to ensure the Non-Viability Trigger Event no longer applies;
 - (ii) the amount required to cure the Loss Absorption Event so that the Common Equity Tier 1 Ratio is greater than 5.125%; and
 - (iii) the aggregate Face Value in respect of such Capital Notes.
- (c) If the Issuer is required to Convert some (but not all) Capital Notes following a Loss Absorption Event, then subject to paragraph (d) below:
- (i) the Issuer must endeavour to select the Capital Notes of the Capital Noteholders to be Converted on an approximately proportionate basis among all Capital Noteholders, provided however that the Issuer may make such adjustments among Capital Noteholders to take account of the effect on the marketable parcels, whole numbers of Ordinary Shares and other logistical considerations; and
 - (ii) where the Specified Currency of the Relevant Tier 1 Capital Instruments is not the same for all Relevant Tier 1 Capital Instruments, then the Issuer may treat all such instruments as if converted into a single currency (at the Issuer's discretion) at such rate of Conversion as the Issuer considers reasonable. The Issuer may make such adjustments amongst the Capital Noteholders and holders of the other Relevant Tier 1 Capital Instruments as required, having regard to the need to effect the Conversion immediately.
- (d) Despite any other provision in these Conditions, on a Loss Absorption Event Conversion Date, the aggregate Face Value (as determined under this Condition 7.4 (Loss Absorption Event Conversion)), will be Converted into Ordinary Share immediately and irrevocably.
- (e) A Loss Absorption Event occurs immediately on the day the Issuer determines or is notified by APRA of such event whether or not that day is a Business Day. Accordingly, the Issuer must perform its obligations under this Condition 7.4 (Loss Absorption Event Conversion) on that day as if such day were a Business Day.
- (f) None of the following prevents, impedes or delays the Conversion of Capital Notes as required under this Condition 7.4 (Loss Absorption Event Conversion):

- (i) any failure or delay to convert or exchange into Ordinary Shares or write-off other Relevant Tier 1 Capital Instruments (other than the Capital Notes);
 - (ii) any failure or delay in giving a Loss Absorption Event Notice;
 - (iii) any failure or delay in the quotation of the Ordinary Shares to be issued on Conversion;
 - (iv) any obligations to treat holders proportionately or to make determinations or adjustments in accordance with Condition 7.4(b) (Loss Absorption Event Conversion); or
 - (v) any decision as to the identity of Capital Noteholders whose Capital Notes are to be Converted or Written-Off in accordance with these Conditions.
- (g) From a Loss Absorption Event Conversion Date, the Issuer must treat the Capital Noteholder in respect of its Capital Notes as the holder of the Conversion Number of Ordinary Shares and will take all such steps, including updating any register, required to record the Conversion.

7.5 **Write-Off following failure to Convert**

If the Conversion required in respect of a Capital Note following a Loss Absorption Event has not been (or cannot be) effected within 5 Business Days following such Loss Absorption Event for any reason, then the Conversion will not occur. Notwithstanding any other Condition, the Capital Notes which, but for this Condition 7.5 (Write-Off following failure to Convert), would be required to be Converted, will be immediately and irrevocably Written-Off with effect on and from the Loss Absorption Event Conversion Date whether or not that day is a Business Day.

7.6 **Loss Absorption Event Notice**

As soon as practicable following the occurrence of a Loss Absorption Event, the Issuer must give notice of the Loss Absorption Event (a Loss Absorption Event Notice) to the Registry and the Capital Noteholders which states:

- (a) the Loss Absorption Event Conversion Date;
- (b) the aggregate Face Value of Capital Notes to be Converted or Written-Off; and
- (c) the aggregate outstanding principal amount of Relevant Tier 1 Capital Instruments Converted for Ordinary Shares or Written-off.

7.7 **Priority of Conversion obligations**

- (a) Conversion as a result of a Loss Absorption Event is not subject to the matters described as the Mandatory Conversion Conditions or to any other condition except as provided in this Condition 7 (Mandatory Conversion on Loss Absorption Event).
- (b) Notwithstanding any other provision in these Conditions, Conversion required as a result of a Loss Absorption Event takes place on the date, and in the manner, required under Condition 7.4 (Loss Absorption Event Conversion).

8. **Conversion on an Acquisition Event**

8.1 **Conversion on the occurrence of an Acquisition Event**

If an Acquisition Event occurs, the Issuer must Convert all (but not some only) Capital Notes on the Acquisition Conversion Date by notice (an **Acquisition Conversion**

Notice) to the Trustee and the Capital Noteholders in accordance with this Condition 8 (Conversion on an Acquisition Event) and Condition 10 (Conversion mechanics).

8.2 **Acquisition Conversion Notice**

Subject to Condition 8.3 (Where Acquisition Conversion Notice not required), the Issuer must give an Acquisition Conversion Notice to the Trustee and the Capital Noteholders as soon as practicable and, in any event, within 10 Business Days after becoming aware of the Acquisition Event.

An Acquisition Conversion Notice must specify:

- (a) the details of the Acquisition Event to which the Acquisition Conversion Notice relates;
- (b) the date on which the Conversion is to occur (the **Acquisition Conversion Date**), which must be:
 - (i) the Business Day prior to the date reasonably determined by the Issuer to be the last date on which the holders of Ordinary Shares are likely to be able to participate in the bid or scheme concerned or such other earlier date as the Issuer may reasonably determine, having regard to the timing for the implementation of the bid or scheme concerned; or
 - (ii) such later date as APRA may require; and
- (c) whether any Distribution will be paid in respect of the Capital Notes on the Acquisition Conversion Date.

8.3 **Where Acquisition Conversion Notice not required**

Notwithstanding any other provision in this Condition 8 (Conversion on an Acquisition Event), the Issuer is not required to give an Acquisition Conversion Notice if either or both of the Optional Conversion Restrictions would apply (and as if a reference to an Optional Conversion Notice were a reference to an Acquisition Conversion Notice). In those circumstances, Condition 8.4 (Deferred Conversion on Acquisition Event) will apply.

8.4 **Deferred Conversion on Acquisition Event**

If Condition 8.3 (Where Acquisition Conversion Notice not required) applies or the Issuer has given an Acquisition Conversion Notice but, if the Acquisition Conversion Date were a Relevant Mandatory Conversion Date for the purposes of Condition 6.2 (Mandatory Conversion Date), either the Second Mandatory Conversion Condition (applied as if it referred to 20.20% of the Issue Date VWAP) or the Third Mandatory Conversion Condition would not be satisfied in respect of that date, then notwithstanding any other provision of these Conditions (but without limitation to the operation of Condition 7.7 (Priority of Conversion obligations)):

- (a) the Acquisition Conversion Notice, if given, is taken to be revoked and Conversion will not occur on the Acquisition Conversion Date specified in the Acquisition Conversion Notice;
- (b) the Issuer will notify the Trustee and the Capital Noteholders as soon as practicable that Conversion will not (or, as the case may be, did not) occur (a **Deferred Acquisition Conversion Notice**); and
- (c) the Issuer must, unless Condition 8.3 (Where Acquisition Conversion Notice not required) applies, give an Acquisition Conversion Notice (or, as the case may be, a new Acquisition Conversion Notice) on or before the 25th Business Day prior to

the immediately succeeding Distribution Payment Date which is at least 25 Business Days after the date on which the Deferred Acquisition Conversion Notice was given.

The Acquisition Conversion Notice given in accordance with paragraph (c) above must comply with the requirements in Condition 8.2 (Acquisition Conversion Notice).

If this Condition 8.4 (Deferred Conversion on Acquisition Event) applies but:

- (d) Condition 8.3 (Where Acquisition Conversion Notice not required) applies in respect of the Distribution Payment Date referred to in paragraph (c) above such that no Acquisition Conversion Notice (or, as the case may be, a new Acquisition Conversion Notice) is given under this Condition 8.4 (Deferred Conversion on Acquisition Event); or
- (e) an Acquisition Conversion Notice (or, as the case may be, a new Acquisition Conversion Notice) is given under this Condition 8.4 (Deferred Conversion on Acquisition Event) but, if the Acquisition Conversion Date specified in the Acquisition Conversion Notice were a Relevant Mandatory Conversion Date for the purpose of Condition 6.2 (Mandatory Conversion Date), either the Second Mandatory Conversion Condition (applied as if it referred to 20.20% of the Issue Date VWAP) or the Third Mandatory Conversion Condition would not be satisfied in respect of that date,

then this Condition 8.4 (Deferred Conversion on Acquisition Event) will be reapplied in respect of each subsequent scheduled Distribution Payment Date until a Conversion occurs.

9. **Optional Conversion**

9.1 **Optional Conversion by the Issuer**

The Issuer may, with APRA's prior written consent, by notice to the Trustee, the Registry and the Capital Noteholders (an **Optional Conversion Notice**) elect to Convert:

- (a) all or some Capital Notes on an Optional Conversion Date following the occurrence of a Tax Event or a Regulatory Event; or
- (b) all or some Capital Notes on a Scheduled Optional Conversion Date.

Capital Noteholders should not expect that APRA's approval will be given for a Conversion of Capital Notes under these Conditions.

9.2 **When an Optional Conversion Notice may be given**

An Optional Conversion Notice under this Condition 9 (Optional Conversion) may be given:

- (a) in the case of Condition 9.1(a) (Optional Conversion by the Issuer), on any day following the occurrence of the Tax Event or Regulatory Event (as applicable); or
- (b) in the case of Condition 9.1(b) (Optional Conversion by the Issuer), on any day following the occurrence of the Scheduled Optional Conversion Date,

provided in each case that an Optional Conversion Notice cannot be given in the period of 20 Business Days preceding (and not including) a Relevant Mandatory Conversion Date where the First Mandatory Conversion Condition has been met in respect of that Relevant Mandatory Conversion Date.

Subject to Condition 7.7 (Priority of Conversion obligations), an Optional Conversion Notice once given is irrevocable.

9.3 **Contents of Optional Conversion Notice**

An Optional Conversion Notice must specify:

- (a) in the case of Condition 9.1(a) (Optional Conversion by the Issuer), the details of the Tax Event or Regulatory Event to which the Optional Conversion Notice relates;
- (b) the date on which Conversion is to occur (the **Optional Conversion Date**) which:
 - (i) in the case of a Tax Event or a Regulatory Event, is the next Distribution Payment Date, unless the Issuer determines an earlier date having regard to the best interests of Capital Noteholders as a whole and the relevant event; or
 - (ii) in the case of Condition 9.1(b) (Optional Conversion by the Issuer), is the "**Optional Conversion Date**" as specified in the Optional Conversion Notice being a date at least 10 Business Days and no more than 60 Business Days after the date of the Optional Conversion Notice;
- (c) if less than all Capital Notes are subject to Conversion, the proportion of the Capital Notes that are to be Converted; and
- (d) whether any Distribution will be paid in respect of the Capital Notes to be Converted on the Optional Conversion Date.

9.4 **Restrictions on election of Conversion**

The Issuer may not elect to Convert its Capital Notes under this Condition 9 (Optional Conversion) if:

- (a) on the second Business Day before the date on which an Optional Conversion Notice is to be sent by the Issuer (or, if trading in Ordinary Shares did not occur on that date, the last Business Day prior to that date on which trading in Ordinary Shares occurred) (the **Non-Conversion Test Date**), the VWAP on that date is less than or equal to 22.50% of the Issue Date VWAP (the **First Optional Conversion Restriction**); or
- (b) a Delisting Event applies in respect of the Non-Conversion Test Date (the **Second Optional Conversion Restriction** and together with the First Optional Conversion Restriction, the **Optional Conversion Restrictions**).

9.5 **Deferred Conversion on Optional Conversion Date**

If the Issuer has given an Optional Conversion Notice but, if the Conversion Date were a Relevant Mandatory Conversion Date for the purposes of Condition 6.2 (Mandatory Conversion Date), either the Second Mandatory Conversion Condition (applied as if it referred to 20.20% of the Issue Date VWAP) or the Third Mandatory Conversion Condition would not be satisfied in respect of that date, then, notwithstanding any other provision of these Conditions:

- (a) the Optional Conversion Date will be deferred until the first Distribution Payment Date on which the Mandatory Conversion Conditions (applied as if the percentage of the Issue Date VWAP were 22% for the First Mandatory Conversion Condition and 20.20% for the Second Mandatory Conversion Condition) would be satisfied if that Distribution Payment Date were a Relevant

Mandatory Conversion Date for the purposes of Condition 6.2 (Mandatory Conversion Date) (the **Deferred Conversion Date**);

- (b) the Issuer must Convert the Capital Notes on the Deferred Conversion Date (unless the Capital Notes are Converted, Written-Off, Redeemed or Resold earlier in accordance with these Conditions); and
- (c) until the Deferred Conversion Date, all rights attaching to the Capital Notes will continue as if the Optional Conversion Notice had not been given.

The Issuer will notify the Capital Noteholders on or as soon as practicable after an Optional Conversion Date in respect of which this Condition 9.5 (Deferred Conversion on Optional Conversion Date) applies that Conversion did not occur on that Conversion Date.

10. **Conversion mechanics**

10.1 **Conversion**

If the Issuer elects to Convert its Capital Notes (with APRA's prior written approval) or must Convert its Capital Notes in accordance with these Conditions, then, subject to this Condition 10 (Conversion mechanics), the following provisions apply:

- (a) on the relevant Conversion Date the Issuer will allot and issue the Conversion Number of Ordinary Shares to the Capital Noteholders in accordance with these Conditions;
- (b) each Capital Noteholder will be issued a number of Ordinary Shares for each Capital Note held by that Capital Noteholder that is being Converted on the Conversion Date equal to the Conversion Number, where the "**Conversion Number**" is the lesser of the number calculated according to the following formula and the Maximum Conversion Number:

$$A = B/C$$

where:

A = the Conversion Number;

B = the Face Value; and

C = 99% multiplied by VWAP.

For the purposes of this Condition 10 (Conversion mechanics), the following definitions apply:

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

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

$$A = B/C$$

where:

A = the Maximum Conversion Number;

B = the Face Value; and

C = the Issue Date VWAP multiplied by the Relevant Fraction,

where:

Relevant Fraction means:

- (i) if Conversion is occurring on a Mandatory Conversion Date, 0.5; and
 - (ii) if Conversion is occurring for any other reason, 0.2;
- (c) each Capital Noteholder's rights (including to payment of Distributions, other than the Distribution if any, payable on a Conversion Date that is not a Loss Absorption Event Conversion Date) in relation to each Capital Note that is being Converted will be immediately and irrevocably terminated for an amount equal to the Face Value of that Capital Note and the Issuer will apply the Face Value by way of payment for subscription for the Conversion Number of Ordinary Shares to be issued under Condition 10 (Conversion mechanics). Each Capital Noteholder is taken to have irrevocably directed that any amount payable under this Condition 10.1(c) (Conversion) is to be applied as provided for in this Condition and no Capital Noteholder has any right to payment in any other way;
- (d) if the total number of Ordinary Shares to be issued to a Capital Noteholder in respect of their aggregate holding of Capital Notes that is being Converted includes a fraction of a Ordinary Share, that fraction of a Ordinary Share will be disregarded;
- (e) the rights attaching to the Ordinary Shares issued upon Conversion do not take effect until 5.00 pm Sydney time on the Mandatory Conversion Date, Acquisition Conversion Date or the Optional Conversion Date (as the case may be) or, in the case of a Conversion on the Loss Absorption Event Conversion Date, the time at which such Conversion occurs on that date. At that time:
- (i) all other rights conferred or restrictions imposed on that Capital Note under these Conditions will no longer have effect (except for rights relating to a Distribution which has been determined to be payable on a Conversion Date (that is not a Loss Absorption Event Conversion Date), which rights will continue); and
 - (ii) the Ordinary Shares issued upon the Conversion will rank equally with all other Ordinary Shares; and
- (f) where Capital Notes are Converted, the Issuer will allot and issue the Ordinary Shares to the Capital Noteholder on the basis that a Capital Noteholder's name and address set out in the Register (or, if not set out in the Register, otherwise held by the Registry) are the name and address for entry into any register of title and delivery of any certificate or holding statement in respect of any Ordinary Shares issued on Conversion.

10.2 **Adjustments to VWAP**

For the purposes of calculating the VWAP in these Conditions:

- (a) where, on some or all of the Business Days in the relevant VWAP Period, Ordinary Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement and Capital Notes will be Converted for Ordinary Shares after that date and those Ordinary Shares will no longer carry that dividend or any other distribution or entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted cum dividend or cum

any other distribution or entitlement will be reduced by an amount (**Cum Value**) equal to:

- (i) in the case of a dividend or other distribution, the amount of that dividend or other distribution;
 - (ii) in the case of any other entitlement that is not a dividend or other distribution under paragraph (i) above which is traded on ASX on any of those Business Days, the volume weighted average price of all such entitlements sold on ASX during the relevant VWAP Period on the Business Days on which those entitlements were traded (excluding trades of the kind that would be excluded in determining VWAP under the definition of that term); or
 - (iii) in the case of any other entitlement which is not traded on ASX during the VWAP Period, the value of the entitlement as reasonably determined by the Board; and
- (b) where, on some or all of the Business Days in the VWAP Period, Ordinary Shares have been quoted as ex dividend or ex any other distribution or entitlement, and Capital Notes will be Converted for Ordinary Shares which would be entitled to receive the relevant dividend, distribution or entitlement, the VWAP on the Business Days on which those Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement will be increased by the Cum Value.

10.3 **Adjustments to VWAP for capital reconstruction and similar transactions**

- (a) Where, during the relevant VWAP Period, there is a change to the number of Ordinary Shares on issue because the Ordinary Shares are reconstructed, consolidated, divided or reclassified (not involving any payment or other compensation to or by holders of Ordinary Shares) (**Reclassification**) into a lesser or greater number, the daily VWAP for each day in the VWAP Period which falls before the date on which trading in Ordinary Shares is conducted on a post Reclassification basis will be multiplied by the following formula:

A / B

where:

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

B = means the aggregate number of Ordinary Shares immediately after the Reclassification.

- (b) Any adjustment made by in accordance with paragraph (a) above will be effective and binding on Capital Noteholders under the Conditions and the Conditions will be construed accordingly.
- (c) For the avoidance of doubt, nothing in this Condition 10.3 (Adjustments to VWAP for capital reconstruction and similar transactions) allows a cash payment or other distribution to be made to or by a Capital Noteholder as part of a Reclassification or as a result of a Reclassification.

10.4 **Adjustments to Issue Date VWAP generally**

For the purposes of determining the Issue Date VWAP under Condition 10.1 (Conversion), adjustments will be made in accordance with Condition 10.2 (Adjustments

to VWAP) and Condition 10.3 (Adjustments to VWAP for capital reconstruction and similar transactions) during the VWAP Period for the Issue Date VWAP. On and from the Issue Date, adjustments to the Issue Date VWAP:

- (a) may be made in accordance with Conditions 10.1 (Conversion) to Condition 10.7 (No adjustment to Issue Date VWAP in certain circumstances) (inclusive);
- (b) if so made, will correspondingly cause an adjustment to the Maximum Conversion Number and the Mandatory Conversion Conditions; and
- (c) if so made, will be effective and binding on Capital Noteholders under these paragraphs and these paragraphs will be construed accordingly.

10.5 **Adjustments to Issue Date VWAP for bonus issues**

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

$$V = V_o \times RD / (RD + RN)$$

where:

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

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

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

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

- (b) For the avoidance of doubt, paragraph (a) above does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
- (c) For the purposes of this paragraph, an issue will be regarded as a bonus issue notwithstanding that the Issuer does not make offers to some or all holders of Ordinary Shares with registered addresses outside Australia (or to whom an offer is otherwise subject to foreign securities laws), provided that in so doing is not in contravention of the ASX Listing Rules.

10.6 **Adjustments to Issue Date VWAP for capital reconstruction**

If, at any time after the Issue Date, there is a change to the number of Ordinary Shares on issue because of a Reclassification into a lesser or greater number, the Issue Date VWAP will be adjusted by multiplying the Issue Date VWAP applicable on the Business Day immediately before the date of any such Reclassification by the following formula:

$$A / B$$

where:

A = means the aggregate number of Ordinary Shares on issue immediately before the Reclassification; and

B = means the aggregate number of Ordinary Shares on issue immediately after the Reclassification.

10.7 No adjustment to Issue Date VWAP in certain circumstances

Despite the provisions of Conditions 10.5 (Adjustments to Issue Date VWAP for bonus issues) and 10.6 (Adjustments to Issue Date VWAP for capital reconstruction), no adjustment will be made to the Issue Date VWAP where any such adjustment (rounded if applicable) would be less than one percent of the Issue Date VWAP then in effect.

10.8 Announcement of adjustments to Issue Date VWAP

The Issuer will notify any adjustment to the Issue Date VWAP under Conditions 10.4 (Adjustments to Issue Date VWAP generally) to 10.6 (Adjustments to Issue Date VWAP for capital reconstruction) (inclusive) to the Registry and the Capital Noteholders within 10 Business Days of the Issuer determining the adjustment and the adjustment will be final and binding.

10.9 Status and quotation of Ordinary Shares

- (a) Ordinary Shares issued or arising from Conversion will rank equally with all other fully paid Ordinary Shares provided that the rights attaching to the Ordinary Shares issued or arising from Conversion do not take effect until 5.00 pm (Sydney time) on the relevant Conversion Date (or such other time required by APRA).
- (b) The Issuer will use all reasonable endeavours to quote the Ordinary Shares issued on Conversion of the Capital Notes on ASX.
- (c) Capital Noteholders acknowledge that any ASX trades in Capital Notes that have not settled on the Conversion Date will continue to settle in accordance with the normal ASX settlement process, although the seller will be treated as having delivered and the buyer will be treated as having acquired, the number of Ordinary Shares into which Capital Notes have been Converted.
- (d) Capital Noteholders agree not to trade Ordinary Shares issued on Conversion (except as permitted by the Corporations Act, other applicable laws and the ASX Listing Rules) until the Issuer has taken such steps as are required by the Corporations Act, other applicable laws and the ASX Listing Rules for the shares to be freely tradeable without such further disclosure or other action and agrees to allow the Issuer to impose a holding lock or refuse to register a transfer in respect of Ordinary Shares until such time.

10.10 Failure to Convert (other than as a result of a Loss Absorption Event)

If on a Conversion Date (other than a Loss Absorption Event Conversion Date), an Ordinary Share is not issued or delivered in respect of a Capital Note, that Capital Note remains on issue (and will continue to entitle the Capital Noteholder to Distributions in accordance with the Conditions) until the Ordinary Share is issued to the Capital Noteholder (such date is deemed to be the Conversion Date in respect of that Capital Note) or the Capital Note is Redeemed (such date is deemed to be the Redemption Date in respect of that Capital Note) or Resold (such date is deemed to be the Resale Date in respect of that Capital Note), and a Capital Noteholder has no claim in respect of that failure other than for specific performance of the obligation to issue or deliver the Ordinary Shares. This Condition 10.10 (Failure to Convert (other than as a result of a Loss Absorption Event)) does not affect the obligation of the Issuer to issue or deliver the Ordinary Shares when required in accordance with the Conditions.

10.11 Issue to the Trustee or an Eligible Nominee

- (a) Where a Capital Note is required to be Converted and:
- (i) the Capital Note is held by a Foreign Capital Noteholder, unless the Issuer is satisfied that the laws of the Foreign Capital Noteholder's country of residence permit the issue of Ordinary Shares to the Foreign Capital Noteholder, either unconditionally or after compliance with conditions which the Issuer (in its absolute discretion) regards as acceptable and not unduly onerous; or
 - (ii) the Capital Noteholder has notified the Issuer that it does not wish to receive Ordinary Shares as a result of Conversion, which notice may be given by the Capital Noteholder at any time on or after the Issue Date and no less than 15 Business Days prior to the Conversion Date,

the Ordinary Shares which either the Foreign Capital Noteholder under sub-paragraph (i) or the Capital Noteholder under sub-paragraph (ii) above is obliged to accept will be issued to the Trustee or to a nominee (which must not be the Issuer or any Related Entity of the Issuer) (an **Eligible Nominee**) but otherwise in accordance with Condition 10 (Conversion mechanics) and on terms that, at the first reasonable opportunity to sell the Ordinary Shares, the Trustee or the Eligible Nominee will arrange for their sale and pay to the relevant Foreign Capital Noteholder under paragraph (i) or the Capital Noteholder under sub-paragraph (ii) on a date determined by the Trustee or the Eligible Nominee, as applicable a cash amount equal to the Attributable Proceeds of the relevant Foreign Capital Noteholder or Capital Noteholder as applicable.

- (b) Where a Capital Note is required to be Converted and a FATCA Withholding is required to be made in respect of Ordinary Shares issued on Conversion of such Capital Note, the Ordinary Shares which the Capital Noteholder is obliged to accept will be issued to the Capital Noteholder only to the extent (if at all) that the issue is net of FATCA Withholding and the Issuer will issue the balance of the Ordinary Shares (if any) to the Trustee or an Eligible Nominee who will sell those Ordinary Shares and deal with any proceeds of their disposal in accordance with FATCA.

The issue of Ordinary Shares in accordance with paragraph (a)(i) or (ii) above (as applicable) will satisfy all obligations of the Issuer in connection with the Conversion, the Capital Note will be deemed to be Converted and will be dealt with in accordance with Condition 10 (Conversion mechanics) and, on and from the issue of Ordinary Shares, the rights of a Capital Noteholder the subject of paragraph (i) or (ii) above (as applicable) in respect of the Capital Note are limited to its rights in respect of the Ordinary Shares or the Attributable Proceeds as provided in those Conditions.

Without prejudice to the express obligations of the Issuer and the Trustee and the Eligible Nominee under this Condition 10.11 (Issue to the Trustee or an Eligible Nominee):

- (c) neither the Issuer nor the Trustee has no duty to enquire into the law of a Foreign Capital Noteholder's country of residence; and
- (d) neither the Issuer, the Trustee, nor any Eligible Nominee owes any obligations or duties to Capital Noteholders in relation to the price at which Ordinary Shares are sold or has any liability for any loss suffered by a Capital Noteholder as a result of the sale of Ordinary Shares where required by this Condition 10.11 (Issue to the Trustee or an Eligible Nominee).

If Conversion is occurring as a result of a Loss Absorption Event and has not been effected within 5 days after the Conversion Date for any reason (including an Inability Event), then Condition 7.5 (Write-Off following failure to Convert) will apply.

10.12 **Capital Noteholder acknowledgments relating to Conversion**

Each Capital Noteholder irrevocably:

- (a) upon Conversion of Capital Notes in accordance with these Conditions, consents to becoming a member of the Issuer and agrees to be bound by the constitution of the Issuer, in each case in respect of the Ordinary Shares issued on Conversion;
- (b) acknowledges and agrees that it is obliged to accept Ordinary Shares upon a Conversion notwithstanding anything that might otherwise affect a Conversion of Capital Notes including:
 - (i) any change in the financial position of the Issuer since the Issue Date;
 - (ii) any disruption to the market or potential market for the Ordinary Shares or to capital markets generally; or
 - (iii) any breach by the Issuer of any obligation in connection with the Capital Notes;
- (c) acknowledges and agrees that:
 - (i) where Condition 7.4 (Loss Absorption Event Conversion) applies:
 - (A) there are no other conditions to a Loss Absorption Event occurring as and when provided in Conditions 7.2 (Common Equity Trigger Event), 7.3 (Non-Viability Trigger Event) and 7.4 (Loss Absorption Event Conversion);
 - (B) Conversion must occur immediately on the Loss Absorption Event and that may result in disruption or failures in trading or dealings in the Capital Notes;
 - (C) it will not have any rights to vote or right of approval in respect of any Loss Absorption Event Conversion; and
 - (D) the Ordinary Shares issued on Loss Absorption Event Conversion may not be quoted at the time of issue, or at all;
 - (ii) the only conditions to a Mandatory Conversion are the Mandatory Conversion Conditions;
 - (iii) the only conditions to a Conversion under Condition 8 (Conversion on an Acquisition Event) or a Conversion under Condition 9 (Optional Conversion) are the conditions expressly applicable to such Conversion as provided in Condition 8 (Conversion on an Acquisition Event) and Condition 9 (Optional Conversion) respectively and no other conditions or events will affect Conversion;
 - (iv) Condition 7.5 (Write-Off on failure to Convert) is a fundamental term of the Capital Notes and where this applies, no other conditions or events will affect its operation; and

- (v) a Capital Noteholder has no right to request a Conversion, Redemption or Resale of any Capital Note or to determine whether (or in what combination) Capital Notes are Converted, Redeemed or Resold; and
- (d) agrees to provide to the Issuer any information necessary to give effect to a Conversion and, if applicable, to surrender any certificate relating to the relevant Capital Notes on the occurrence of the Conversion.

10.13 **Appointment of attorneys, agents and directions**

Each Capital Noteholder irrevocably:

- (a) appoints each of the Issuer, its respective Authorised Officers and any liquidator, administrator, statutory manager or other similar official of the Issuer or the Issuer (each an “**Appointed Person**”) severally to be the attorneys of the Capital Noteholder and the agents of the Capital Noteholder, with the power in the name and on behalf of the Capital Noteholder to:
 - (i) sign all documents, instruments or transfers or instructing CHES as may, in the opinion of the Appointed Person, be necessary or desirable to be done in order to give effect to, a Write-Off, purchase, Redemption, Resale or Conversion in accordance with these Conditions;
 - (ii) do all other things which an Appointed Person reasonably believes to be necessary or desirable to give effect to these Conditions; and
 - (iii) appoint in turn its own agent or delegate; and
- (b) authorises and directs the Issuer and/or the Registry to make such entries in the Register, including amendments and additions to the Register, which the Issuer and/or the Registry may consider necessary or desirable to record a Write-Off, purchase, Redemption, Resale or a Conversion in accordance with these Conditions.

The power of attorney given in this Condition 10.13 (Appointment of attorneys, agents and directions) is given for valuable consideration and to secure the performance by the Capital Noteholder of the Capital Noteholder's obligations under these Conditions and is irrevocable and will survive and not be affected by the subsequent disability or incapacity of the Capital Noteholder (or, if such Capital Noteholder is an entity, by its dissolution or termination). An Appointed Person will have no liability in respect of any acts duly performed in accordance with the power of attorney given in this Condition 10.13 (Appointment of attorneys, agents and directions).

11. **Redemption**

11.1 **Redemption**

Each Capital Note has no fixed maturity date and can only be redeemed by the Issuer in accordance with these Conditions at its Redemption Price or as otherwise specified in these Conditions.

11.2 **Early Redemption**

With the prior written approval of APRA, the Issuer may by notice to Capital Noteholders and the Registry (an **Early Redemption Notice**) elect to Redeem:

- (a) all or some of the Capital Notes on an Optional Redemption Date following the occurrence of a Tax Event or a Regulatory Event; or
- (b) all or some of the Capital Notes on a Scheduled Optional Redemption Date.

Capital Noteholders should not expect that APRA's approval will be given for any Redemption of Capital Notes or that the Issuer will redeem the Capital Notes under these Conditions.

11.3 **Early Redemption Notice**

An Early Redemption Notice must specify:

- (a) where Condition 11.2(a) (Early Redemption) applies, the details of the Tax Event or Regulatory Event to which the Early Redemption Notice relates;
- (b) the Capital Notes subject to redemption;
- (c) if less than all Capital Notes are subject to Redemption, the number and proportion of Capital Notes to be Redeemed;
- (d) whether any Distribution will be paid in respect of the Capital Notes to be Redeemed on the Early Redemption Date; and
- (e) the Early Redemption Date, which:
 - (i) in the case of a Scheduled Optional Redemption Date, is at least 10 Business Days (and no more than 60 Business Days) after the date the Early Redemption Notice is given; and
 - (ii) in the case of a Tax Event or Regulatory Event, is the next Optional Redemption Date after the date the Early Redemption Notice is given unless the Issuer determines an earlier Early Redemption Date (having regard to the best interests of the Capital Noteholders as a whole and the relevant event).
- (f) An Early Redemption Notice given under this Condition 11.3 is irrevocable and obliges the Issuer, subject to Condition 11.4, to redeem the relevant number of Capital Notes on the Early Redemption Date, by payment of the Face Value in respect of each Capital Note to be redeemed (together with any Distribution payable on the Capital Note to the Early Redemption Date).

11.4 **Effect of notice of Redemption**

Any notice of Redemption given under this Condition 11.4 is irrevocable and obliges the Issuer to redeem the Capital Notes at the time and in the manner specified in the notice.

11.5 **No Early Redemption by Capital Noteholders**

A Capital Noteholder cannot require the Issuer to redeem all or some of the Capital Notes held by that Capital Noteholder.

11.6 **Redemption**

Capital Notes will be redeemed by payment on the applicable Early Redemption Date of an amount equal to the Face Value to the Capital Noteholder.

11.7 **Effect of Redemption on Capital Noteholders**

On the Redemption Date the only right the Capital Noteholders will have in respect of Capital Notes will be to obtain the Face Value payable in accordance with these Conditions and any Distribution the Issuer has determined is payable on that date. Upon the Face Value being paid (or taken to be paid in accordance with Condition 16 (Payments)), all other rights conferred, or restrictions imposed, by Capital Notes will no longer have effect.

12. **Optional Resale**

12.1 **Optional Resale by the Issuer**

The Issuer may, with APRA's prior written approval, by notice to the Registry and the Capital Noteholders (an **Optional Resale Notice**), elect to Resell:

- (a) all or some Capital Notes on a Resale Date following the occurrence of a Tax Event or a Regulatory Event; or
- (b) all or some Capital Notes on a Scheduled Optional Resale Date.

Capital Noteholders should not expect that APRA's approval will be given for any Resale of Capital Notes under these Conditions.

12.2 **When an Optional Resale Notice may be given**

An Optional Resale Notice may be given:

- (a) in the case of Condition 12.1(a) (Optional Resale by the Issuer), on any day following the occurrence of the Tax Event or Regulatory Event (as applicable) provided that an Optional Resale Notice cannot be given in the period of 20 Business Days preceding (and not including) a Relevant Mandatory Conversion Date where the First Mandatory Conversion Condition has been met in respect of that Relevant Mandatory Conversion Date; and
- (b) in the case of Condition 12.1(b) (Optional Resale by the Issuer), the Scheduled Optional Resale Date is at least 10 Business Days (and no more than 60 Business Days) after the date the Early Redemption Notice is given.

Subject to Conditions 7.7 (Priority of Conversion obligations), 13.2 (Appointment of a Nominated Purchaser) and 13.5 (Effect of failure of a Nominate Purchaser to pay), an Optional Resale Notice once given is irrevocable.

12.3 **Contents of an Optional Resale Notice**

An Optional Resale Notice must specify:

- (a) in the case of Condition 12.1(a) (Optional Resale by the Issuer), the details of the Tax Event or Regulatory Event to which the Optional Resale Notice relates;
- (b) the date on which Resale is to occur (the Resale Date), which:
 - (i) in the case of a Tax Event or a Regulatory Event, is the next Distribution Payment Date, unless the Issuer determines an earlier Resale Date having regard to the best interests of the Capital Noteholders as a whole and the relevant event; or
 - (ii) in the case of Condition 12.1(b) (Optional Resale by the Issuer), the Scheduled Optional Resale Date;
- (c) if less than all Capital Notes are subject to Resale, the proportion of the Capital Notes that are to be Resold;
- (d) the identity of the Nominated Purchasers for that Resale and the Resale Price; and
- (e) whether any Distribution will be paid in respect of the Capital Notes to be Resold on the Resale Date.

13. **Resale mechanics**

13.1 **Resale mechanics**

If the Issuer elects to Resell its Capital Notes in accordance with these Conditions, the provisions of this Condition 13 (Resale mechanics) apply to that Resale.

13.2 **Appointment of a Nominated Purchaser**

The Issuer must appoint one or more Nominated Purchasers for the Resale on such terms as may be agreed between the Issuer and the Nominated Purchasers (and, to the extent any such conditions may cause the Capital Notes to cease to be Additional Tier 1 Capital, with the prior written approval of APRA) including:

- (a) as to the conditions of any Resale, the procedures for settlement of such Resale and the circumstances in which the Optional Resale Notice may be amended, modified, added to or restated;
- (b) as to the substitution of another entity (not being the Issuer or a Related Entity of the Issuer) as Nominated Purchaser if, for any reason, the Issuer is not satisfied that the Nominated Purchaser will perform its obligations under this Condition 13 (Resale mechanics); and
- (c) as to the terms (if any) on which any Capital Notes acquired by a Nominated Purchaser may be Redeemed, Converted or otherwise dealt with.

If the Issuer appoints more than one Nominated Purchaser in respect of a Resale, all or any of the Capital Notes held by a Capital Noteholder which are being Resold may be purchased by any one or any combination of the Nominated Purchasers, as determined by the Issuer for the Resale Price.

13.3 **Identity of a Nominated Purchaser**

The Issuer may not appoint itself or any Related Entity of it as a Nominated Purchaser.

13.4 **Irrevocable offer to sell Capital Notes**

Each Capital Noteholder on the Resale Date is taken irrevocably to offer to sell Capital Notes the subject of an Optional Resale Notice to the Nominated Purchaser or Nominated Purchasers on the Resale Date for the Resale Price.

13.5 **Effect of failure by Nominated Purchaser to pay**

If a Nominated Purchaser does not pay the Resale Price to the Capital Noteholders on the Resale Date (a **Defaulting Nominated Purchaser**):

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

14. **Purchase**

The Issuer or any Related Entity of the Issuer may at any time purchase the Capital Notes in the open market or otherwise and at any price or consideration, subject to the prior written approval of APRA.

Capital Noteholders should not expect that APRA's approval will be given for any purchase of Capital Notes under these Conditions.

15. Redemption, resale and purchase restrictions

- (a) The Issuer may only elect to Redeem, Resell or Purchase any Capital Notes in accordance with these Conditions, if APRA is satisfied that either:
- (i) before or concurrently with the resale, redemption or purchase, the Issuer replaces the Capital Notes the subject of the resale, redemption or purchase with a capital instrument which is of the same or better quality (for the purposes of APRA's prudential standards as they are applied to the Group at the relevant time) and the replacement of the relevant Capital Notes is done under conditions that are sustainable for the income capacity of the Issuer; or
 - (ii) the capital position of the Judo Level 1 Group and the Judo Level 2 Group remains adequate and that the Issuer does not have to replace the Capital Notes the subject of the resale, redemption or purchase,

and in each case, the Issuer meets the requirements relating to reductions in capital set out in APRA's Prudential Standard APS 110.

- (b) Without limiting paragraph (a) above, and notwithstanding any other Condition, the Issuer must not provide an Early Redemption Notice, Optional Resale Notice or purchase any Capital Notes if:
- (i) a Loss Absorption Event has occurred; or
 - (ii) a Loss Absorption Event will occur,

provided that in each case, if the Issuer has delivered an Early Redemption Notice or Optional Resale Notice in breach of this Condition, then such notice is deemed to be immediately, automatically and permanently revoked.

16. Payments

16.1 Payment of other amounts

Payments of other amounts in respect of a Capital Note will be made to each person registered as the Capital Noteholder of that Capital Note (or the first person to be registered in the case of joint holders) on the relevant date for payment.

16.2 Payment of Distributions

Payments of Distributions in respect of a Capital Note will be made to each person registered as at 5.00 pm on the Record Date as the Capital Noteholder of that Capital Note (or the first person to be registered in the case of joint holders).

16.3 Payments to accounts

Payments in respect of the Capital Note, will be made in Australian dollars, will be made in Australia and may be paid in any manner the Issuer decides, which may include any of the following:

- (a) by any method of crediting on the payment date, the amount due to the Capital Noteholder or Capital Noteholders as shown on the Register or to such person or place directed by that Capital Noteholder;

- (b) by crediting on the payment date, the amount then due under each Capital Note to an account in Australia previously notified by the Capital Noteholder to the Issuer and the Registry;
- (c) by sending on or before the payment date a cheque, through the post at the Capital Noteholder's risk directed to the physical or postal address of the Capital Noteholder as shown in the Register or, in the case of joint Capital Noteholders, to the physical or postal address notified to the Registry for receipt of such monies (and in default of notification, to the physical or postal address shown in the Register as the address of the joint Capital Noteholder first named in that Register);
- (d) by cheque sent through the post directed to such other physical or postal address as the Capital Noteholder or joint Capital Noteholders in writing direct.

16.4 **Payments by cheque**

If the Capital Noteholder has not notified the Registry of an account to which payments to it must be made by the close of business on the Record Date, payments in respect of the Capital Note will be made in Australia by cheque drawn on a bank in Australia sent by prepaid post on, or on the Business Day immediately before, the payment date, at the risk of the registered Capital Noteholder, to the Capital Noteholder (or to the first named joint holder of the Capital Note) at its address appearing in the Register at the close of business on the Record Date.

Cheques sent to the nominated address of a Capital Noteholder are taken to have been received by the Capital Noteholder on the payment date and, no further amount is payable by the Issuer in respect of the Capital Notes as a result of the Capital Noteholder not receiving payment on the due date.

16.5 **Payments and issue and delivery of securities subject to law**

All payments and issue and delivery of securities are subject to applicable law, but without prejudice to the provisions of Condition 17 (*Taxation*).

16.6 **Payments on Business Days**

Other than in respect of a Conversion to be made on a Mandatory Conversion Date, if a payment is due on a day which is not a Business Day then the due date for payment is adjusted in accordance with the Business Day Convention. The Capital Noteholder is not entitled to any additional payment in respect of such delay.

17. **Taxation**

17.1 **No set-off, netting, counterclaim or deductions**

Payments in respect of the Capital Notes are subject to fiscal and other laws, regulations and directives. Payments in respect of the Capital Notes must be made without (and are not subject to any) set-off, netting or counterclaim and made free and clear of, and without deduction for any Taxes of any nature now or later imposed, levied, collected, withheld or assessed, unless such withholding or deduction is required by law or Condition 17.2 (Deductions).

17.2 **Deductions**

- (a) The Issuer and any financial institutions or intermediaries through which payments are made or securities are issued and delivered, may withhold or deduct from any amount payable or securities issuable or deliverable to a Capital Noteholder the amount of any withholding, deduction or other tax, duty or levy

required by law to be withheld or deducted in respect of such payment, including, without limitation:

- (i) any withholding or deduction of taxes, interest or penalties required under FATCA (**FATCA Withholding**); or
 - (ii) where the Issuer and any financial institution or intermediary (as applicable) has reasonable grounds to suspect that a Capital Noteholder or a beneficial owner of any Capital Note (or any financial institution or intermediary through which the payment is to be made) may be subject to a FATCA Withholding in respect of the payment of that amount.
- (b) For the avoidance of doubt, any withholding or deduction required under FATCA is a tax, the withholding or deduction of which is required by applicable law for purposes of this Condition 17.2 (Deductions). In addition, where Ordinary Shares are required to be delivered to a Capital Noteholder upon a Conversion, and the Issuer is required or entitled to make a FATCA Withholding, then each of the Issuer is entitled to deal with any Ordinary Shares in accordance with these Conditions.
- (c) Each Capital Noteholder is deemed to authorise the Issuer and any financial institutions or intermediaries through which payments are made to deal with payments, securities to be issued or delivered and the Capital Noteholder's Capital Notes in accordance with FATCA, including remitting, or otherwise dealing with, any amounts or securities comprising a FATCA Withholding, or reporting payment or account or other information to the Internal Revenue Service of the United States of America or other relevant revenue or taxing authority in accordance with the applicable requirements under FATCA.
- (d) If any withholding or deduction is required by applicable law, the Issuer or the relevant financial institution or intermediary through which payments are made to deal with payments, securities to be issued or delivered (as applicable) must remit the full amount required to be withheld or deducted, or remit or otherwise deal with the total number of securities, to or as required by the relevant revenue or taxing authority within the time allowed for such remittance or dealing without incurring a penalty under the applicable law.
- (e) If:
- (i) a withholding or deduction is made in accordance with this Condition 17.2 (Deductions);
 - (ii) the amount of the withholding or deduction is, or number of or rights in respect of securities withheld are, accounted for by the Issuer or the relevant financial institution's or intermediary's (as applicable) to the relevant revenue or taxing authority; and
 - (iii) the balance of the amount payable has been paid, or the balance of the securities to be issued or delivered are issued or delivered, to the Capital Noteholder, then the Issuer's or the relevant financial institution's or intermediary's (as applicable) obligation to make the payment, or to issue or deliver securities to the Capital Noteholder is taken to have been satisfied in full.

18. **Time limit for claims**

A claim against the Issuer for a payment under a Capital Note is void unless made within 5 years (in the case of Distributions and other amounts) from the date on which payment first became due.

19. **No discharge by payment**

If any of the rights and claims of a Capital Noteholder against the Issuer is discharged by any payment whether voluntarily or in any other circumstances received from or on account of the Issuer (including by way of credit, set-off, counterclaim or otherwise howsoever) or from any Winding-Up of the Issuer in breach of Condition 20, that Capital Noteholder will immediately pay an amount equal to the amount of that discharge to the Issuer or, in the event of its Winding-Up, the liquidator (or other competent official) of the Issuer and until such time as payment is made will hold a sum equal to that amount on behalf of the Issuer and accordingly any such discharge will be taken not to have taken place.

20. **Subordination**

20.1 **Winding-Up**

- (a) In a Winding-Up of the Issuer, and subject to the terms of the Trust Deed and this Condition 20, a Capital Noteholder (and the Trustee) is entitled to claim for payment in cash of an amount equal to the Face Value. Any such claim is subordinated to the claims of holders of Senior Ranking Obligations of the Issuer, in that:
- (i) all claims of holders of Senior Ranking Obligations must be paid in full before the Capital Noteholder's claim is paid; and
 - (ii) until the claims of holders of Senior Ranking Obligations have been paid in full, the Capital Noteholder must not claim in the Winding-Up in competition with the holders of Senior Ranking Obligations so as to diminish any distribution, dividend or payment which, but for that claim, the holders of Senior Ranking Obligations would have been entitled to receive.
- (b) There is no limit on the amount of debt or other obligations which rank equally or ahead of the Capital Notes that may be incurred or assumed by the Issuer.
- (c) A Capital Noteholder does not have any right to set-off or net any amounts owing to it by the Issuer in respect of a Capital Note against any amount owing by that Capital Noteholder to the Issuer on any account.
- (d) The Issuer does not have any right to set-off or net any amounts owing to it by a Capital Noteholder on any account against any amount owing by the Issuer to that Capital Noteholder on any account.

20.2 **Winding-Up of Issuer**

Subject to Condition 20.1(a):

- (a) if an order by a court of competent jurisdiction is made (and the order is not successfully appealed within 21 days) or an effective resolution is passed for the Winding-Up of the Issuer in Australia, a Capital Noteholder of Capital Notes may, subject to Conditions 7.4 (Loss Absorption Event Conversion) and 7.5 (Write-Off following failure to Convert), by notice to the Registry, declare any such Capital Notes to be due and payable and may prove or claim in that Winding-Up of the

Issuer in Australia. The Capital Noteholder of Capital Notes may in that Winding-Up of the Issuer in Australia prove for the Face Value owing to that Capital Noteholder under the Capital Notes;

- (b) no remedy of the Capital Noteholders of Capital Notes against the Issuer other than proving or claiming in that Winding-Up of the Issuer in Australia, will be available to the Capital Noteholders of Capital Notes as a consequence of that Winding-Up of the Issuer in Australia;
- (c) in a Winding-Up of the Issuer in Australia, a Capital Note confers upon the Capital Noteholder (and the Trustee), subject to Conditions 7.4 (Loss Absorption Event Conversion) and 7.5 (Write-Off following failure to Convert), the right to payment in cash of the Face Value on a subordinated basis in accordance with Condition 3.3 (Subordination in a Winding-Up), but no further or other claim on the Issuer in the Winding-Up of the Issuer in Australia; and
- (d) nothing in this Condition 20.2 (Winding-Up of Issuer):
 - (i) creates a charge or security interest on or over any right of the Capital Noteholder or the Trustee; or
 - (ii) requires the consent of any Senior Creditor to any amendment of these Conditions made in accordance with Condition 22 (Variation).

20.3 **Agreements and Acknowledgements of Capital Noteholders**

Each Capital Noteholder (and the Trustee in its capacity as trustee for the Capital Noteholders) irrevocably acknowledges and agrees that:

- (a) **(debt subordination)** this Condition 20 is a debt subordination for the purposes of section 563C of the Corporations Act;
- (b) **(Preference Shares)** that it does not have, and waives to the maximum extent permitted by law, any entitlement to interest under section 563B of the Corporations Act to the extent that a holder of a Preference Share would not be entitled to such interest;
- (c) **(voting)** it must not exercise its voting rights as an unsecured creditor in the Winding-Up or administration of the Issuer to defeat the subordination in this Condition 20;
- (d) **(not otherwise affected)** the debt subordination effected by this Condition 20 is not affected by any act or omission of the Issuer or a holder of a Senior Ranking Obligation which might otherwise affect it at law or in equity; and
- (e) **(clawback)** it must pay or deliver to the liquidator any amount or asset received on account of its claim in the Winding-Up of the Issuer in connection with a Capital Note in excess of its entitlement under Condition 20 above.

20.4 **No consent of holders of Senior Ranking Obligations**

Nothing in this Condition 20 (Subordination) is taken to require the consent of any holder of a Senior Ranking Obligation to any amendment of these Conditions.

21. **Voting, enforcement and consent**

21.1 **Enforcement by Trustee**

Subject to Condition 21.2 (Capital Noteholder's right to take action), only the Trustee may enforce the provisions of the Trust Deed or these Conditions. The Trustee is not

bound to take any action under these Conditions or the Trust Deed to enforce the obligations of the Issuer in respect of the Capital Notes or any other proceedings or action pursuant to or in connection with the Trust Deed or the Capital Notes unless:

- (a) it has been directed by the Capital Noteholders (by way of Special Resolution) or so requested in writing by the Capital Noteholders of at least 25% of the aggregate Face Value of all Capital Notes then Outstanding; and
- (b) it is indemnified in accordance with clause 11.4(b) of the Trust Deed.

21.2 **Capital Noteholder's right to take action**

No Capital Noteholder is entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Capital Note or the Trust Deed (including by way of proving for the Redemption Price in a Winding-Up of the Issuer) unless the Trustee, having become bound to proceed, fails to do so within 14 days and the failure is continuing, in which case any Capital Noteholder may itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so.

21.3 **Requirement for APRA approval**

Any resolution which may affect the eligibility of the Capital Notes as Additional Tier 1 Capital cannot be approved by Capital Noteholders without the prior written approval of APRA.

22. **Variation**

22.1 **Variation with consent**

Unless expressly provided otherwise in these Conditions or the Trust Deed, or unless Condition 22.2 (*Variation without consent*) applies, any Condition may be varied by the Issuer with the approval of the Trustee (such approval not to be unreasonably withheld or delayed) in accordance with the Meetings Provisions, provided that the Issuer has obtained the prior written approval of APRA where the amendments may affect the regulatory capital treatment of the Capital Notes as Relevant Capital Instruments.

22.2 **Variation without consent**

- (a) Subject to complying with the Corporations Act and all other applicable laws and directives, any Condition or the Trust Deed may be amended by the Issuer without the consent of the Trustee or the Capital Noteholders if the Issuer is of the opinion that the amendment:
 - (i) is of a formal, minor or technical nature;
 - (ii) is made to correct a manifest error;
 - (iii) is made to cure any ambiguity or correct or supplement any defective or inconsistent provision;
 - (iv) is necessary or expedient for the purpose of enabling the Capital Notes to be listed or to remain listed on a stock exchange or lodged in a clearing system or to remain lodged in a clearing system or to be offered for sale or for subscription under the laws for the time being in force in any place;
 - (v) is necessary or expedient for the purpose of complying with the provisions of any statute, the requirements of any statutory authority, the ASX Listing Rules or the listing or quotation requirements of any securities exchange

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

- (vi) is necessary and appropriate to effect the substitution under Condition 25 (Substitution);
- (vii) is made to amend any date or time period stated, required or permitted in connection with any Conversion, Redemption or Resale (including, without limitation, when the proceeds of Redemption are to be reinvested in a new security to be issued by the Issuer or a member of the Group);
- (viii) is made to:
 - (A) amend the terms of the Capital Notes to align them with any Relevant Tier 1 Capital Instruments issued after the Issue Date; or
 - (B) amend the definition of Relevant Tier 1 Capital Instruments on account of the issue after the Issue Date of capital instruments of any member of the Group;
- (ix) is not materially prejudicial to the interests of the Capital Noteholders as a whole;
- (x) is to comply with mandatory provisions of the law of the jurisdiction in which the Issuer is incorporated; or
- (xi) only applies to Capital Notes issued by it after the date of amendment,

provided that, notwithstanding anything else in this Condition 22.2, any amendments which may have an adverse effect on the Trustee's personal rights and obligations under the Conditions or the Trust Deed must first be approved by the Trustee in writing (such approval not to be unreasonably withheld or delayed). In considering whether an amendment is materially prejudicial to Capital Noteholders as a whole, the Issuer need not take into account the taxation and regulatory capital consequences to Capital Noteholders (or any class of Capital Noteholders) or other special consequences which are personal to a Capital Noteholder (or any class of Capital Noteholders).

- (b) The Issuer must obtain the prior written approval of APRA where the amendments may affect the regulatory capital treatment of the Capital Notes as Relevant Capital Instruments.
- (c) Subject to complying with all applicable laws and with APRA's prior written approval where required in accordance with the Conditions, the Issuer may without the authority, assent or approval of the Capital Noteholders, amend these Conditions if the Issuer is of the reasonable opinion that the amendment is necessary and appropriate to effect the substitution of an Approved NOHC as issuer of ordinary shares on Conversion in the manner contemplated by these Conditions including without limitation amendments and additions to effect a substitution in accordance with Condition 25 (Substitution).
- (d) The Issuer must give the Trustee notice of any proposed amendment under Condition 22.2(a)(ix) (**Proposed Amendment Notice**) at least 35 days (or such lesser period as may be acceptable to the Trustee (acting reasonably)) prior to making the amendment. If the Trustee (acting reasonably) has notified the Issuer that it has determined that an amendment proposed to be made by the Issuer under Condition 22.2(a)(ix) (taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment) may be

materially adverse to the interests of the Capital Noteholders as a whole, which notice shall be given as soon as practicable and in any event within 35 days of the date of the Proposed Amendment Notice, the Issuer may not make that amendment unless an Ordinary Resolution is passed in favour of the amendment.

22.3 Notification of amendment to APRA

The Issuer will promptly notify APRA of any amendments made in accordance with this Condition 22 (Variation).

22.4 Requirement for APRA approval

A requirement in this Condition 22 (Variation) for an amendment to be made with APRA's prior written approval applies only where the amendment may affect the eligibility of Capital Notes as Additional Tier 1 Capital.

23. Further issues and other rights

Each of the following is expressly permitted and authorised by these Conditions:

- (a) the allotment or issue of notes, preference shares or other securities, or the conversion or exchange of existing securities into preference shares or other securities, ranking equally with, in priority to or junior to, or having different rights from, the Capital Notes then on issue;
- (b) a redemption, conversion, exchange, buy-back or return or distribution of capital in respect of any share capital (except as provided by Condition 5.9 (Restrictions in the case of non-payment)) or any other securities issued by the Issuer whether ranking behind, equally with, or in priority to, the Capital Notes; and
- (c) the incurring or guaranteeing by the Issuer of any indebtedness upon such terms as the Issuer thinks fit in its sole discretion.

24. No other rights

Before Conversion, the Capital Notes confer no rights on Capital Noteholders to:

- (a) attend or vote at any meeting of the members of the Issuer;
- (b) subscribe for securities or to participate in any bonus issues of securities of the Issuer or any other member of the Group;
- (c) participate in the issue of any other securities of the Issuer and has no claim against the Issuer other than as expressly set out in these Conditions or in respect of any other member of the Group; or
- (d) otherwise participate in the profits or property of the Issuer or any other member of the Group, except by receiving payments as set out in these Conditions.

No Capital Noteholder of the Capital Notes has any claim against the Issuer or any other member of the Group other than as expressly provided for in these Conditions.

25. Substitution

25.1 Substitution of Approved NOHC as issuer of Ordinary Shares

If:

- (a) the Issuer proposes to implement a NOHC Event involving an Approved NOHC; and
- (b) the Approved NOHC agrees for the benefit of Capital Noteholders:
 - (i) to deliver fully paid ordinary shares in its capital under all circumstances when the Issuer (or the NOHC, as applicable) would otherwise have been required to deliver ordinary shares and upon the occurrence of an Acquisition Event with respect to the Approved NOHC, subject to the same terms and conditions as set out in these Conditions (with all necessary modifications); and
 - (ii) to use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of all ordinary shares in the capital of the Approved NOHC issued under these Conditions (with all necessary modifications) on the securities exchange on which the other ordinary shares in the capital of the Approved NOHC are quoted at the time of a Conversion,

the Issuer may give a notice (an **Approved NOHC Substitution Notice**) to the Capital Noteholders and the Trustee (which, if given, must be given as soon as practicable before the NOHC Event and in any event no later than 10 Business Days before the NOHC Event occurs) specifying the amendments to these Conditions which will be made in accordance with Condition 25.2 (Amendment without consent for substitution of an Approved NOHC) to effect the substitution of an Approved NOHC as the issuer of ordinary shares on Conversion (the **Approved NOHC Substitution Terms**). An Approved NOHC Substitution Notice, once given, is irrevocable. If the Issuer gives an Approved NOHC Substitution Notice to Capital Noteholders and the Trustee in accordance with Condition 25.2 (Amendment without consent for substitution of an Approved NOHC), the Approved NOHC Substitution Terms will have effect on and from the date specified in the Approved NOHC Substitution Notice. No proposal to implement a NOHC prevents, impedes or delays a Conversion required on account of a Loss Absorption Event.

25.2 **Amendment without consent for substitution of an Approved NOHC**

Subject to complying with all applicable laws and with APRA's prior written approval, if the circumstances described in Condition 25.1 (Substitution of Approved NOHC as issuer of ordinary shares) applies, without the authority, assent or approval of the Capital Noteholders, the Issuer may give an Approved NOHC Substitution Notice which:

- (a) amends the definition of "Conversion" such that, unless APRA otherwise agrees, on the date Capital Notes are to be Converted:
 - (i) each Capital Note that is being Converted will be automatically transferred by each Capital Noteholder free from encumbrance to the Approved NOHC (or another member of the Group which is a holding company of the Issuer) (the **Transferee**) on the date the Conversion is to occur;
 - (ii) each Capital Noteholder (or in the circumstances contemplated in Condition 10.11 (Issue to the Trustee or an Eligible Nominee) the Trustee or Eligible Nominee) will be issued a number of ordinary shares in the capital of the Approved NOHC equal to the Conversion Number; and
 - (iii) as between the Issuer and the Transferee, each Capital Note held by the Transferee as a result of the transfer will be automatically Converted into ordinary shares in the Approved NOHC, in a number such that the total number of ordinary shares held by the Transferee increases by the number which equals the number of ordinary shares in the capital of the

Approved NOHC issued by the Approved NOHC to Capital Noteholders on Conversion; and

- (b) makes such other amendments as in the Issuer's reasonable opinion are necessary and appropriate to effect the substitution of an Approved NOHC as the provider of the ordinary shares on Conversion in the manner contemplated by these Conditions, including without limitation:
- (i) amendments and additions to the definition of "Group", "Acquisition Event", "Common Equity Trigger Event", "Non-Viability Trigger Event", "Loss Absorption Event", "Regulatory Event", "Tax Event" and "Mandatory Conversion";
 - (ii) where the terms upon which the Approved NOHC acquires the Issuer are such that the number of ordinary shares in the capital of the Approved NOHC on issue immediately after the substitution differs from the number of ordinary shares on issue immediately before the substitution (not involving any cash payment, or other distribution (or compensation) to or by the holders of any such shares), an adjustment to any relevant VWAP or Issue Date VWAP consistent with the principles of adjustment set out in Condition 10 (Conversion mechanics);
 - (iii) amendments to the mechanics for adjusting the Conversion Number; and
 - (iv) any term defining the rights of Capital Noteholders if the Conversion is not effected which is appropriate for the Capital Notes to remain as Tier 1 Capital.

25.3 **Further substitutions**

After a substitution under Condition 25.1 (Substitution of Approved NOHC as issuer of ordinary shares), the Approved NOHC may, without the consent of the Capital Noteholders, effect a further substitution in accordance with Condition 25.1 (Substitution of Approved NOHC as issuer of ordinary shares) as if references to "Issuer" were to the "Approved NOHC" and any other necessary amendments to that Condition.

25.4 **Notice to Capital Noteholders**

The Issuer or the Approved NOHC must notify the Trustee, the Registry and the Capital Noteholders of the particulars of any substitution according to Condition 25.1 (Substitution of Approved NOHC as issuer of ordinary shares) or Condition 25.3 (Further substitutions) in writing as soon as practicable after the substitution.

25.5 **Acknowledgement of Capital Noteholders**

Each Capital Noteholder irrevocably acknowledges and agrees that an Approved NOHC may in accordance with these Conditions be substituted for the Issuer as issuer of the Ordinary Shares on Conversion and that if such a substitution is effected, the Capital Noteholder is obliged to accept ordinary shares in that Approved NOHC on a Conversion, and will not receive Ordinary Shares.

26. **Notices**

All notices and other communications required to be given to the Capital Noteholders in accordance with these Conditions must also be provided to the Trustee.

27. **Governing law and jurisdiction**

27.1 **Governing law**

The Capital Notes are governed by the law in force in New South Wales, Australia.

27.2 **Jurisdiction**

The Issuer irrevocably and unconditionally submits, and each Capital Noteholder is taken to have submitted, to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. The Issuer waives any right it has to object to any suit, action or proceedings (**Proceedings**) being brought in those courts including by claiming that the Proceedings have been brought in an inconvenient forum or that those courts do not have jurisdiction.

Schedule 2

Meeting Provisions

1. Definitions

In this schedule, unless the context requires otherwise:

"Holder" means the person or persons named in the Register as a holder of a Capital Note 1 Business Day prior to the date that the notice of the meeting is given.

"Representative" means:

- (a) in relation to a Holder, a person appointed as a proxy for that Holder pursuant to clause 3.3 of this schedule; and
- (b) without limiting the generality of paragraph (a), in relation to a Holder that is a body corporate, a person appointed as a representative of that Holder pursuant to clause 3.4 of this schedule.

"Special Resolution" has the meaning given to it in the Terms.

2. Calling of meetings

2.1 Who may call a meeting

- (a) **(Issuer and Trustee)**: The Issuer or the Trustee may at any time call a meeting of Holders.
- (b) **(meeting on request by Holders)**: The Issuer must call a meeting of Holders if Holders who together hold 10% or more of the Face Value of the Notes outstanding request the Issuer to do so.
- (c) **(When otherwise required by law)**: The Issuer must call a meeting of Holders whenever required to do so by law.
- (d) **(Winding-Up)**: If a Winding-Up occurs, the Trustee must, upon becoming aware of the Winding-Up, call a meeting as soon as reasonably practicable.
- (e) **(Corporations Act)**: a meeting of Holders may be called under Part 2L.5 of the Corporations Act.

2.2 Method of calling a meeting

- (a) **(by notice)**: The Issuer or the Trustee may call a meeting of Holders by notice given:
 - (i) to the other in accordance with this document at least 28 days before the date of the meeting exclusive of the day on which the notice is served or deemed to be served and of the day on which it is given; and
 - (ii) each Holder at least 28 days before the date of the meeting exclusive of the day on which the notice is served or deemed to be served and of the day on which it is given:
 - (A) by posting it to the Holder's address as recorded on the Register on the Business Day prior to the date that the notice is given;
 - (B) by providing it to the Holder personally;

- (C) by sending it to the electronic address nominated by the Holder;
- (D) by publishing an advertisement in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia; or
- (E) if delivered to CHES (or any other applicable securities clearance and settlement system through which the Notes are cleared and/or settled) for communication by them to persons shown in their respective records as having interests therein.

If the notice is posted to the Holder, the Holder is taken to have received it 3 days after it is posted, or if the notice is sent electronically, the Holder is taken to have received it on the Business Day after it is sent.

- (b) **(contents of notice):** A notice under clause 2.2(a) of this schedule must:
 - (i) state the date, commencement time and place of the meeting;
 - (ii) describe the general nature of the business to be considered and, where a resolution to amend the Terms is proposed, must specify the terms of the proposed amendment (but, in other cases, not specify the precise terms of the resolutions proposed); and
 - (iii) provide that Holders may attend personally or through a Representative appointed and notified to the Trustee.
- (c) **(notice to the Issuer's auditor):** If the Issuer is required to call a meeting in order to :
 - (i) consider the financial statements that were laid before the last AGM of the Issuer; and/or
 - (ii) give the Trustee directions in relation to the exercise of any of its powers
 then it must also give prior notice of the meeting to the Issuer's auditor.

2.3 **Corporations Act**

The Issuer and the Trustee must comply with the requirements of the Corporations Act when calling meetings.

2.4 **Failure to notify Holder need not invalidate a meeting**

Any:

- (a) **(Accidental omission to give notice):** accidental omission to give notice to, or the non-receipt of notice by, any person other than the Issuer or the Trustee; or
- (b) **(Change in the identity of the Holders):** any change in the identity of the Holders from that recorded on the Register on the Business Day before the notice of meeting is given, will not invalidate a meeting nor any resolution passed at that meeting.

2.5 **Consequences of failure to notify the Issuer or the Trustee**

An omission to give notice to, or the non-receipt of notice by, the Trustee or the Issuer under clause 2.2(a)(i) of this schedule, within the period specified in that clause, invalidates a meeting unless:

- (a) **(Recipient has refused delivery)**: the Trustee or the Issuer (as the case may be) refuses to accept delivery of that notice; or
- (b) **(Recipient waives compliance)**: the Trustee or the Issuer (as the case may be), by notice to the other, waives its right to compliance with clause 2.2(a)(i).

2.6 **Meeting in more than one place**

A meeting of Holders may, if the Trustee so determines, be held at two or more meeting venues linked together by audio-visual communication equipment which, by itself or in conjunction with other arrangements:

- (a) **(Participate in proceedings)**: gives the Holders in the separate venues a reasonable opportunity to participate in the proceedings;
- (b) **(Chairperson aware of proceedings)**: enables the chairperson to be aware of proceedings in each such venue; and
- (c) **(Vote)**: enables the Holders in each such venue to vote on a show of hands and on a poll.

A Holder at one of the separate meeting venues is taken to be present at the meeting of the Holders and is entitled to exercise all rights which a Holder has under the this document and this schedule in relation to a meeting of Holders. Where a meeting of Holders is held at two or more meeting venues pursuant to this clause that meeting will be regarded as having been held at the venue determined by the chairperson of the meeting.

3. **Attendance at meetings**

3.1 **By Issuer and Trustee**

The Issuer and the Trustee (in each case, personally or through their respective representatives and financial and legal advisers) may attend and speak at any meeting of Holders.

3.2 **By Holders**

A Holder (whether it received notice of the meeting or not) may attend, and speak and vote at, a meeting either personally or through its Representative.

3.3 **Appointment of proxy**

A Holder (whether a body corporate or not) by an instrument may appoint a proxy to attend, speak and vote on the Holder's behalf at a specified meeting or at meetings generally of Holders.

3.4 **Appointment of Representative by body corporate**

A Holder that is a body corporate, may authorise a person to act as its Representative at a specified meeting or at meetings generally of Holders.

3.5 **Form of Instrument appointing Representative**

An instrument appointing a Representative must be:

- (a) **(Approved form)**: in a form acceptable to the Trustee or the Issuer, as the case may be;
- (b) **(Lodged with Trustee)**: lodged at such places in New South Wales as the Trustee or the Issuer (with the approval of the Trustee) direct in the notice convening the meeting (or if no such place is appointed then with the Trustee at

least 48 hours before the meeting, adjourned meeting or taking of a poll at which it is to be relied on; and

- (c) **(Proof of attorney's power)**: in the case of an instrument appointing a proxy which is under the hand of an attorney, accompanied by proof acceptable to the Trustee of the attorney's authority.

3.6 **Waive requirements**

The Trustee or the Issuer (with the approval of the Trustee) may in its sole discretion waive any of the requirements in relation to the appointment of a Representative and approve as valid any instrument appointing a Representative despite that it does not comply with those requirements or is received or produced at the wrong place or the wrong time.

3.7 **Appointment applies for meeting**

Unless the instrument provides otherwise, an instrument appointing a Representative is valid for the meeting to which it relates and for any adjournment of that meeting.

3.8 **Qualifications of Representative**

A Representative need not be a Holder. The Trustee and any officer of the Trustee may be appointed a Representative.

3.9 **Continuing appointment**

Action taken at a meeting, adjourned meeting or on the taking of a poll by a representative appointed and notified to the Trustee is valid despite:

- (a) **(Death etc)**: any death, unsoundness of mind or dissolution of the Holder;
- (b) **(Revocation)**: any revocation of the instrument of appointment (or of the authority under which it was executed); or
- (c) **(Transfer)**: any transfer of the Note in respect of which the appointment was made, unless the Issuer or the Trustee has received notice of this at its registered office before the meeting or adjourned meeting commences.

3.10 **Rights of Representative**

A Representative has the right to demand or join in demanding a poll and (except and to the extent to which the Representative is specially directed to vote for or against any proposal) has power generally to act at a meeting for the Holder concerned.

3.11 **Voting by person of unsound mind**

A Holder of unsound mind or in respect of whom an order has been made by any court having jurisdiction in respect of mental health may vote whether on a show of hands or on a poll by his committee or trustee or other person who properly has the management of the Holder's estate.

3.12 **Objection to voter's qualification**

An objection may only be raised to the entitlement of a person to attend or vote at a meeting of Holders at the meeting in question (or adjournment of it). Any such objection is to be considered by the chairperson of the meeting whose decision will be final and conclusive. The chairperson may consult with any representative of the Issuer and the Trustee present at the meeting.

4. Procedure at meetings

4.1 Quorum

- (a) **(No business unless quorum present at commencement)**: No business may be transacted at a meeting of Holders unless a quorum is present at the time the meeting proceeds to business.
- (b) **(Calculation of quorum)**: The quorum for a meeting of Holders, which is to be calculated by reference to Holders who:
- (i) are present in person or by Representative (even if by the same Representative); and
 - (ii) are entitled to vote at that meeting,
- is two Holders holding in aggregate Capital Notes representing at least 10% of the aggregate Face Value of the Capital Notes outstanding when the meeting proceeds to business.
- (c) **(Quorum not present)**: If a quorum is not present within 15 minutes of the announced commencement time for a meeting, the meeting:
- (i) if convened pursuant to clause 2.1(b) of this schedule, is dissolved; or
 - (ii) in any other case, stands adjourned to such day, and to such time and place, as the chairperson determines (and at such meeting the Holders present and entitled to vote are a quorum for the transaction of business, regardless of the percentage of the Face Value of the Capital Notes held by them).

4.2 Chairperson

- (a) **(Appointment by Trustee)**: The Trustee may appoint a person to be chairperson at a meeting of Holders.
- (b) **(Ordinary Resolution in default of Trustee)**: If the Trustee does not appoint a person to be chairperson of a meeting, or the person is not present within 15 minutes of the announced commencement time for a meeting or is unwilling to act, the Holders must appoint a person by Ordinary Resolution to be chairperson of that meeting.
- (c) **(Qualifications of chairperson)**: The chairperson:
- (i) need not be a Holder; and
 - (ii) may be an officer of the Issuer or the Trustee.
- (d) **(Casting Vote)**: The chairperson has a casting vote, both on a show of hands and on a poll.

4.3 Voting procedure

- (a) **(In the first instance by a show of hands)**: Every question submitted to a meeting must be decided in the first instance by a show of hands of Holders or their Representatives. Unless a poll is demanded in accordance with this clause 4.3, a declaration by the chairperson that a resolution has been carried, carried by a particular majority, lost or not carried is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

- (b) **(Call for a Poll):** Each of:
 - (i) the chairperson;
 - (ii) the Issuer or the Trustee; or
 - (iii) a Holder or Holders holding in aggregate at least 5 per cent. of the Face Value of the Notes outstanding when the meeting proceeds to business (or its or their Representatives), may call for a poll on a resolution before or on the declaration of the result of the show of hands. A demand for a poll may be withdrawn.
- (c) **(Taking of a Poll):** A poll on the election of a chairperson or a question of adjournment must be taken immediately. A poll on other matters must be taken in the manner, at the time and in the place determined by the chairperson. The result of a poll is to be taken to be the resolution of the meeting at which the poll was demanded, passed on the day the poll is taken.
- (d) **(Continuation of business):** The demand for a poll may not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) **(Number of votes):** In the case of a vote:
 - (i) on a show of hands, each person present and entitled to vote has one vote; and
 - (ii) on a poll, each person who is present and entitled to vote has one vote in respect of each Note in respect of which that person is the Holder or in respect of which that person is otherwise entitled to vote.

Without prejudice to the obligations (if any) imposed by a Holder on its Representative, any person entitled to more than one vote need not exercise all those votes in the same way.

- (f) **(Vote of joint Holders):** If a Note is held by joint Holders, only the vote of the most senior such person who tenders a vote (whether in person or by Representative) may be accepted as a vote, to the exclusion of any attempted votes of the other joint Holders of that Note (which may not be regarded as valid votes for any purpose). For this purpose, seniority is determined by the order in which names are recorded in the Register in respect of that Note.

4.4 Resolutions

- (a) **(Ordinary Resolutions):** Except to the extent provided in this document, the Terms or the Corporations Act, a resolution may be passed as an Ordinary Resolution of the Holders.
- (b) **(Special Resolutions):** A resolution which if passed would:
 - (i) release any party from any liability to the Holders;
 - (ii) adversely affect the rights of any Holder;
 - (iii) require the resignation or removal of the Trustee; or
 - (iv) approve an amendment to the Terms in accordance with the Terms, requires a Special Resolution.

- (c) **(Resolutions bind Holders)**: A resolution passed at a meeting of Holders convened and held in accordance with this schedule binds all Holders whether present at the meeting or not.
- (d) **(Declaration of result conclusive)**: At a meeting of Holders, a declaration by the chairperson that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.
- (e) **(Written Resolutions)**: Despite the other provisions in this schedule, an Ordinary Resolution and a Special Resolution may be passed, without any meeting or previous notice being required, by an instrument or instruments in writing signed by Holders holding the relevant proportion of the Moneys Owing to pass the relevant resolution and any such instrument is effective upon presentation to the Issuer for entry in the minutes referred to in clause 5 of this schedule.

4.5 **Adjournment**

- (a) **(Who may adjourn)**: Each of:
 - (i) the chairperson;
 - (ii) the Trustee; and
 - (iii) the Holders (or their Representatives) by Ordinary Resolution,may adjourn a meeting (including an adjourned meeting) to such time and place as the Trustee or that resolution (as appropriate) determines. The only business which may be transacted at an adjourned meeting is business which might lawfully have been transacted at the meeting from which the adjournment took place.
- (b) It is not necessary to give notice of an adjourned meeting.

4.6 **Court order**

A meeting of Holders ordered to be held by a court will be conducted, in accordance with the provisions of this document, unless the court otherwise directs.

5. **General**

5.1 **Minutes**

Minutes of all resolutions and proceedings at every meeting must be made and duly entered in the books to be provided for that purpose by the Trustee. Any such minutes if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings transacted or by the chairperson of the next succeeding meeting (if any) of Holders, are conclusive evidence of the matters stated in them. Every such meeting in respect of the proceedings of which minutes have been made and signed are deemed to have been duly convened and held and all resolutions passed and proceedings conducted at such meetings are deemed to have been duly passed and conducted.

5.2 **Further procedures for meetings**

Subject to all other provisions of this document and this schedule, the Trustee may without the consent of the Holders prescribe such further regulations regarding the holding of meetings of the Holders and attendance and voting at such meetings as the Trustee may in its sole discretion determine including particularly (but without prejudice

to the generality of the foregoing) such regulations and requirements as the Trustee thinks reasonable:

- (a) (Regarding entitlement to vote): so as to satisfy itself that persons who purport to attend or vote at any meeting of Holders are entitled to do so in accordance with this schedule and the other provisions of this document; and
- (b) (Regarding representatives): as to the form of appointment of a Representative