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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): February 7, 2012**

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**LEGEND INTERNATIONAL HOLDINGS, INC**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**000-32551**  
(Commission  
File Number)

**23-3067904**  
(I.R.S. Employer  
Identification No.)

**Level 8, 580 St Kilda Road, Melbourne, Victoria Australia 3004**  
(Address of Principal Executive Office) (Zip Code)

**61-3-8532-2866**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01: Entry into a Material Definitive Agreement**

Effective as of February 7, 2012, Legend International Holdings, Inc., a Delaware corporation (the “Company”) entered into a convertible note purchase agreement (the “Convertible Note Agreement”), by and among the Company, its wholly-owned subsidiary, Paradise Phosphate Pty Limited (“Paradise”) and two Australian investment funds, pursuant to which Paradise shall issue up to \$7.5 million in principal amount of notes due 12 months from the issue date (the “Notes”), which shall bear interest at a nominal rate of 15% per annum (the actual amount of effective interest depends upon the event that triggers repayment) and shall in circumstances described in the agreement be convertible into ordinary shares of Paradise at a conversion rate of \$0.50 per share (subject to adjustment pursuant to a formula set forth in the Note Agreement). The description of the transactions that is contained in this Form 8-K is qualified in its entirety to the text of the Convertible Note Agreement and other transaction documents that are filed as exhibits hereto.

### Asset Sale Agreement

As a key requirement to obtain the debt funding referred to in the Convertible Note Agreement described herein, Legend has agreed to transfer all its right, title and interest in its Phosphate Tenements and related rights and intellectual property (“**the Phosphate Assets**”) to Paradise in exchange for all of the issued and outstanding shares of Paradise.

### Convertible Note Agreement

This is the key document in respect of the provision of the debt funding by the lenders.

In summary:

The lenders will provide \$7.5 million to Paradise repayable 12 months from the completion date of the agreement.

If, within 12 months of the completion date of the agreement Paradise conducts a public offering of securities in Australia to raise at least \$20 - \$30 million (the minimum alters depending upon the price of the securities offered) and lists those securities on the Australian Securities Exchange, then the lenders debt converts automatically to shares in Paradise in accordance with the formula provided in the agreement.

The loan funds will become, in effect, immediately repayable to the lenders if any of the listed default events occur (for e.g. a breach of the agreement or Paradise is placed under external administration). In key circumstances, (e.g. a breach of the agreement), there is, in effect, a right to pay out the liability within 45 days before the lenders can act to recover their monies by recourse to their security over the Phosphate Assets.

If all or substantially all of the Phosphate Assets are to be sold, or Legend is to sell shares in Paradise (prior to a public offering) or if no public offering occurs within 12 months of the completion date of the agreement, then this will trigger an obligation to pay out the lenders with a similar benefit calculated as to what the lenders would have received if a public offering had occurred.

Legend’s liability to the lenders is limited to the Phosphate Assets (so long as it remains the legal owner pending finalisation of the transfer to Paradise) and the assets of Paradise itself. Legend’s other assets are not available to the lenders to satisfy any liability to the lenders.

### Mining Mortgage

The phosphate project has two granted mine leases, ML 90190 and ML 90191. These will be covered by the Mining Mortgage and give the lenders (where it becomes entitled to) the right to take possession of and sell/transfer those mine leases to satisfy any monies owed to them but unpaid in accordance with the terms of the Convertible Note Agreement.

### Security Agreement

This agreement provides, in effect a charge over these mining tenements and associated rights in favour of the lenders which can be used to satisfy any liability owed to them but not paid in accordance with the terms of the Convertible Note Agreement.

### Share Mortgage

The lenders have also been granted a mortgage over the shares Legend holds in Paradise to give them the ability to recover their monies in the event of default.

### Security Trust Deed

As there are two lenders they have appointed (and Legend and Paradise have agreed to them so appointing) pursuant to this Deed, a trustee to act on their behalf should they be required to enforce any of the securities.

### Paradise Mortgage

Upon the transfer of the two mining leases being finalised the Mining Mortgage and Security Agreement granted by Legend in respect of the Phosphate Assets will cease to be of any value to the Lenders. If applicable, at that time the Legend Mortgage will be replaced by the mortgage granted by Paradise over the same mining leases.

### Paradise General Security Agreements

Paradise has given a charge in favour of the Lenders over all its assets. This provides the Lender security over the Phosphate Assets during and after the transfer process.

### Services Agreement

Legend will continue to provide management, technical and administrative support to Paradise and will for an interim period provide some plant, equipment and facilities in Queensland for Paradise's use at cost.

### **Item 2.03 Creation of a Direct Financial Obligation or Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

Refer Item 1.01.

### **Item 9.01: Financial Statement and Exhibits**

- 99.1 Press Release dated February 13, 2012
- 99.2 Asset Sale Agreement dated February 7, 2012 between Legend International Holdings, Inc and Paradise Phosphate Pty Ltd.
- 99.3 Service Deed dated February 7, 2012 between Legend International Holdings, Inc and Paradise Phosphate Pty Ltd.
- 99.4 Convertible Note Agreement dated February 7, 2012 between Legend International Holdings, Inc, Paradise Phosphate Pty Ltd, and Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1 and Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2.
- 99.5 Security Agreement dated February 7, 2012 between Legend International Holdings, Inc and Acorn Capital Limited.
- 99.6 Mining Mortgage dated February 7, 2012 between Legend International Holdings, Inc and Acorn Capital Limited.
- 99.7 Mining Mortgage dated February 7, 2012 between Paradise Phosphate Pty Ltd and Acorn Capital Limited.
- 99.8 Share Mortgage dated February 7, 2012 between Legend International Holdings, Inc and Acorn Capital Limited.

- 99.9 General Security Agreement dated February 7, 2012 between Paradise Phosphate Pty Ltd and Acorn Capital Limited.
- 99.10 Security Trust Deed dated February 7, 2012 between Legend International Holdings, Inc, Paradise Phosphate Pty Ltd, Acorn Capital Limited, and Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1 and Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2.

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

### **LEGEND INTERNATIONAL HOLDINGS, INC.**

By: /s/ Peter Lee

Peter Lee  
Secretary

Date: February 13, 2012



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February 13, 2012

**PRESS RELEASE**

**LEGEND INTERNATIONAL HOLDINGS, INC. ANNOUNCES FIRST MAJOR MILESTONE FOR FINANCING OF THE PARADISE PHOSPHATE PROJECT**

Melbourne Australia – Monday, February 13, 2012 – Legend International Holdings, Inc (OTCBB: LGDI), (“Legend”), is pleased to announce that it has achieved the first major milestone for financing of its 100% owned Paradise Phosphate Project.

This first step has involved a transfer of all Legend’s phosphate assets into a 100% owned subsidiary of Legend and funding via a A\$7.5 million convertible note facility (“Convertible Note Agreement”) which has been injected into the subsidiary through , Acorn Capital Ltd (“Acorn”), an Australian financial institution. The A\$7.5 million will convert into equity in the subsidiary upon a successful Initial Public Offering (“IPO”) and listing of the subsidiary on the Australian Securities Exchange (“ASX”) within 12 months of the note issue date. Further information about the transfer of the phosphate assets, the Convertible Note Agreement and other related documents please refer to Legend’s Form 8-K of the same date as this press release.

Acorn is a significant cornerstone investor from the Australian market and will act as a strong catalyst for further investment in the future developments of the project. Legend anticipates that by using an Australian subsidiary it is better placed to lift the profile of the world quality phosphate assets, provide a stronger trading platform that will help maximise their value and enable further capital raising to support the development of phosphate rock production and subsequent value added products.

**Phosphate Asset Transfer to 100% Subsidiary “Paradise Phosphate Pty Ltd”**

The phosphate assets comprise the Paradise Phosphate Rock Deposits of Paradise North (historically know as Lady Jane) and Paradise South (historically known as Lady Annie), the D-Tree deposit and the deposits associated with Legend’s rights and obligations under the King Eagle Joint Venture agreement (i.e. Highland Plains, Lily & Sherrin Creek and Quita Creek). The assets include the exploration and mining permits and applications associated with the above deposits and related infrastructure.

The transfer of the phosphate assets is to a 100% owned subsidiary called Paradise Phosphate Pty Ltd (“Paradise”). Legend’s senior management are of the opinion that a dedicated Australian company wholly focused on phosphate is best placed to bring the project into production and is in the best interests of all Legend’s stockholders. It will also assist us in seeking investment by Australian financial institutions such as Acorn and other global managed funds that have not been able to invest in stocks listed on the OTC Bulletin Board in the USA.

### **Convertible Note Agreement**

The convertible note facility of A\$7.5 million to Paradise is repayable 12 months from the completion date of the agreement. If, within 12 months of the completion date of the agreement Paradise conducts a public offering of securities in Australia and those securities are listed on the Australian Securities Exchange, then the lender’s debt converts automatically to shares in Paradise in accordance with the formula provided in the agreement and following an IPO, Legend’s interest in Paradise will be diluted to approximately 60-70% of Paradise.

Further, if Paradise proceeds to an IPO:

- 1 Paradise will be the issuer of the securities to be offered;
- 2 a disclosure document for the offer of the securities under Australian law will be made available when the shares are offered;
- 3 anyone who wants to acquire the shares will need to complete the application form that will accompany the disclosure document.

E.L. & C. Baillieu (“Baillieu”) is the stock broking firm that has arranged and managed the convertible note facility with Acorn.

Funds received under the convertible note facility will be used to progress the project, its development, production and ultimately the export of phosphate rock from the phosphate deposits.

Paradise will continue discussions with potential strategic partners in relation to participating in the full development of the fertilizer complex in Mt Isa, Queensland, Australia. Legend has been progressing these discussions with various international industry fertilizer corporations for over 12 months and expects to finalise any potential transaction this year, however, any delays in finalising a transaction will not hold up the initial development of phosphate rock production.

### **Project Update**

Tender documents for the construction of a 1 million tonne per annum phosphate rock beneficiation plant at Paradise South have recently been completed and distributed to various suitable engineering and construction companies. A further five work packages will be completed and ready for distribution by March 2012 on each of the following items:

- transmission line
- water supply dam and tailings starting facility
- water treatment plant

- accommodation village and administration building
- mining infrastructure (including the construction of the ROM pad and haul road) and operations

These different work packages have been prepared to best match the capability of the designers and contractor. All tender packages including the beneficiation plant have responses due by the end of April 2012. The sum of all the above packages plus key equipment costs for items such as the rotary screen, rod mill, hydro-cyclone, feed filters, flotation cells, tailings and concentrate thickeners will form the total cost of construction of a 1Mtpa beneficiation plant located at Paradise South.

Suitability of un-beneficiated Paradise North rock for SSP production and phosphoric acid production is being further investigated by various fertilizer companies, including IFFCO, some of which have requested bigger bulk samples.

### **Forward-Looking Statements**

This Press Release may contain forward looking statements. Forward looking statements are statements that describe, or that are based on, our current expectations, estimates, projections and beliefs. Forward looking statements are based on assumptions made by us, and on information currently available to us. Forward-looking statements describe our expectations today of what we believe is most likely to occur or may be reasonably achievable in the future, but such statements do not predict or assure any future occurrence and may turn out to be wrong. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. The words "believe," "anticipate," "intend," "expect," "estimate," "project", "predict", "hope", "should", "may", and "will", other words and expressions that have similar meanings, and variations of such words and expressions, among others, usually are intended to help identify forward-looking statements.

Forward-looking statements are subject to both known and unknown risks and uncertainties and can be affected by inaccurate assumptions we might make. Risks, uncertainties and inaccurate assumptions could cause actual results to differ materially from historical results or those currently anticipated. Consequently, no forward-looking statement can be guaranteed. The potential risks and uncertainties that could affect forward looking statements include, but are not limited to:

- The risk factors set forth in Item 1A of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2010,
- The possibility that the phosphates we find are not commercially economical to mine,
- The possibility that we do not find diamonds or other minerals or that the diamonds or other minerals we find are not commercially economical to mine,
- The risks and hazards inherent in the mineral exploration and development business (including environmental hazards, industrial accidents, weather or geologically related conditions),
- Changes in the market price of phosphate, base metals and diamonds,

- The uncertainties inherent in our exploratory activities, including risks relating to permitting and regulatory delays,
- The effects of environmental and other governmental regulations,
- Uncertainty as to whether financing will be available to enable further exploration and development;
- Estimates of proven and probable reserves are subject to considerable uncertainty,
- Movements in foreign exchange rates,
- Increased competition, governmental regulation,
- Performance of information systems,
- Ability of the Company to hire, train and retain qualified employees,
- The availability of sufficient, transportation, power and water resources, and
- Our ability to enter into key exploration and supply agreements and the performance of contract counterparties.

In addition, other risks, uncertainties, assumptions, and factors that could affect the Company's results and prospects are described in the Company's prior and future filings with the Securities and Exchange Commission and other written and oral statements made or released by the Company.

We caution you not to place undue reliance on any forward-looking statements, which speak only as of the date of this document. The information contained in this Press Release is current only as of its date, and we assume no obligation to update any forward-looking statements.

The Paradise shares have not been and will not be registered under the United States Securities Act of 1933, as amended (the "U.S. Securities Act") and may not be offered or sold within the United States or to or for the account or benefit of U.S. persons, except in certain transactions exempt from the registration requirements of the U.S. Securities Act. This press release does not constitute an offer to sell, or the solicitation of an offer to buy, securities of Paradise in the United States, Australia or in any other jurisdiction.

For further information, please contact:

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## Asset sale agreement

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Legend International Holdings Inc.

Paradise Phosphate Pty Ltd ACN 154 180 882

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# Asset sale agreement

Dated **7 February 2012**

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## Parties

<b>Legend</b>	<b>Legend International Holdings Inc</b> of Level 8, 580 St Kilda, Melbourne, Victoria 3000
<b>Paradise</b>	<b>Paradise Phosphate Pty Ltd ACN 154 180 882</b> of Level 8, 580 St Kilda, Melbourne, Victoria 3000

## Background

- A Legend is the legal and beneficial owner of the Phosphate Sale Interest.
- B Legend has agreed to sell to Paradise and Paradise has agreed to buy from Legend the Phosphate Sale Interest.
- C The parties have entered into this document to record the terms and conditions of Paradise's purchase of the Phosphate Sale Interest.

## Agreed terms

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this document:

<b>Term</b>	<b>Definition</b>
<b>Applications</b>	means the EPM Applications and the EA Applications.
<b>Assets</b>	means: <ul style="list-style-type: none"> <li>(a) the Tenements;</li> <li>(b) any Authorisations relating to the Tenements;</li> <li>(c) the Environmental Authorities;</li> <li>(d) the Mining Information and any intellectual property rights created, developed or obtained through carrying out exploration of the Tenements;</li> <li>(e) the Contracts; and</li> <li>(f) any information or intellectual property relating to the method of beneficiation of phosphate (including Australian Patent Application 2011205157 and International Application No. PCT/AU2001/000651.</li> </ul>

<b>Term</b>	<b>Definition</b>
<b>Authorisation</b>	<p>means:</p> <p>(a) an approval, authorisation, consent, declaration, exemption, notarisation, license, quota, permit or waiver, however described, and any condition attaching to it; and</p> <p>(b) in the context of anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of the period without that action being taken,</p> <p>including any renewal, consolidation, replacement, extension or amendment of any of them.</p>
<b>Breaching Party</b>	has the meaning set out in clause 8.4(a).
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Brisbane and Melbourne.
<b>Claim</b>	means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
<b>Completion</b>	means completion of the sale and purchase of the Phosphate Sale Interest under this document.
<b>Completion Date</b>	means the next Business Day following satisfaction or waiver of the Conditions Precedent or another date Legend and Paradise agree in writing.
<b>Conditions Date</b>	means 30 days after the date of this document or such later date Legend and Paradise agree in writing.
<b>Conditions Precedent</b>	means the Conditions Precedent set out in clause 2.1.
<b>Consideration</b>	has the meaning set out in clause 4.3.
<b>Continuing Clauses</b>	means clauses 1, 9 and 12.
<b>Contracts</b>	<p>means:</p> <p>(a) the Farm In Agreement;</p> <p>(b) the Royalty Agreements;</p> <p>(c) Compensation Agreement – D-Tree North between Bezuma Pastoral Co Pty Ltd and Legend;</p> <p>(d) Compensation Agreement – Paradise North between Bezuma Pastoral Co Pty Ltd and Legend;</p> <p>(e) Compensation Agreement – Paradise North Project - between Calton Hills Pty Ltd and Legend &amp; Supplementary Agreement dated 24 January 2011;</p> <p>(f) Compensation Agreement – Access land for mining lease ML 90191 between Kalkadoon People #4 and Legend &amp; Supplementary Agreement dated 20 January 2011;</p> <p>(g) Section 31 (Native Title) Deed between The State of Queensland, Legend and Indjalandji-Dhidhanu (ML 90190) &amp; Section 31 (Native Title) Deed between The State of Queensland, Legend and Indjalandji-Dhidhanu (ML 90191); and</p> <p>(h) D-Tree North DSO and Paradise North DSO Mining Projects Ancilliary agreement between Indjalandji-</p>

<b>Term</b>	<b>Definition</b>
	Dhidhanu people and Legend.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Deal With</b>	means to assign, transfer, declare a trust over or otherwise to alienate, or create or allow the creation of an Encumbrance over of or in respect of.
<b>Default Event</b>	has the meaning set out in clause 10.1.
<b>Defaulting Party</b>	has the meaning set out in clause 10.3.
<b>Disclosure Notice</b>	has the meaning set out in clause 8.4(a).
<b>EA Applications</b>	has the meaning set out in clause 3.1(a).
<b>Encumbrance</b>	means: <ul style="list-style-type: none"> <li>(a) the Existing Encumbrances;</li> <li>(b) any mortgage, charge, pledge or lien, and any security interest or a preferential or adverse interest of any kind;</li> <li>(c) a title retention arrangement;</li> <li>(d) a right of any person to purchase, occupy or use assets (including under a hire purchase agreement, option, licence, lease, or agreement to purchase);</li> <li>(e) a right to set-off or right to withhold payment of a deposit or other money;</li> <li>(f) an easement, restrictive covenant, caveat or similar restriction over property (except, in the case of land, a covenant noted on the certificate of title to the land concerned); or</li> <li>(g) an agreement to create any of the items referred to in paragraphs (b) to (f) above or to allow any of those items to exist.</li> </ul>
<b>Effective Date</b>	means 1 January 2012.
<b>Environmental Authorities</b>	means the environmental authorities in relation to the Tenements issued under the <i>Environmental Protection Act 1994</i> (Old) including numbers: <ul style="list-style-type: none"> <li>(a) MIC200800608;</li> <li>(b) MIC200931609;</li> <li>(c) MIN200906809;</li> <li>(d) MIC200447806;</li> <li>(e) MIC200724908;</li> <li>(f) MIN200736608;</li> <li>(g) MIN200796108;</li> <li>(h) MIN200780108;</li> <li>(i) MIN200765108;</li> <li>(j) MIC200746608;</li> <li>(k) MIN100876109; and</li> <li>(l) MIN100916309,</li> </ul> and any replacement of those environmental authorities and any other environmental authority issued at any time for the Tenements.

<b>Term</b>	<b>Definition</b>
<b>EPM Applications</b>	has the meaning set out in clause 3.1(a).
<b>EPM Application Matters</b>	has the meaning set out in clause 3.2.
<b>Existing Encumbrances</b>	means the Farm In Agreement and the Royalty Agreements.
<b>Farm In Agreement</b>	means the farm in agreement entered into between Legend and King Eagle Resources Pty Ltd on 21 May 2008.
<b>Government Agency</b>	means: <ul style="list-style-type: none"> <li>(a) a government or government department or other body;</li> <li>(b) a government, semi-governmental or judicial person; or</li> <li>(c) a person (whether autonomous or not) who is charged with the administration of a law.</li> </ul>
<b>GST</b>	has the meaning given by the GST Act.
<b>GST Act</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Input Tax Credit</b>	has the meaning given to that term in the GST Act.
<b>Insolvency Event</b>	means: <ul style="list-style-type: none"> <li>(a) a receiver, manager, receiver and manager, trustee, administrator, controller (as that term is defined in section 9 Corporations Act) is appointed in respect of a person or any asset of a person;</li> <li>(b) a liquidator or provisional liquidator is appointed in respect of a person;</li> <li>(c) an application is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of: <ul style="list-style-type: none"> <li>(i) appointing a person referred to in paragraph (a) or (b);</li> <li>(ii) winding up a person; or</li> <li>(iii) proposing or implementing a scheme or arrangement in respect of a person;</li> </ul> </li> <li>(d) a person stops or suspends payment to creditors generally or enters into an arrangement, assignment or composition with or for the benefit of its creditors generally or any class of them or proposes to do so; or</li> <li>(e) anything analogous or having a similar effect to an event listed in items (a) to (d) occurs.</li> </ul>
<b>Joint Venture Operator</b>	has the meaning given to that term in the GST Act.
<b>Legend Warranties</b>	means the warranties referred to in clauses 8.1 and 8.2 made by Legend in favour of Paradise.
<b>Liabilities</b>	includes liabilities, expenses, duties and obligations of any nature, however arising, including penalties, fines and interests, and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.
<b>Losses</b>	includes losses, damages, costs, expenses and Liabilities



<b>Term</b>	<b>Definition</b>
	incurred by the person concerned, however arising, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable, and includes loss of profit or expected profit, and diminution in value.
<b>Mining Act</b>	means the <i>Mineral Resources Act 1989</i> (Qld) and any regulations made under it.
<b>Mining Information</b>	means all information to the extent owned or controlled by Legend with respect to the Tenements or the proposed fertiliser complex in Mount Isa including, but not limited to, all surveys, maps, mosaics, aerial photographs, electromagnetic tapes, electromagnetic or optical disks, sketches, drawings, memoranda, drill cores, logs of drill cores, geophysical, geological or drill maps, sampling and assay reports, notes and other relevant information and data in whatever form, including without limitation the information contained in any feasibility study.
<b>Mining Lease</b>	means a mining lease granted in respect of any of the Tenements under the Mining Act and any renewal, consolidation, replacement, extension or amendment of that mining lease.
<b>Minister</b>	means the Minister from time to time responsible for administering the Mining Act.
<b>Non-Breaching Party</b>	has the meaning set out in clause 8.4 (a).
<b>Non-defaulting Party</b>	has the meaning set out in clause 10.3.
<b>Phosphate Sale Interest</b>	means the Assets and the Applications.
<b>Recipient</b>	has the meaning given to that term in the GST Act.
<b>Related Body Corporate</b>	has the meaning given to that term in section 50 Corporations Act.
<b>Relevant Time</b>	means the later of: <ul style="list-style-type: none"> <li>(a) the time the consideration for the Supply is payable; and</li> <li>(b) ten Business Days after the Supplier gives the Recipient reasonable evidence that the Supply is a Taxable Supply.</li> </ul>
<b>Representative Member</b>	has the meaning given to that term in the GST Act.
<b>Royalty Agreements</b>	means the: <ul style="list-style-type: none"> <li>(a) share sale agreement entered into between Legend, Real Grumpy Pty Ltd and Ernst Alfred Kohler dated on or about 20 February 2008; and</li> <li>(b) the joint venture agreement entered into between Legend and Mt. Isa Metals Limited dated 8 April 2009 as varied by a deed of variation dated 19 October 2009.</li> </ul>
<b>Security Deposit</b>	means any security deposits, guarantees and bonds provided by Legend under the Mining Act in relation to the Tenements prior to Completion.
<b>Service Agreement</b>	means the Service Agreement between Legend and Paradise

<b>Term</b>	<b>Definition</b>
	executed on or about the date of this agreement.
<b>Subsequent Default Event</b>	has the meaning set out in clause 10.4.
<b>Supplier</b>	means the entity making the Supply.
<b>Supply</b>	has the meaning given to that term in the GST Act.
<b>Tax Invoice</b>	has the meaning given to that term in the GST Act.
<b>Taxable Supply</b>	has the meaning given to that term in the GST Act.
<b>Tenements</b>	means the tenements set out in Schedule 1 and any renewal, consolidation, replacement, extension or amendment of those tenements and subject to clause 3, the EPM Applications.
<b>Transfer Forms</b>	means the transfer forms required to be entered into under the Mining Act for registration of the transfer of the Tenements and Environmental Authorities described under this document.

## 1.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (k) a reference to 'month' means calendar month; and
- (l) a reference to '\$' or 'dollar' is to Australian currency.

## **2 Conditions Precedent to Completion**

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### **2.1 Condition Precedent to Completion**

Except for this clause and the Continuing Clauses, performance of the obligations under this document are subject to satisfaction or waiver of the following conditions:

- (a) the execution by Legend of Transfer Forms in respect of the Tenements and the Environmental Authorities;
- (b) the execution by Legend of the Service Agreement between Legend and Paradise; and
- (c) the execution of employment agreements between Paradise and Edward Walker and Craig Michael;
- (d) Legend obtaining written consents to the transfer of ML 90191 and ML 90190 (as applicable) to Paradise from the following parties:
  - (i) Real Grumpy Pty Ltd;
  - (ii) Ernst Alfred Kohler; and
  - (iii) Bezuma Pastoral Co Pty Ltd.

### **2.2 Obligations in respect of Conditions Precedent**

Each party must:

- (a) cooperate with the other and use best endeavours to procure that the Conditions Precedent are fulfilled as soon as reasonably possible;
- (b) sign and deliver all documents or, if a Related Body Corporate is party to any of those documents, procure execution by the Related Body Corporate and do everything necessary or desirable to carry out its obligations under this clause 2;
- (c) take no action that might prevent or hinder satisfaction of the Conditions Precedent;
- (d) supply to the other party copies of all applications made and all information supplied to enable satisfaction of the Conditions Precedent;
- (e) keep the other party regularly informed of the status of any discussions or negotiations with relevant third parties about the Conditions Precedent; and
- (f) promptly notify the other party when the Conditions Precedent have been satisfied or if the Conditions Precedent cannot be satisfied.

### **2.3 Waiver of Conditions Precedent**

A Condition Precedent may only be waived if both parties agree in writing to waive the Condition Precedent.

### **2.4 Termination if conditions not fulfilled**

If the Conditions Precedent are not satisfied, or waived under clause 2.3, on or before the Conditions Date then all rights and obligations under this document terminate on the day after the Conditions Date, other than:

- (a) the Continuing Clauses; and
- (b) rights and obligations that accrue on or before the Conditions Date.

## 2.5 Continuing Clauses

If this document is terminated under clause 2.4, except for this clause and the Continuing Clauses, this document will have no effect. Termination will not affect the accrued rights and obligations of the parties at the date of termination.

## 3 EPMA Application Process

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### 3.1 Grant of the Application Sale Interest

The parties acknowledge and agree as follows:

- (a) EPMA 17087 and MPA 18209 are applications for exploration tenements under the Mining Act (**EPM Applications**) by Paradise with associated applications for Environmental Authorities (**EA Applications**), both of which are yet to be granted;
- (b) that until granted the Applications cannot be transferred to Paradise; and
- (c) from Completion and until the EPM Applications and the associated EA Applications are granted, Legend will hold them on trust for Paradise.

### 3.2 EPM Application Matters

Following Completion, Legend must use its best endeavours to cause as soon as practicably possible:

- (a) the grant of the EPM Applications under the Mining Act in Legend's name; and
- (b) either of:
  - (i) Legend obtaining the Minister's notice of approval in writing to the transfer of the EPM Applications to Paradise; and
  - (ii) receipt of notification of registration from the Minister to Paradise as the owners of the EPM Applications,
 (collectively **EPM Application Matters**).

### 3.3 Obligations in respect of EPM Application Matters

Each party must:

- (a) cooperate with the other parties and use its best endeavours to ensure that the EPM Application Matters are fulfilled as soon as reasonably possible following Completion;
- (b) sign and deliver all documents and do everything necessary or desirable to carry out its obligations under this clause 3;
- (c) keep the other parties regularly informed of the status of any discussions or negotiations with relevant third parties regarding the EPM Application Matters; and

- (d) promptly notify the other parties when the EPM Application Matters have been satisfied or has become incapable of being fulfilled.

## **4 Sale and purchase of Phosphate Sale Interest**

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### **4.1 Agreement**

Legend agrees to sell and Paradise agrees to purchase the Phosphate Sale Interest from Legend for the Consideration with effect:

- (a) in the case of the Assets, on and from the Effective Date including all obligations in relation to the Assets (including those under the Mining Act and under the *Environmental Protection Act 1994 (Old)*) falling due for observance and performance on and from the Effective Date; and
- (b) in the case of the EPM Applications and associated EA Applications in accordance with clause 3.

### **4.2 Title and risk**

Subject to clause 3, title to property in, and risk in, the Phosphate Sale Interest remains with Legend and passes to Paradise on Completion.

### **4.3 Consideration**

The consideration for the Phosphate Sale Interest is the issue to Legend of 100,000,000 ordinary shares in Paradise (**Consideration**).

## **5 Conduct before Completion**

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### **5.1 Legend's conduct involving the Phosphate Sale Interest**

Until Completion, Legend must:

- (a) manage the Phosphate Sale Interest in the normal manner (having regard to the nature of the Phosphate Sale Interest, good commercial practice and compliance with applicable laws);
- (b) provide Paradise with a copy of any material correspondence involving the Phosphate Sale Interest that is received from any third party;
- (c) do all things necessary and within Legend's control to enable the transfer of the Assets to Paradise in accordance with this document and in the case of the Applications, following grant of those Applications; and
- (d) use best endeavours to obtain grant of the EPM Applications.

### **5.2 Conduct requiring the consent of Paradise**

Until Completion, Legend must ensure that, unless required to or contemplated by this document, it does not without the written consent of Paradise:

- (a) Deal With the Phosphate Sale Interest;

- (b) do anything, or fail to do anything, or (to the extent a matter is within Legend's control) allow anything to happen, that would make a Legend Warranty materially untrue, incomplete or inaccurate or materially misleading or deceptive; and
- (c) surrender, fail to renew or allow to lapse any Authorisation or the Tenements (other than the relinquishment of sub-blocks required under the Mining Act and the terms of the Tenements).

### **5.3 Liabilities**

- (a) All Liabilities relating to the Phosphate Sale Interest arising before the Effective Date are the responsibility of Legend.
- (b) Subject to Completion occurring, all Liabilities relating to the Phosphate Sale Interest arising on or after the Effective Date are the responsibility of Paradise.

## **6 Completion**

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### **6.1 Time and place for Completion**

Completion will take place at the offices of Legend at 10.00am on the Completion Date or such other time and place as agreed by the parties.

### **6.2 Obligations of Legend on Completion**

On Completion, Legend must deliver to Paradise:

- (a) subject to clause 3, absolute ownership of and title to the Assets free from Encumbrances (other than the Existing Encumbrances);
- (b) executed instruments of assignment together with such other documents (including declarations) required by the Mining Act or the *Environmental Protection Act 1994 (Qld)* to be signed by Legend to transfer the Tenements and Environmental Authorities to Paradise; and
- (c) any other document reasonably required in order to vest full, access, management, ownership, title, possession and benefit of the Assets in Paradise (including by providing originals of all documents of title relating to the Assets, as required, to enable registration of the transfer of the Assets).

### **6.3 Obligations of Paradise on Completion**

On Completion, Paradise must:

- (a) issue the shares in Paradise to Legend comprising the Consideration;
- (b) accept from Legend all documents delivered by Legend under clause 6.2 to the extent of the Assets; and
- (c) do, execute and deliver all such other acts and documents that this document requires Paradise to do, execute or deliver at Completion.

### **6.4 Obligations on Completion**

The parties acknowledge that:

- (a) the obligations in clauses 6.2 and 6.3 are interdependent, and that no action under those clauses will be effective unless all actions under those clauses have been effected; and
- (b) all actions performed under clauses 6.2 and 6.3 will be taken to have occurred simultaneously at Completion.

## **6.5 Obligations following Completion**

- (a) As soon as practicable following Completion, and in any event by no later than seven days after the Completion Date, Paradise agrees to lodge all necessary documentation for the transfer of the Tenements and Environmental Authorities to Paradise with the relevant Government Agencies and provide a substitute security deposit for the Security Deposits lodged by Legend.
- (b) Following Completion, Legend must do all such things as Paradise reasonably requires to cause Paradise to become registered as the holder of the Assets (including by providing originals of all documents of title relating to the Assets, as required, to enable registration of the transfer of the Assets).
- (c) Following Completion, Paradise must do all things reasonably necessary (and Legend must do all things reasonably necessary to assist it) to keep the Assets in good standing.

## **7 Contracts**

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### **7.1 Assignment**

Subject to clauses 7.2 and 7.3 and from Completion:

- (a) Legend assigns the benefit of the Contracts to Paradise; and
- (b) Paradise accepts that assignment.

### **7.2 Legend indemnity**

Legend indemnifies Paradise against any Losses incurred by Paradise from any breach of any of the Contracts before Completion.

### **7.3 Consent**

If the consent of a person is needed for the assignment of a Contract to Paradise:

- (a) this document assigns that Contract only to the extent that the assignment would not breach the Contract;
- (b) Legend and Paradise must each use reasonable endeavours to obtain that consent before Completion; and
- (c) Legend and Paradise must promptly sign every document reasonably required by the third party to obtain the consent of the third party and satisfy all reasonable requirements of any third party to a Contract including providing all information reasonably requested by the third party.

#### 7.4 Hold Contract for Buyer's benefit

If, despite using reasonable endeavours, Legend is unable to obtain the assignment of any Contract to Paradise, then after Completion Legend must to the extent it lawfully can, hold the benefit of the Contract for Paradise.

## 8 Warranties and representations

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### 8.1 Mutual warranties and representations

Each party represents and warrants to the other that, as at the date of this document and as at the Completion Date:

- (a) **(status)** it is a company limited by shares incorporated and existing under the laws of its country of incorporation, and an Insolvency Event does not affect the party;
- (b) **(power)** it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this document;
- (c) **(authorisation)** subject to satisfaction of the Conditions Precedent, all conditions and things required by applicable law to be fulfilled or done in order to enable it lawfully to enter into, and exercise its rights and perform its obligations under this document have been fulfilled or done; and
- (d) **(obligations binding)** this document constitutes legally binding obligations enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally).

### 8.2 Legend's warranties and representations

In addition to the warranties given by it in clause 8.1, Legend represents and warrants to Paradise that as at the date of this document and as at the Completion Date:

- (a) **(owner)** Legend is the registered holder and beneficial owner of an unencumbered (100% interest in the Assets (subject to the Existing Encumbrances);
- (b) **(right to transfer)** Legend has (subject to the satisfaction of the Conditions Precedent) full right, title and authority to transfer to Paradise the Phosphate Sale Interest; and
- (c) **(good standing)** each of the Tenements and the Environmental Authorities are in good standing and not liable to cancellation or forfeiture and Legend is not aware of any circumstances that may give rise to such cancellation or forfeiture.

### 8.3 Application of warranties

Each Legend Warranty:

- (a) does not merge on, and remains in full force after Completion; and
- (b) must be construed independently and is not limited by reference to another warranty.

### 8.4 Breach of warranties

- (a) If a party breaches any of its respective warranties (**Breaching Party**), it must promptly give the other party (**Non-Breaching Party**) written notice containing full



details of the relevant fact, matter or circumstance giving rise to that breach  
(**Disclosure Notice**).

- (b) A Non-Breaching Party may, on or before Completion, terminate this document under clause 8 for a material breach by a Breaching Party of a Paradise Warranty or a Legend Warranty.

#### **8.5 Indirect or consequential loss or damage**

Regardless of any other term in this document, neither party will be under any liability to the other party in respect of any indirect or consequential loss or damage (including for loss of business revenue, loss of profits or failure to realise expected profits or savings, or diminution in value) in connection with the arrangements contemplated by this document, whether the claim is based on breach of contract, warranty, negligence or any other cause of action.

#### **8.6 Time limit to bring Claim**

If Paradise becomes aware of any facts that might give rise to a Claim under any Legend Warranty, Paradise must give written notice to Legend setting out reasonable particulars within six months of Completion following which no further Claim can be made by Paradise.

#### **8.7 Minimum quantum of Claim**

Paradise must not make a Claim against Legend for a breach of any Legend Warranty for less than \$50,000.

#### **8.8 Maximum liability**

The maximum aggregate liability of Legend for any Losses claimed or incurred by Paradise for any breach of the Legend Warranties is 100% of the Consideration.

### **9 Announcements and confidentiality**

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#### **9.1 Agreement to remain confidential**

Subject to clause 9.2, the parties must keep confidential the terms of this document, their negotiations and information relating to the Phosphate Sale Interest.

#### **9.2 Exceptions**

A party may disclose the details and subject matter of this document or information relating to the Phosphate Sale Interest:

- (a) if the other party gives its written approval, which consent must not be unreasonably withheld;
- (b) if the disclosure is to the disclosing party's Related Bodies Corporate, employees, consultants, professional advisers, bankers, financial advisers and financiers of the disclosing party or its Related Bodies Corporate or to a person whose consent is required under this document, or for a transaction contemplated by this document, on a need to know basis;
- (c) if the disclosure is required for the purposes of any court proceeding involving a dispute arising out of this document;

- (d) if the disclosure is made to comply with any applicable law or the requirements of any regulatory body (including any relevant stock exchange); or
- (e) that is generally available in the public domain other than as a result of a breach of this document by the party;
- (f) to any third party to whom disclosure is required in order to procure the satisfaction of the Conditions Precedent; or
- (g) to any other third party (with the prior written consent of the other party, and that consent must not to be unreasonably withheld), if the third party is, before disclosure, under an obligation to keep the information disclosed to it confidential under a confidentiality undertaking in a form acceptable to the other parties acting reasonably.

### 9.3 Public announcement

If any party wishes to publish any public statement (including a press release) about or in any way connected with this document or the transactions contemplated by it, then, to the extent permitted by law or the rules of any recognised stock exchange, that party must notify and, where practicable, give a copy of the public statement to the other parties before the issue of the public statement.

## 10 Default Event

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### 10.1 Default Events

Each of these events or circumstances is a Default Event:

- (a) if a party fails to remedy any breach of its material obligations under this document within 14 days after a written demand for remedy has been made by the other party;
- (b) if an Insolvency Event occurs to a party; or
- (c) if any party commits any criminal offence that affects or compromises the operation of this document.

### 10.2 Condition of this document

It is a condition of this document that no Default Event occurs.

### 10.3 Results of a Default Event

If a Default Event happens to a party (**Defaulting Party**), the other party (**Non-defaulting Party**), in addition to any other rights the Non-defaulting Party may have, may:

- (a) affirm this document by written notice and:
  - (i) sue the Defaulting Party for specific performance and damages; or
  - (ii) sue the Defaulting Party for damages in lieu of specific performance; or
- (b) by written notice to the Defaulting Party terminate this document and sue the Defaulting Party for damages.

#### **10.4 Affirmation does not waive breach**

If there is a subsequent Default Event after a notice of affirmation is given under clause 10.3(a) (**Subsequent Default Event**), the Non-defaulting Party may subsequently terminate this document under clause 10.3(b), and its affirmation of this document under clause 10.3(a) in relation to the earlier Default Event does not amount to a waiver of the Subsequent Default Event.

#### **10.5 Results of termination**

On the date the Non-defaulting Party terminates this document under clause 10.3(b), all rights and obligations under this document terminate, other than:

- (a) the Continuing Clauses;
- (b) this clause 10.5; and
- (c) rights and obligations that accrue before that date.

### **11 GST**

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#### **11.1 GST exclusive**

Except under this clause, the consideration for a Supply made under or in connection with this document (including for avoidance of doubt, the Consideration) does not include GST.

#### **11.2 Sale of a going concern**

- (a) Legend and Paradise agree that the supply of the Phosphate Sale Interest made by Legend to Paradise under this document constitutes the Supply of a going concern for the purposes of section 38-325 of the GST Act, unless the Commissioner of Taxation subsequently determines, for whatever reason, that the Supply of all or part of the Phosphate Sale Interest is a Taxable Supply.
- (b) Legend and Paradise acknowledge and agree that they will take all reasonable steps and do all reasonable things necessary to ensure that the Supply of the Phosphate Sale Interest is treated as a GST-free Supply of a going concern.
- (c) if the Commissioner subsequently determines the supply of the Phosphate Sale Interest is a Taxable Supply, then the Supplier must give the Recipient a Tax Invoice for the Supply and the Recipient must pay the Supplier the GST Amount in respect of that Supply within three Business Days of:
  - (i) if the Input Tax Credit results in a refund for the Recipient for that tax period, the date of issue of the refund; and
  - (ii) otherwise, the due date of payment of any GST Amount for that period.

#### **11.3 Taxable Supply**

If a Supply other than the Phosphate Sale Interest made under or in connection with this document is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
- (b) the Supplier must give the Recipient a Tax Invoice for the Supply.

#### **11.4 Reimbursement or indemnity**

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

## **12 General**

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### **12.1 Amendments**

This document may only be amended by written agreement between all parties.

### **12.2 Assignment**

- (a) Subject to clause 12.2(b), each party may only assign this document or a right under this document with the written consent of the other party whose consent may not be unreasonably withheld.
- (b) On or before completion, Legend may nominate another party as the purchaser to enter into the transaction documents.

### **12.3 Counterparts**

This document may be executed in any number of counterparts. All counterparts together make one instrument.

### **12.4 No merger**

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

### **12.5 Entire agreement**

- (a) This document supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- (b) Any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to in any negotiation, arrangement, understanding or agreement, has no effect except to the extent expressly set out or incorporated by reference in this document.

### **12.6 Further assurances**

Each party must do all things necessary to give effect to this document and the transactions contemplated by it.

## 12.7 No waiver

- (a) The failure of a party at any time to require full or partial performance of any provision of this document does not affect in any way the right of that party to require that performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

## 12.8 Governing law and jurisdiction

- (a) Queensland law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

## 12.9 Severability

A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.

## 12.10 Costs

- (a) Subject to clause 12.10(b) each party bears its own costs in relation to the preparation and signing of this document.
- (b) Unless otherwise provided in this document, Paradise must pay all stamp duty and other taxes of a similar nature (including fines, penalties and interest) on this document and on any instrument or other document executed to give effect to this document.

## 12.11 Notices

- (a) All notices, requests, consents and other documents authorised or required to be given by or under this document must be given in writing and either personally served or sent by fax addressed as follows:

### Legend

Attention:	Director
Address:	Level 8, 580 St Kilda, Melbourne, Victoria 3000
Fax:	+61 3 8532 2805

### Paradise

Attention:	Director
Address:	Level 8, 580 St Kilda, Melbourne, Victoria 3000
Fax:	+61 3 8532 2805

- (b) Notices, requests, consents and other documents (**Notices**) are considered served or given:
- (i) if personally served by being left at the address of the party to whom the Notice is given between the hours of 9.00am and 5.00pm on any Business Day, then in such case at the time the Notice is so delivered;
  - (ii) if sent by fax, then in such case when successfully transmitted during business hours, or if not during business hours, then when business hours next commence; and
  - (iii) any party may change its address for receipt of Notices at any time by giving notice to each other party.

## Schedule 1

### Tenements

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- (a) EPM 14753;
- (b) EPM 15014;
- (c) EPM 15015;
- (d) EPM 15763;
- (e) EPM 16942;
- (f) EPM 17330;
- (g) EPM 17333;
- (h) EPM 17441;
- (i) EPM 17446;
- (j) EPM 17443;
- (k) EPM 17447;
- (l) ML 90190;
- (m) ML 90191;
- (n) MLA 90197;
- (o) MLA 90210;
- (p) MLA 90221;
- (q) MLA 90222;
- (r) MLA 90223;
- (s) MLA 90224;
- (t) MLA 90225;
- (u) MLA 90226; and
- (v) MLA 90227.

# Execution



EXECUTED as an agreement

Signed by  
Legend Holdings International Inc by its duly  
authorised officer on / /20 in the  
presence of:

▲ /s/ P J Lee  
\_\_\_\_\_  
Signature of witness

▲ P J Lee  
\_\_\_\_\_  
Name of witness (print)

▲ /s/ J I Gutnick  
\_\_\_\_\_  
Signature of Authorised Officer

▲ J I Gutnick  
\_\_\_\_\_  
Full Name of Authorised Officer

▲ Director  
\_\_\_\_\_  
Office Held

Executed by  
Paradise Phosphate Pty Ltd ACN 154 180 882  
on / /20 by:

▲ /s/ P J Lee  
\_\_\_\_\_  
Secretary

▲ P J Lee  
\_\_\_\_\_  
Full name of Secretary

▲ /s/ J I Gutnick  
\_\_\_\_\_  
Director

▲ J I Gutnick  
\_\_\_\_\_  
Full name of Director



**THIS SERVICE DEED** is made on the 7<sup>th</sup> day of February 2012

**BETWEEN:** **PARADISE PHOSPHATE PTY LTD** (“the Client”)  
of Level 8, 580 St Kilda Road, Melbourne

-and-

**LEGEND INTERNATIONAL HOLDINGS INC.** of Level 8,  
580 St Kilda Road, Melbourne (“the Company”)

**WHEREAS:**

- A. At all times prior to the Commencement Date the Company:
  - a. was the holder of (or applicant) as the case may be, of certain exploration and mining rights and authorisations (“**the tenements**”) concerning what is known as and shall be referred to as the Phosphate Project (“**the business**”);
  - b. was the owner or lessee (as the case may be) of a certain facilities and equipment (“**the facilities and equipment**”), used in the conduct of the business (e.g. office facilities, vehicles, field equipment and the like) as set out in Annexure 1 hereto.
- B. The Client is a wholly owned subsidiary company of the Company.
- C. Pursuant to a contract of sale between the Client and the Company, on and from the Commencement Date, the Client will be the operator of the business and in due course subject to law, will become the owner of the tenements.
- D. On and from the Commencement Date the Client requires the Company to provide managerial and administrative services (“**the Services**”) to the Client to enable it to operate the business.
- E. On and from the Commencement Date the Client requires the use of the facilities and equipment and desires to enter into an interim arrangement for 3 calendar months (“**the Relevant Period**”) with the Company for the ongoing use of the facilities at cost so as the Client can:
  - a. Determine if it wishes to purchase or take an assignment of any of the facilities and equipment;
  - b. Negotiate an arms-length long term agreement for the provision of the facilities and equipment by the Company; or
  - c. Terminate the arrangement between them with respect to the facilities and equipment.
- F. The parties desire to record in writing their agreement as to terms and conditions of the provision of the Services and the facilities and equipment.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

THE SERVICES

1. "**Commencement Date**" means the Effective Date as defined in and determined by the Contract of Sale dated **7 February 2012** between the Company and the Client.
2. The Company agrees to provide or procure, until termination of this Deed, managerial and administrative services required for the business conducted by the Client and as requested by the Client. The services include but are not limited to provision and maintenance of staff, all payroll facilities and employee records required by law and by usual accounting procedures, provision of all types of insurance in accordance with prudent business practice and provision of management, legal, financial and accounting advice and services.
3. In addition to the above the Company shall procure and provide for the Client various services including but not limited to the making available of stationery, furniture, furnishings, floral arrangements, library facilities, reference books, periodicals, transport, secretarial services, telephone answering services, photocopying and duplicating facilities and any other services as may be required from time to time by the Client as and when requested by the Client.
4. The Company and the Client shall execute any further agreements or documents and do such acts and things as may be reasonably required to record the terms upon which any particular service is provided.
5. The Client shall pay to the Company in consideration of the services provided hereunder a service fee equal to the aggregate of the cost and expense to the Company of providing the services, facilities and equipment (less any moneys already paid by the Client pursuant to Clause 6 below) and such fee shall be paid by the Client within 21 days from the receipt of the monthly invoice from the Company. The parties may vary this fee from time to time by mutual written agreement.
6. THE Company at all times is entitled to request that the Client provide moneys to the Company, on receipt by the Company of an invoice, demand or account or upon notification of a claim or a requirement to make a payment for greater than \$1,000.00 in relation to or as a result of the provision or termination of any of the services, facilities or equipment provided to the Client by the Company either prior to or after the Company making that payment. The Client shall within 14 days after the receipt of such a request pay the moneys required as instructed by the Company.
7. The Client shall reimburse the Company for the costs and expenses incurred by it but not paid by the Client to date for the provision of the services, facilities and equipment by the Company to the Client within 21 days from the date of the invoice for such amount received from the Company by the Client.
8. The Client shall indemnify and keep indemnified the Company for all costs, expenses, claims, outgoings, damages and liabilities incurred, resulting or arising directly or indirectly, from the provision or termination of services, facilities and equipment to the Client whether pursuant to this Deed or prior to the execution of this Deed and shall include any breach by the Client of this Deed or any lease agreement or other agreement with the Company or any breach by the Company of any lease or other agreement such breach being caused by, resulting or arising

from some act or omission by the Client. This indemnity shall survive termination of this Deed.

#### THE FACILITIES AND EQUIPMENT

9. The Company shall make available to the Client without fee (other than cost recovery fees referred to in clause 10 below) for its exclusive use during the Relevant Period, the facilities and equipment. During the Relevant Period the Client and the Company will negotiate in good faith to determine if, at the end of the Relevant Period:
  - 9.1. The Client will purchase or take an assignment of some or all of the facilities and equipment and on what terms;
  - 9.2. The Client and the Company will enter into a further agreement for the continued use by the Client of the facilities and equipment; and
  - 9.3. The Client will source its own facilities and equipment.
10. The Client shall make payment by way of reimbursement to the Company (without markup) for any direct costs (e.g. rental, lease or hire costs) associated with the facilities and equipment that are payable by the Company. Such request for payment shall be made by invoice either included in an invoice under clause 4 or independent.
11. The Company shall (subject to the Client's obligations under clause 12 below) take such steps as are reasonably necessary (where applicable) to ensure that the facilities and equipment remain available for use by the Client in the conduct of the business of the Client throughout the relevant period.
12. The Client covenants that it has and shall continue to:-
  - 12.1. at its cost, keep and maintain the items of equipment referred to Annexure 1 in Clause 2 ("the equipment") in good repair;
  - 12.2. if applicable, use or permit the use of the Equipment only by properly qualified or licensed personnel;
  - 12.3. skillfully and properly test the Equipment to ensure it is safe for use and operation;
  - 12.4. take care of the Equipment in order to prevent damage, loss or destruction to the Equipment;
  - 12.5. at the expiry of any lease entered into the by Company in respect to an item or items of the Equipment ("Lease"), to deliver that item or items to the Company or to the lessor under the particular Lease, as instructed by the Company;
  - 12.6. in all respects use and treat the Equipment as though it was the lessee under any applicable Lease;
  - 12.7. make all necessary payments on request by the Company pursuant to Clause 9 above, required to be made by the lessee under each or any of the Leases on a return to the Equipment or any items of the Equipment by the Client, prior to the expiry of the particular Lease covering that item or items of Equipment.

INVOICING AND LIMIT OF EXPENDITURE

- 13. The Company shall provide monthly itemised invoices separating the amount expended over the period and the total liability of the Client to the Company by reference to the items set out in the Cash Flow Model (“Cash Flow Model”) annexed hereto and marked “Annexure 2”.
- 14. The Client shall not be liable to any amount for any individual expenditure item exceeding 15% above the amounts set out in the Cash Flow Model

GENERAL MATTERS

- 15. If either party breaches in any way this Deed or causes directly or indirectly either party to be in breach of another agreement in relation to the subject matter of this Deed, the non-defaulting party may send a notice of default to the other party requiring the default to be remedied within 14 days from the receipt of the notice.
- 16. If the defaulting party does not remedy the default within fourteen (14) days from the receipt of the notice the non-defaulting party may, without prejudice to its rights at law, demand specific performance, terminate the agreement, and/or demand damages.
- 17. The defaulting party shall pay the costs of any action taken by the other party as a result of the default.
- 18. Either the Company or the Client may terminate this Deed by sixty days prior written notice (“Notice of Termination”).
- 19. THIS Deed shall be construed in accordance with the laws of Victoria, Australia.

**Executed as a Deed**

Signed by  
Legend International Holdings Inc by its duly  
authorised officer in the presence of:

		<u>/s/ J I Gutnick</u>
	▲	Signature of Authorised Officer
▲	<u>/s/ P J Lee</u>	<u>J I Gutnick</u>
	Signature of witness	▲ Full Name of Authorised Officer
▲	<u>P J Lee</u>	<u>Director</u>
	Name of witness (print)	▲ Office Held

Executed by  
Paradise Phosphate Pty Ltd ACN 154 180 882  
on    /    /20    by:

      /s/ P J Lee        
Secretary

      /s/ J I Gutnick        
Director

      P J Lee        
Full name of Secretary

      J I Gutnick        
Full name of Director

# Agreement

Execution Copy

Investment in Paradise Phosphate Pty Ltd

## Convertible note agreement

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**Freehills**

101 Collins Street Melbourne Vic 3000 Australia  
GPO Box 128A Melbourne Vic 3001 Australia  
Sydney Melbourne Perth Brisbane Singapore

Telephone +61 3 9288 1234 Facsimile +61 3 9288 1567  
[www.freehills.com](http://www.freehills.com) DX 240 Melbourne

Associated offices in Jakarta Beijing Shanghai Hanoi Ho Chi Minh City

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**Attachments**

**Deed of adherence**

**New Security Provider Accession Deed Poll**

## Convertible note agreement

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Date ► **February 7, 2012**

Between the parties

---

**Initial Noteholders**      **Australian Microcap Investments Pty Ltd** ACN 127 745 395 as trustee for Microcap Investment Trust 1 of Level 12, 90 Collins Street, Melbourne 3000 (**MIT 1**)

**Australian Microcap Investments Pty Ltd** ACN 127 745 395 as trustee for Microcap Investment Trust 2 of Level 12, 90 Collins Street, Melbourne VIC 3000 (**MIT 2**)

(Each an **Initial Noteholder** and together the **Initial Noteholders**)

---

**Company**                    **Paradise Phosphate Pty Ltd** ACN 154 180 882 of Level 8, 580 St Kilda Road, Melbourne VIC 3004 (**Company**)

---

**Legend**                    **Legend International Holdings Inc. ARBN** 120 855 352 of Level 8, 580 St Kilda Road, Melbourne VIC 3004 (**Legend**)

---

**Recitals**                    The Company wishes to issue the Notes to the Initial Noteholders, and the Initial Noteholders wish to subscribe for the Notes, on the terms and conditions of this agreement.

---

The parties agree as follows:

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## 1 Definitions and interpretation

---

### 1.1 Agreement components

This agreement includes any schedule.

### 1.2 Definitions

The meanings of the terms used in this agreement are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Acceptable Bank</b>	Westpac Banking Corporation, National Australia Bank Limited, Australia and New Zealand Banking Corporation, Commonwealth Banking Corporation or other bank or financial institution approved by the Noteholders.
<b>Accounting Standards</b>	<ol style="list-style-type: none"><li>1 the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board) and other mandatory professional reporting requirements issued by the joint accounting bodies (including the Australian Accounting Standards issued either jointly by CPA Australia and the Institute of Chartered Accountants in Australia or by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia); and</li><li>2 if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in Australian Statements of Accounting Concepts.</li></ol>
<b>Accounts</b>	all of the audited accounts of the Company for 3 years preceding the Accounts Date.
<b>Accounts Date</b>	date of execution of this agreement.
<b>Acorn</b>	Acorn Capital Limited ACN 082 694 531 of Level 12, 90 Collins Street Melbourne, VIC 3000.
<b>Action</b>	action, dispute, claim, counter-claim, demand, investigation, inquiry, prosecution, litigation, proceeding, arbitration, mediation or dispute resolution.

<b>Term</b>	<b>Meaning</b>
<b>ASIC</b>	Australian Securities and Investment Commission.
<b>Asset Sale</b>	a sale of all, or substantially all, the assets of the Company.
<b>Associate</b>	the same meaning as in section 9 of the Corporations Act.
<b>ASX</b>	Australian Securities Exchange.
<b>Authorisation</b>	includes: <ol style="list-style-type: none"> <li>1 any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and</li> <li>2 in relation to anything that a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.</li> </ol>
<b>Available Cash</b>	at any time, cash at bank (including on term deposit) credited to an account in the name of the Company with an Acceptable Bank for so long as: <ol style="list-style-type: none"> <li>1 that cash is payable to the Company on demand;</li> <li>2 repayment of that cash is not contingent on the prior discharge of any other Financial Indebtedness of the Company or of any other person whatsoever or on the satisfaction of any other condition; and</li> <li>3 there is no Security Interest over that cash other than a Security.</li> </ol>
<b>Business Day</b>	a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday in that city.
<b>Business Hours</b>	9.00am to 5.00pm on a Business Day.
<b>Cash Equivalent Investments</b>	at any time: <ol style="list-style-type: none"> <li>1 certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;</li> <li>2 any investment in marketable debt obligations issued or guaranteed by the federal government of Australia or the government of any State or Territory of Australia or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;</li> <li>3 any investment accessible within 30 days in money market funds which have a credit rating of either B+ or higher by Standard &amp; Poor's Rating Services or AA or higher by Fitch Ratings or Aa2 or higher by Moody's Investor Services and which invest substantially</li> </ol>

Term	Meaning
	<p>all their assets in securities of the types described in paragraphs 1 and 2 above; or</p> <p>4 any other debt security approved by the Noteholders.</p>
<b>Cash Flow Model</b>	the 12 month cash flow model set out in Schedule 6.
<b>Change in Control</b>	<p>1 a person who Controls the Company ceasing to do so; or</p> <p>2 another person acquiring Control of the Company.</p>
<b>Child Entity</b>	in respect of an entity, each entity Controlled by that entity.
<b>Completion</b>	the settlement of the issue of the Subscription Notes under this agreement.
<b>Completion Date</b>	the date of Completion as determined in clause 5.1.
<b>Contested Taxes</b>	a Tax payable by the Company when the Company is contesting its liability to pay that Tax, and has reasonable grounds to do so.
<b>Control</b>	the meaning given in section 50AA of the Corporations Act and includes the possession of the power, directly or indirectly, whether by contract (but excluding any contract of employment or similar whereby a person is employed in an executive capacity, e.g. Chief Executive Officer) or ownership, to direct or cause the direction of the management and affairs of a person or entity, including investment decisions, and <b>Controlling</b> and <b>Controlled</b> will be construed accordingly.
<b>Conversion</b>	the repayment of the Outstanding Amount and the application of the proceeds to subscribe for that number of Ordinary Shares as is determined by clause 7.3 and <b>convert</b> has a corresponding meaning.
<b>Conversion Date</b>	in respect of a Note, the date of Conversion as determined in clause 7.2.
<b>Conversion Price</b>	the price per Ordinary Share, as determined under clause 8.
<b>Conversion Shares</b>	the aggregate number of Ordinary Shares that a Noteholder is entitled to on Conversion of that Noteholder's Notes as determined under clause 7.3.

Term	Meaning
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Deed of Adherence</b>	a deed of adherence in the form of Attachment 1.
<b>Disputing Action</b>	in respect of Tax Claim, any action to cause the Tax Claim to be withdrawn, reduced or postponed or to avoid, resist, object to, defend, appear against or compromise the Tax Claim and any judicial or administrative proceedings arising out of that action.
<b>Effective Consideration per Share</b>	<p>the aggregate consideration receivable by the Company for the relevant issue of Equity Securities plus the additional minimum consideration (if any) to be received by the Company on (and assuming) the conversion, exchange or exercise of the relevant Equity Securities (without any deduction for any commissions, discounts or expenses paid, allowed or incurred in connection with the issue) divided by the number of Shares comprised in the relevant Equity Securities or into or for which the relevant Equity Securities may be converted, exchanged or exercised.</p> <p>Where the consideration receivable or the number of shares is subject to adjustment for future events such consideration and number of shares is to be determined as if conversion, exchange or exercise occurred at the time of the calculation and on the basis of the facts and circumstances then existing including facts and circumstances occurring in connection with the events in respect of which the Effective Consideration is being calculated.</p>
<b>Effective Consideration per Sale Share</b>	$\frac{A}{B}$ <p>where:</p> <p>A =</p> <p>1 in the case of a Legend Sell Down, the aggregate consideration receivable by Legend (and any Related Party of Legend) for the relevant disposal of Ordinary Shares held by Legend plus the:</p> <ul style="list-style-type: none"> <li>• completion adjustments to the purchase price (if in favour of Legend);</li> <li>• additional minimum consideration (if any) to be received by Legend (and any Related Party of Legend) on (and assuming) the occurrence of certain future events (where such additional minimum consideration is calculated on the basis of the facts and circumstances then existing including facts and circumstances occurring in connection with the events in respect of which the Effective Consideration per Sale Share is being calculated); and</li> <li>• indirect consideration (by way of holding Ordinary Shares) to be received by Legend (and any Related Party of Legend) on (and assuming) the provision of benefits to the Company including:             <ul style="list-style-type: none"> <li>• providing, or arranging for the provision of, funding to the Company;</li> </ul> </li> </ul>

Term	Meaning
	<ul style="list-style-type: none"> <li>• providing, or arranging for the provision of, goods or services to the Company;</li> <li>• offtake arrangements; and</li> <li>• any other benefit indirectly or directly receivable by the Company in connection with, or as a consequence of, the Legend Sell Down,</li> </ul> <p><b>OR</b></p> <p>2 in the case of a Company Equity Issue, the aggregate consideration receivable by the Company (and any Related Party of the Company) for the issue of Equity Securities plus the:</p> <ul style="list-style-type: none"> <li>• additional minimum consideration (if any) to be received by the Company on (and assuming) the conversion, exchange or exercise of the relevant Equity Securities without any deduction for any commissions, discounts or expenses paid, allowed or incurred in connection with the issue (where the consideration receivable or the number of shares is subject to adjustment for future events such consideration and number of shares is to be determined as if conversion, exchange or exercise occurred at the time of the calculation and on the basis of the facts and circumstances then existing including facts and circumstances occurring in connection with the events in respect of which the Effective Consideration per Sale Share is being calculated); and</li> <li>• increase in the value of the Company in connection with, or as a consequence of, the Company Equity Issue on (and assuming) the provision of benefits to the Company including: <ul style="list-style-type: none"> <li>• providing, or arranging for the provision of, funding to the Company;</li> <li>• providing, or arranging for the provision of, goods or services to the Company;</li> <li>• offtake arrangements; and</li> <li>• any other benefit indirectly or directly receivable by the Company in connection with, or as a consequence of, the Company Equity Issue.</li> </ul> </li> </ul> <p><b>B =</b></p> <p>1 in the case of Legend Sell Down, the number of Ordinary Shares disposed of to a third party pursuant to the Legend Sell Down; or</p> <p>2 in the case of Company Equity Issue, the number of Shares comprised in the relevant Equity Securities or into or for which the relevant Equity Securities may be converted, exchanged or exercised.</p>
<b>Equity Securities</b>	in respect of a company, each class of shares in the capital of the company, any note or other financial accommodation that is convertible into shares in the capital of the company or repayable by way of the issue of shares in the capital of the company and any option to be issued shares in the capital of the company.
<b>Excluded Issue</b>	any issue of Ordinary Shares pursuant to the conversion of the Notes



<b>Term</b>	<b>Meaning</b>
<b>Excluded Taxes</b>	<ol style="list-style-type: none"> <li>1 any Tax imposed on or calculated by reference to the net income of a Noteholder;</li> <li>2 any Tax which a Noteholder is entitled to claim as a deduction or credit against, relief or remission from any Tax.</li> </ol>
<b>Existing Security Interest</b>	<ol style="list-style-type: none"> <li>3 Joint Venture/Farm In Agreement between Legend and King Eagle Resources Pty Ltd;</li> <li>4 Compensation Agreement – D-Tree North between Bezuma Pastoral Co Pty Ltd and Legend;</li> <li>5 Compensation Agreement – Paradise North between Bezuma Pastoral Co Pty Ltd and Legend;</li> <li>6 Compensation Agreement – Paradise North Project - between Calton Hills Pty Ltd and Legend &amp; Supplementary Agreement dated 24 January 2011;</li> <li>7 Compensation Agreement – Access land for mining lease ML 90191 between Kalkadoon People #4 and Legend &amp; Supplementary Agreement dated 20 January 2011;</li> <li>8 Joint Venture Agreement (D-Tree) between Mt Isa Metals Limited and Legend &amp; Deed of Variation dated 19 October 2009;</li> <li>9 Section 31 (Native Title) Deed between The State of Queensland, Legend and Indjalandji-Dhidhanu (ML 90190) &amp; Section 31 (Native Title) Deed between The State of Queensland, Legend and Indjalandji-Dhidhanu (ML 90191);</li> <li>10 D-Tree North DSO and Paradise North DSO Mining Projects Ancilliary agreement between Indjalandji-Dhidhanu people and Legend;</li> <li>11 Share Sale Agreement between Real Grumpy Pty Ltd &amp; Ernst Alfred Kohler and Legend; and</li> <li>12 Royalty obligations to the State of Queensland.</li> </ol>
<b>Event of Default</b>	any of the events or circumstances described in clause 12.1.
<b>Face Value</b>	in respect of a Note, \$1.
<b>Financial Indebtedness</b>	any indebtedness, present or future, actual or contingent, in respect of moneys borrowed or raised in any financial accommodation whatever including, without limitation, under or in respect of any overdraft facility, bill, bond, note, certificate of deposit, transferable or negotiable instrument, acceptance, guarantee, redeemable or repurchasable share or stock, discounting arrangement, finance lease, swap, option, futures contract or analogous transaction, put option, hire purchase, deferred purchase price (for more than 90 days) of any asset or service, or any obligation to deliver goods or provide services paid for in advance by any financier or in connection with any other financing transaction.
<b>Government</b>	any government or governmental, administrative, monetary, fiscal or

<b>Term</b>	<b>Meaning</b>
<b>Agency</b>	judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
<b>Group Entity</b>	<ol style="list-style-type: none"> <li>1 a Parent Entity;</li> <li>2 a Child Entity;</li> <li>3 a Sibling Entity; or</li> <li>4 a Related Body Corporate.</li> </ol>
<b>GST</b>	goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.
<b>GST Group</b>	has the same meaning as that term is defined in the GST Law.
<b>GST Law</b>	A New Tax System (Goods and Services Tax) Act 1999 (Cth).
<b>IFFCO</b>	Indian Farmers Fertiliser Cooperative Limited
<b>IFFCO Bulk Sample Arrangement</b>	the document setting out the details of the arrangement between the Company and IFFCO for the extraction, transportation, testing and analysis of a bulk sample of phosphate extracted from the Mining Rights including the indicative timetable for undertaking these activities and providing the results of the testing.
<b>Indirect TFA</b>	an agreement between the members of a GST Group which is intended to allocate the funding of GST liabilities within the GST Group.
<b>Indirect TSA</b>	an agreement between the members of a GST Group which takes effect as an indirect tax sharing agreement under section 444-90 of Schedule 1 of the <i>Taxation Administration Act 1953</i> .
<b>Independent Director</b>	a non-executive director who is not a member of the Company's management and who is free of any business or other relationship that could materially interfere with, or could reasonably be perceived to interfere with, the independent exercise of their judgment as a director.
<b>Independent Expert</b>	the person nominated by the Company with the prior approval of the Noteholders or, in the absence of such approval, an independent firm of accountants appointed by the president for the time being of the Institute of Chartered Accountants in Australia.

<b>Term</b>	<b>Meaning</b>
<b>Interest Period</b>	<ol style="list-style-type: none"> <li>1 the period from the Completion Date to first Interest Payment Date; and</li> <li>2 each subsequent period from (and including) an Interest Payment Date to (but excluding) the next Interest Payment Date.</li> </ol>
<b>Interest Payment Date</b>	<p>in relation to a Note:</p> <ol style="list-style-type: none"> <li>1 30 June 2012, and each subsequent 31 December and 30 June until the Note is converted or repaid; and</li> <li>2 the date immediately prior to the earlier of: <ul style="list-style-type: none"> <li>• the date of conversion of that Note; and</li> <li>• the date of repayment of that Note.</li> </ul> </li> </ol>
<b>IPO</b>	an initial public offering of Ordinary Shares.
<b>IPO Price</b>	the price per Ordinary Share at which Ordinary Shares are offered to the public pursuant to a Qualifying IPO.
<b>Key Mining Rights</b>	<ol style="list-style-type: none"> <li>1 MLA 90197;</li> <li>2 EPM 16942;</li> <li>3 ML 90190;</li> <li>4 EPM 15763;</li> <li>5 EPM 14753;</li> <li>6 EPM 174467;</li> <li>7 EPM 17333;</li> <li>8 ML 90191; and</li> <li>9 EPM 17330.</li> </ol>
<b>King Eagle Tenements</b>	EPM 14905, EPM 14906, EPM 14912 and each other tenement held by King Eagle Resources Pty Limited as at the date of this agreement in which the Company or Legend is proposed to acquire an interest pursuant to the joint venture agreement between Legend and King Eagle Resources Pty Limited.
<b>Law</b>	includes any law, statute, regulation, ordinance, authorisation, ruling, judgement and any order or decree of any Government Agency in any jurisdiction.
<b>Legend Services Agreement</b>	the services agreement to be entered into between Legend and the Company under which Legend will provide head office services, and the use of facilities and equipment, to the Company.

<b>Term</b>	<b>Meaning</b>
<b>Legend Transfer Agreement</b>	the asset transfer agreement to be entered into between Legend and the Company under which Legend agrees to transfer the Phosphate Assets to the Company.
<b>Liquid Assets</b>	at any time, the aggregate of the Company's: <ol style="list-style-type: none"> <li>1 Available Cash; and</li> <li>2 Cash Equivalent Investments,</li> </ol> in either case to which the Company is alone beneficially entitled at that time and which is not subject to any Security Interest other than a Security.
<b>Loss</b>	losses, liabilities, damages, costs, charges and expenses and includes Taxes and expenses relating to Taxes except Excluded Taxes.
<b>Marketable Securities</b>	<ol style="list-style-type: none"> <li>1 the meaning given to that expression in the Corporations Act; and</li> <li>2 any units (whatever called) in a trust estate which represent a legal or beneficial interest in any of the income or assets of that trust estate and includes any options to acquire any units as described.</li> </ol>
<b>Material Adverse Change</b>	any event or circumstance or series of events or circumstances which alone or together have or could reasonably be expected to have a Material Adverse Effect.
<b>Material Adverse Effect</b>	a material adverse effect on: <ol style="list-style-type: none"> <li>1 on the business, assets, liabilities, financial position or prospects of an Obligor;</li> <li>2 the ability of an Obligor to perform and comply with any material provision of any Transaction Document or the Legend Transfer Agreement; or</li> <li>3 the rights of the Noteholders under, or the enforceability of, a Transaction Document.</li> </ol>
<b>Mining Rights</b>	<ol style="list-style-type: none"> <li>1 any tenement listed in Schedule 8;</li> <li>2 any access rights or rights to use infrastructure or extract water listed in Schedule 8; and</li> <li>3 any tenement granted pursuant to an application listed in Schedule 8.</li> </ol>
<b>New Security Provider Accession Deed</b>	the accession deed in the form of Attachment 2.

<b>Term</b>	<b>Meaning</b>
<b>Nominee</b>	National Nominees Limited (in its capacity as custodian for the relevant Noteholder).
<b>Note</b>	a convertible note issued in accordance with clause 3.1 which has not been repaid or converted in accordance with this agreement.
<b>Noteholder</b>	<ol style="list-style-type: none"> <li>1 each Initial Noteholder; and</li> <li>2 any person to whom a Note is transferred in accordance with this agreement.</li> </ol>
<b>Noteholder Warranties</b>	the representations and warranties set out in Schedule 4.
<b>Note Certificate</b>	a certificate in the form set out in Schedule 2.
<b>Obligor</b>	<ol style="list-style-type: none"> <li>1 the Company; and</li> <li>2 each Security Provider.</li> </ol>
<b>Ordinary Shares</b>	fully paid ordinary shares in the capital of the Company.
<b>Outstanding Amount</b>	<p>in respect of a Note:</p> <ol style="list-style-type: none"> <li>1 the Outstanding Principal in respect of the Note; and</li> <li>2 the accrued but uncapitalised and unpaid interest from time to time payable by the Company in respect of the Note under this agreement.</li> </ol>
<b>Outstanding Principal</b>	<p>in respect of a Note:</p> <ol style="list-style-type: none"> <li>1 the Face Value of the Note; and</li> <li>2 any interest in respect of the Note which has been capitalised under this agreement.</li> </ol>
<b>Paradise Employment Contracts</b>	employment contracts entered into between the Company and each of Craig Michael and Ed Walker.
<b>Paradise Phosphate Project</b>	the exploration and mining project in the Georgina Basin, Queensland which includes the phosphate deposits known as Paradise South, Paradise North and D-Tree.

Term	Meaning
<b>Parent Entity</b>	in respect of an entity, each entity which Controls that entity.
<b>Permitted Financial Accommodation</b>	<p>any financial accommodation or any guarantee provided by an Obligor in respect of financial accommodation:</p> <ol style="list-style-type: none"> <li>1 under the Transaction Documents;</li> <li>2 in the ordinary course of business up to a maximum aggregate amount of \$250,000; or</li> <li>3 with the prior written consent of the Noteholders.</li> </ol>
<b>Permitted Financial Indebtedness</b>	<ol style="list-style-type: none"> <li>1 any liability incurred, under any agreement entered into for the acquisition of any asset or service, in relation to expenditure permitted under the Cash Flow Model;</li> <li>2 any Financial Indebtedness incurred or permitted to be incurred under any Transaction Document; or</li> <li>3 any other Financial Indebtedness incurred or permitted to be incurred with the prior written consent of the Noteholders.</li> </ol>
<b>Permitted Security Interest</b>	<ol style="list-style-type: none"> <li>1 every lien created by operation of law (other than the <i>Personal Property Securities Act 2009 (Cth)</i>) securing an obligation that is not yet due;</li> <li>2 every lien or retention of title arrangement securing the unpaid balance of purchase money for property acquired in the ordinary course of ordinary business under an instalment contract on the supplier's standard terms where such unpaid balance is not yet due;</li> <li>3 every lien for the unpaid balance of moneys owing for repairs where such unpaid balance is not yet due;</li> <li>4 any Security Interest arising under a bailment, hiring arrangement or lease where an Obligor is the bailee, hirer or lessee, provided that the aggregate value of all assets or property secured under each such Security Interest does not exceed \$250,000; or</li> <li>5 an Existing Security Interest.</li> </ol>
<b>Permitted Transferee</b>	<ol style="list-style-type: none"> <li>1 Acorn or a Related Body Corporate of Acorn; or</li> <li>2 a trustee or responsible entity, or any custodian, sub-custodian or nominee of any trustee or responsible entity, of any trust managed by Acorn or a Related Body Corporate of Acorn.</li> </ol>
<b>Phosphate Assets</b>	the meaning given to Assets in the Legend Transfer Agreement.
<b>Private Sale Price</b>	the price, or the implied price as determined by the Company in the case of an Asset Sale, per Ordinary Share in a Share Sale or Asset Sale or, if the price is determined pursuant to clause 6.3(d) that price.

Term	Meaning
<b>Qualifying IPO</b>	<p>an IPO on the ASX having a Post-IPO Equity Value of at least \$50 million pursuant to which the public subscribes for, and the Company issues:</p> <ol style="list-style-type: none"> <li>1 more than 10% of the total number of Ordinary Shares on issue immediately after the date of the prospectus lodged with ASIC in respect of an IPO;</li> </ol> <p>and</p> <ol style="list-style-type: none"> <li>2 in the case of a Pre-IPO Equity Value equal to or less than \$50 million, Ordinary Shares to the value of at least \$20 million (calculated by reference to the IPO Price); or</li> <li>3 in the case of a Pre-IPO Equity Value of more than \$50 million, Ordinary Shares to the value calculated in accordance with the following formula (up to a maximum of \$30 million):</li> </ol> $A + \left( B \times \frac{C \times D}{E} \right)$ <p>where:</p> <p>A = \$10 million</p> <p>B = \$10 million</p> <p>C = Number of Ordinary Shares on issue immediately prior to date of the prospectus in respect of a IPO</p> <p>D = IPO Price</p> <p>E = \$50 million</p> <p>in this definition:</p> <p><b>Post-IPO Equity Value</b> means the implied value of all Ordinary Shares on issue (calculated by reference to the IPO Price) immediately after issue of Ordinary Shares applied for under the prospectus and any Ordinary Shares issued pursuant to clause 7.3</p> <p><b>Pre-IPO Equity Value</b> means the implied value of all Ordinary Shares on issue (calculated by reference to the IPO Price) immediately prior to the date of the prospectus in respect of a Qualifying IPO</p>
<b>Redemption Event</b>	<p>the occurrence of any of the following:</p> <ol style="list-style-type: none"> <li>1 an Event of Default;</li> <li>2 a Change in Control;</li> <li>3 the entry into an arrangement to undertake an Asset Sale;</li> <li>4 the entry into an arrangement to undertake a Share Sale;</li> <li>5 the Minister notifies the Company or Legend that it does not approve the assignment of the Mining Rights from Legend to the Company;</li> <li>6 the Company has not lodged a prospectus with ASIC in connection with a Qualifying IPO within 9 months of the Completion Date; or</li> <li>7 the Company has not completed a Qualifying IPO by the Scheduled Repayment Date.</li> </ol>

<b>Term</b>	<b>Meaning</b>
<b>Redemption Notice</b>	in respect to a Note, a notice given by a Noteholder substantially in the form set out in Schedule 4.
<b>Related Body Corporate</b>	the meaning given in section 9 of the Corporations Act.
<b>Related Party</b>	the meaning it would have in section 228 of the Corporations Act if all references in that section to a 'public company' were to a 'public company or proprietary company'.
<b>Related Party Transaction</b>	<p>a transaction which is governed by Chapter 2E of the Corporations Act, or would be governed by Chapter 2E of the Corporations Act if:</p> <ol style="list-style-type: none"> <li>1 the Company (and each Subsidiary of the Company) was a public company; and</li> <li>2 each Group Entity or Associate of Legend was a Related Party.</li> </ol>
<b>Same Day Funds</b>	immediately available and freely transferable funds.
<b>Scheduled Repayment Date</b>	the date that is 12 months after the Completion Date or any other date agreed between the Company and the Noteholders, provided that such date can never be more than 9 years and 11 months after Completion.
<b>Security Provider</b>	<ol style="list-style-type: none"> <li>1 Legend; and</li> <li>2 each new Security Provider that accedes to this agreement as a Security Provider by executing a New Security Provider Accession Deed.</li> </ol>
<b>Security</b>	<ol style="list-style-type: none"> <li>1 the general security agreement between the Company and the Security Trustee the form which was agreed on or about the date of this agreement;</li> <li>2 the share mortgage between Legend and the Security Trustee the form which was agreed on or about the date of this agreement;</li> <li>3 the mining mortgage between Legend and the Security Trustee the form which was agreed on or about the date of this agreement;</li> <li>4 the security agreement between Legend and the Security Trustee the form which was agreed on or about the date of this agreement;</li> <li>5 the mining mortgage between the Company and the Security Trustee the form which was agreed on or about the date of this agreement;</li> <li>6 any other Security Interest granted by an Obligor in favour of the Security Trustee to secure obligations under this agreement; and</li> <li>7 any other document which at a time the Beneficiaries (as defined in the Security Trust Deed) at that time, the Security Trustee and each Obligor at that time agree at any time, now or in the future, is a</li> </ol>



Term	Meaning
	"Security".
<b>Security Interest</b>	<p>any interest or power:</p> <ol style="list-style-type: none"> <li>1 reserved in or over an interest in any asset including, but not limited to, any retention of title; or</li> <li>2 created or otherwise arising in or over any interest in any asset under a bill of sale, security agreement, mortgage, charge, lien, pledge, trust or power,</li> </ol> <p>by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and includes, but is not limited to, any agreement to grant or create any of the above and includes a security interest under section 12(1) of the <i>Personal Property Securities Act 2009</i> (Cth).</p>
<b>Security Trust Deed</b>	the security trust deed made by each Obligor and the Security Trustee in favour of each Beneficiary (as defined in the Security Trust Deed) dated on or about the date of this agreement.
<b>Security Trustee</b>	Acorn.
<b>Share</b>	an Ordinary Share or any other share of any class in the capital of the Company which is on issue or to be issued.
<b>Share Sale</b>	a sale or transfer of all the Ordinary Shares.
<b>Subscription Notes</b>	<p>in respect to each Initial Noteholder, the number of Notes that the Initial Noteholder subscribes for under this agreement, which is in relation to:</p> <ol style="list-style-type: none"> <li>1 MIT1, 1,965,000 Notes; and</li> <li>2 MIT2, 5,535,000 Notes.</li> </ol>
<b>Subscription Price</b>	in respect to a Note, \$1.
<b>Subscription Payment</b>	<p>in respect to each Initial Noteholder, the Subscription Price multiplied by the number of Subscription Notes, which is in relation to:</p> <ol style="list-style-type: none"> <li>1 MIT1, \$1,965,000; and</li> <li>2 MIT2, \$5,535,000.</li> </ol>
<b>Subsidiary</b>	the meaning given in the Corporations Act.

<b>Term</b>	<b>Meaning</b>
<b>Tax</b>	<ol style="list-style-type: none"> <li>1 any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or</li> <li>2 any income, stamp or transaction duty, tax or charge,</li> </ol> <p>which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above. For the avoidance of doubt, Tax includes GST.</p>
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1997</i> (Cth) or the <i>Income Tax Assessment Act 1936</i> (Cth) as applicable.
<b>Tax Claim</b>	<ol style="list-style-type: none"> <li>1 an assessment from a Government Agency requiring the payment of any Tax;</li> <li>2 any document received from a Government Agency administering any Tax assessing, imposing, claiming or indicating an intention to claim any Tax; or</li> <li>3 lodgement of a tax return or a request for an amendment under a law about self-assessment of Tax.</li> </ol>
<b>Tax Consolidated Group</b>	a consolidated group or an MEC group as defined in the Tax Act.
<b>Tax Cost</b>	<p>all costs, and expenses incurred in:</p> <ol style="list-style-type: none"> <li>1 managing an inquiry; or</li> <li>2 conducting any Disputing Action in relation to a Tax Claim,</li> </ol> <p>in relation to Tax, but does not include a Tax.</p>
<b>Tax Law</b>	any law relating to Tax.
<b>Transaction Documents</b>	<ol style="list-style-type: none"> <li>1 this agreement;</li> <li>2 the Security Trust Deed;</li> <li>3 the Security; and</li> <li>4 any other document which at a time the Beneficiaries (as defined in the Security Trust Deed) at that time, the Security Trustee and each Obligor at that time agree at any time, now or in the future, is a "Transaction Document".</li> </ol>
<b>Warranties</b>	the representations and warranties set out in Schedule 3.

### 1.3 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement and a reference to this agreement includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (k) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (l) A reference to '\$' or "dollars" means the lawful currency of Australia.

### 1.4 Interpretation of inclusive expressions

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### 1.5 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### 1.6 Personal Property Securities (PPS) Law

- (a) If:
  - (1) a PPS Law applies, or will at a future date apply to any of the Transaction Documents or any of the transactions contemplated by them, or a Noteholder determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
  - (2) in the opinion of the Noteholder, the PPS Law:

- (A) adversely affects or would or may adversely affect an Noteholder's or Security Trustee's security position or the rights or obligations of a Noteholder or the Security Trustee under or in connection with the Transaction Documents; or
- (B) enables or would enable a Noteholder's or the Security Trustee's security position to be improved without adversely affecting the Obligors,

the Noteholder may (acting reasonably) from time to time give notice to the Obligors requiring the Obligors to do anything, including:

- (3) promptly providing all necessary information and taking all necessary action (including obtaining any consent or agreement or giving any notice) to enable a Noteholder or the Security Trustee to register fully valid and effective financing statements or financing change statements with respect to any PPSA security interest held or intended to be held by the person under the Transaction Documents at any time; and/or
- (4) amending any Transaction Document or executing any new Transaction Document,

that in the Noteholders' opinion is necessary to ensure that, to the maximum possible extent, the Noteholders' and the Security Trustee's security position, and rights and obligations, are not adversely affected as contemplated by clause 1.6(a)(2)(A) (or that any such adverse effect is overcome to the maximum extent possible) or that the Noteholders' and the Security Trustee's security position is improved as contemplated in clause 1.6(a)(2)(B). The Obligors must comply with the requirements of that notice within the time stipulated in the notice provided the stipulated time is a reasonable time having regard to the circumstances.

- (b) In this clause:

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

**PPS Law** means:

- (1) the PPSA;
- (2) any regulations made at any time under the PPSA;
- (3) any provision of the PPSA or regulations referred to in 2;
- (4) any amendment to any of the above, made at any time; or
- (5) any amendment made at any time to the Corporations Act or any other legislation in connection with the implementation or as a consequence of the PPSA.

## 1.7 Termination

- (a) This agreement terminates at the time on which no Notes are held by or on behalf of any Noteholder.
- (b) Subject to clause 22.9, a Noteholder who ceases to hold a Note (or have a Note held on its behalf), ceases to have any further rights or obligations under this agreement in that capacity as a Noteholder.

## 2 Conditions precedent

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### 2.1 Conditions precedent

The Initial Noteholders are not obliged to pay the Subscription Price for the Subscription Notes under clause 3.1 unless and until:

- (a) the Initial Noteholders have received all of the following in form and of substance satisfactory to the Initial Noteholders (acting reasonably):
  - (1) **(officer's certificate)** an officer's certificate in the form of Schedule 9 given in respect of each Obligor and dated no more than 5 Business Days before the Completion Date;
  - (2) **(Transaction Documents)** originals of each Transaction Document duly executed by all parties to them other than the Noteholders;
  - (3) **(Legend Transfer Agreement)** certified copy of the Legend Transfer Agreement (on terms acceptable to the Noteholders) duly executed by all parties to them;
  - (4) **(Paradise Employment Contracts)** certified copies of the Paradise Employment Contracts (on terms acceptable to the Investors) duly executed by all parties to them;
  - (5) **(caveator consent)** certified copy of documents recording the consent of Real Grumpy Pty Ltd & Ernst Alfred Kohler (including two copies of the form number MRA -23 (consent of caveator) executed by each of Real Grumpy Pty Ltd & Ernst Alfred Kohler) to any security taken over, and the transfer of all right, title and interest in, the mining lease 90191 pursuant to the Security and the Legend Transfer Agreement;
  - (6) **(DERM risk assessment report waiver)** certified copy of documents recording the waiver of the requirement to undertake a DERM risk assessment before Legend can deal with its interest under the compensation agreements entered into between Bezuma Pastoral Co Pty Ltd and Legend;
  - (7) **(fees and expenses)** evidence that all fees and expenses due and payable by the Company under the Transaction Documents have been paid or will be paid on the Completion Date out of the proceeds of the Notes; and
  - (8) **(Indirect TSA and Indirect TFA)** Legend and the Company have entered into an Indirect TSA and an Indirect TFA, each of which is in a form satisfactory to the Noteholders.
- (b) **(no Event of Default)** in the opinion of the Noteholders no Event of Default has occurred between the date of this agreement and Completion; and
- (c) **(Completion of Restructure)** completion has occurred under the Legend Transfer Agreement in accordance with the terms of that agreement to the reasonable satisfaction of the Noteholders.

### 2.2 Cut-off date

Legend and the Company must use reasonable endeavours to satisfy the conditions precedent in clause 2.1 as soon as are reasonably practical and, in any event by, 21 February 2012. If the conditions precedent are not satisfied by this date either Initial Noteholder may terminate this agreement by providing written notice to the Company.

### 2.3 Waiver

The conditions in clause 2.1 are for the benefit of the Initial Noteholders and may only be waived by the Initial Noteholders.

### 2.4 Transfer of Mining Rights to the Company

Legend and the Company must:

- (a) take any and all steps necessary or desirable to perfect the transfer of Legend's right, title and interest in the Mining Rights to the Company, including registration thereof, as soon as practicable including by promptly complying with any requests for information from the relevant Government Authority; and
- (b) keep the Noteholders informed of its progress towards satisfying its obligation under sub-clause (a).

## 3 Issue of Notes

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### 3.1 Issue of Notes

On the Completion Date the Company must issue, and each Initial Noteholder must subscribe, or procure that the Nominee subscribes for, its Subscription Notes for the Subscription Price in accordance with this agreement.

### 3.2 Ranking of Notes

The Subscription Notes will:

- (a) be senior, unsubordinated and secured by each Security; and
- (b) be convertible in accordance with clause 7 into fully paid-up Ordinary Shares (unless the Notes are earlier repaid).

### 3.3 Use of subscription proceeds

- (a) The Company must use the proceeds from the issue of the Subscription Notes for:
  - (1) progressing the bulk sample and offtake with IFFCO;
  - (2) progressing the preparation for a Qualifying IPO on the ASX; and
  - (3) such purposes as set out, and expenditure provided for, in the Cash Flow Model approved by the Noteholders,in accordance with the annual budget and Cash Flow Model of the Company.
- (b) The Company is entitled to incur an over-expenditure up to 15% of the authorised amount for any line item in the Cash Flow Model approved by the Noteholders, without further approval by the Noteholders, provided the over-expenditure does not relate to a Related Party Transaction.
- (c) The Company must not incur any over-expenditure on a Related Party Transaction unless prior written approval is given by the Noteholders.
- (d) The Company must not use the proceeds from the issue of the Subscription Notes to:
  - (1) satisfy any consideration payable under the Legend Transfer Agreement;

- (2) pay for any services provided to Legend (including adviser fees) in connection with the Legend Transfer Agreement; or
- (3) pay for any costs in relation to the Phosphate Assets incurred by Legend at a time while the Phosphate Assets were owned by Legend.

### 3.4 Transfer of Notes

- (a) A Noteholder must not transfer its Notes other than:
  - (1) to a Permitted Transferee; or
  - (2) if a Redemption Event has occurred to any person who comes within section 708(8), (10) or (11) of the Corporations Act,and, subject to paragraph (b), the Company must register the transfer on receipt of a document executed by the transferor and the transferee that constitutes the transfer.
- (b) A transferee of Notes must execute and deliver a Deed of Adherence before the Company is required to register the transfer of those Notes.
- (c) A Noteholder may only transfer all (but not some) of the Notes held by or on behalf of it.

## 4 Interest

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### 4.1 Payment

- (a) Subject to clauses 4.1(b) and 4.4, the Company must pay interest in arrears on the Outstanding Principal for each Interest Period on each Interest Payment Date.
- (b) Interest is not payable on the Outstanding Principal for the first Interest Period if a Qualifying IPO occurs during that Interest Period.

### 4.2 Rate

The rate of interest payable under clause 4.1 is:

- (a) 10% per annum in respect of an amount that is not overdue and no Event of Default subsists; and
- (b) 14% per annum in respect of an amount that is overdue or during any period during which an Event of Default subsists.

### 4.3 Calculation

The interest payable under clause 4.1 is calculated on the daily balances on the basis of a 365 day year and for the actual number of days elapsed from and including the first day of each Interest Period to, but excluding, the last day of the Interest Period or, if earlier, the Scheduled Repayment Date.

### 4.4 Capitalisation

- (a) Interest under clause 4.1 which remains unpaid at midnight on each Interest Payment Date will be capitalised, unless a notice has been given by the Company under clause 4.4(b).

- (b) The Company may notify the Noteholders not less than 10 Business Days before the end of an Interest Period that interest for that Interest Period will not capitalise and be payable on the Interest Payment Date.

## 5 Completion

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### 5.1 Time and place for Completion

Completion must take place:

- (a) as soon as practical, and in any event within 5 Business Days, after the satisfaction or waiver of all of the conditions precedent in clause 2.1;
- (b) at the office of Freehills at Level 42, 101 Collins Street, Melbourne or at any other place the parties agree; and
- (c) at the time (but during banking hours at that place) that the parties agree.

### 5.2 Company actions at Completion

At Completion, the Company must issue the Subscription Notes to each Initial Noteholder or the Nominee (as directed by each Initial Noteholder) free from any Security Interest or other third party rights.

### 5.3 Payment at Completion

At Completion, each Initial Noteholder must pay, or cause to be paid, to the Company the Subscription Payment in Same Day Funds.

### 5.4 Documents to be delivered at Completion

At Completion, the Company must:

- (a) **(Note certificates)** issue the Note Certificates in the name of each Initial Noteholder or the Nominee (as the case may be) for its Subscription Notes; and
- (b) **(register of Noteholders)** give to each Noteholder a certified copy of the register of noteholders of the Company showing each Noteholder or the Nominee (as the case may be) as a registered holder of its Subscription Notes.

### 5.5 Post Completion actions

The Company will procure that the relevant ASIC forms are lodged to reflect the issue of the Subscription Notes as soon as practicable, and in any event within 15 days, after Completion.

### 5.6 Nominee

If an Initial Noteholder elects to have its Notes held by the Nominee on its behalf, the Initial Noteholder must procure that the Nominee acts in accordance with this agreement at all times.



## 6 Repayment of Notes

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### 6.1 Payment on the Scheduled Repayment Date

The Company must pay the sum of the Outstanding Amount divided by 0.70 (**Scheduled Repayment Amount**) in respect of each Note on the Scheduled Repayment Date to the relevant Noteholder.

### 6.2 Method of payment

- (a) The Company must make all payments due under this agreement in A\$ in Same Day Funds and not later than midday in Melbourne on the due date.
- (b) The Company must make all payments due under this agreement without any set-off, counterclaim or condition, or any deduction or withholding for any Tax or any other reason (other than a deduction or withholding which is required by applicable Law).

### 6.3 Redemption of Notes on occurrence of Redemption Event

- (a) If a Redemption Event occurs the Company must immediately give written notice to the Noteholders (copied to Security Trustee):
  - (1) specifying that a Redemption Event has occurred; and
  - (2) setting out reasonable details of the event or circumstances constituting the Redemption Event including the calculation of the Private Sale Price (if applicable).
- (b) If a Redemption Event occurs then a Noteholder may at any time following the occurrence of the Redemption Event give a Redemption Notice to the Company (copied to the Security Trustee) requiring the Company to redeem all the Notes held by or on behalf that Noteholder in accordance with the Redemption Notice by paying to that Noteholder:
  - (1) in the case of an event specified in items 3 or 4 of the definition of Redemption Event, the greater of the amounts (or if the amounts calculated under each alternative formula is the same then that amount) calculated as follows:

$$A \times \frac{10}{7}$$

**OR**

$$A \times \frac{B}{C}$$

where:

A = the Outstanding Amount on the date of repayment of the Notes

B = the Private Sale Price

C = the Conversion Price on the date of repayment of the Notes

- (2) in the case of the events specified in items 6 or 7 of the definition of Redemption Event, the Outstanding Amount divided by 0.7;
- (3) in the case of an Event of Default where an Obligor does not pay when due the amount determined in clause 11.6(f), that amount; or
- (4) in the case of any other Redemption Event, the Outstanding Amount,

in respect of a Note multiplied by the outstanding Notes held by or on behalf of that Noteholder (**Redemption Amount**).

- (c) In the case of an event specified in items 3 or 4 of the definition of Redemption Event, if the Noteholders reasonably consider that the Private Sale Price specified in the notice given pursuant to clause 6.3(a) does not take account of all benefits and consideration receivable by Legend (and any Related Party of Legend) and the Company as a direct or indirect result of the transactions contemplated by the relevant Asset Sale or Share Sale, the Noteholders must set out in reasonable detail in the Redemption Notice its reasons as to why the Private Sale Price specified in the notice given pursuant to clause 6.3(a) does not fully reflect the value received under the Asset Sale or Share Sale (as applicable).
- (d) If the Company and the Noteholders cannot agree on the Private Sale Price within 10 Business Days of the date of the Redemption Notice, the Company must appoint an Independent Expert to determine the Private Sale Price by:
  - (1) taking into account the amount which a willing (but not anxious) seller would be prepared to accept and a willing (but not anxious) buyer would be prepared to pay for the Ordinary Shares or assets the subject of the Asset Sale;
  - (2) taking into account all the direct and indirect benefits and consideration (including deferred consideration and adjustments to the purchase price (if in favour of the Company or Legend)) to be received by Legend (and any Related Party of Legend) and the Company as a direct or indirect result of the transactions contemplated by the relevant Asset Sale or Share Sale (where the value of such benefits and consideration are calculated on the basis of the facts and circumstances then existing including facts and circumstances occurring in connection with the events in respect of which the Private Sale Price is being calculated);
  - (3) ignoring any premium or discount relating to whether the transfer of those Ordinary Shares could give rise to a controlling or minority stake in the Company; and
  - (4) ignoring any Tax consequences to the extent that the Tax arises as a direct or indirect result of the implementation of the transactions contemplated by the Asset Sale or Share Sale (as applicable); and
  - (5) ignoring any restrictions on transfer of the Ordinary Shares or assets the subject of the Asset Sale in this agreement or the Constitution.
- (e) Payment of the amount payable under clause 6.3(b) must be made:
  - (1) in the case of an event specified in items 3 or 4 of the definition of Redemption Event:
    - (A) where the Company and Noteholders agree on the Private Sale Price, on the date of completion under the Asset Sale or Share Sale;
    - (B) where the Independent Expert determines the Private Sale Price, within 2 Business Days of the determination of the Independent Expert; or
  - (2) in case of any other Redemption Event within 2 Business Days of the date of the Redemption Notice.

## 6.4 Redemption Notice

A Redemption Notice:

- (a) is irrevocable; and
- (b) must be accompanied by the Note Certificates for the relevant Notes (or such other evidence of title to the Notes as is reasonably acceptable to the Company).

## 6.5 Appropriation

- (a) All payments by the Company to a Noteholder following an Event of Default or Redemption Event may be appropriated as between principal, interest and other amounts as the Noteholder determines in its absolute discretion.
- (b) However, if the Noteholder does not make a determination, the Company may at any other time appropriate such payments in the following order:
  - (1) first, towards all fees, costs, expenses, charges, damages and indemnities (other than interest) payable by the Company to the Noteholder under this agreement;
  - (2) second, towards payment of uncapitalised interest payable by the Company to the Noteholder under this agreement;
  - (3) third, towards payment of capitalised interest payable by the Company to the Noteholder under this agreement; and
  - (4) fourth, towards payment of the Outstanding Principal in respect of the Notes held by or on behalf of the Noteholder.
- (c) All payments by the Company to a Noteholder following an Event of Default or Redemption Event may be appropriated as between principal, interest and other amounts despite and prevalent to any appropriation made by the Company.
- (d) All payments by the Company to Noteholders will be made on a pro rata basis.

## 7 Conversion

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### 7.1 Restriction on Conversion

Subject to clause 7.2, the Company must not convert the Notes until after the expiry of 3 years from the date of execution of the Legend Transfer Agreement.

### 7.2 Mandatory Conversion

If the Company lodges a prospectus with ASIC for a Qualifying IPO, then all the Notes will automatically convert on the date of, and immediately following, the issue of Ordinary Shares applied for under the prospectus for a Qualifying IPO (**Conversion Date**).

### 7.3 Conversion Mechanics

- (a) On the Conversion Date, the Company must issue to the relevant Noteholder the number of Ordinary Shares (**Conversion Shares**) calculated as follows:

If the Conversion Price is equal to or more than the IPO Price multiplied by 0.70:

$$\left( \frac{A \times \frac{10}{7}}{B} \right) \times C$$

OR

If the IPO Price multiplied by 0.70 is more than the Conversion Price:

$$\frac{A \times \left( \frac{\text{IPO Price}}{\text{Conversion Price}} \right) \times C}{B}$$

where:

A = the Outstanding Amount in respect of a Note on the Conversion Date;

B = the IPO Price on the Conversion Date; and

C = the number of outstanding Notes held by or on behalf of the relevant Noteholder.

- (b) On Conversion of any Notes, the Company must issue the Conversion Shares in the name of the Noteholder or as otherwise directed by it in writing no later than 5 Business Days prior to the date of issue.
- (c) No fractional Ordinary Shares will be issued upon conversion in accordance with this agreement and any fractional Ordinary Shares to which the Noteholder would otherwise be entitled will be rounded up to the nearest whole Ordinary Share.
- (d) The Conversion Shares issued on the Conversion of any Notes will:
  - (1) be fully paid and free from any Security Interest or other third party rights; and
  - (2) rank in all respects equally, and form one class with, all other Ordinary Shares.

#### 7.4 Undertakings relating to Conversion

The Company undertakes to each Noteholder that it will:

- (a) be able to issue Ordinary Shares to satisfy the conversion rights attaching to the Notes;
- (b) ensure that the Conversion Shares are freely transferrable without any requirement for disclosure to investors under Part 6D.2 of the Corporations Act; and
- (c) obtain, maintain and promptly renew (if appropriate) from time to time, all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable Law, regulation to enable it to perform its obligations under this agreement and the Notes or which are required for the validity or enforceability of the Notes.

#### 7.5 Post completion

- (a) The Company will procure that the relevant ASIC forms are lodged within 1 Business Day to reflect the issue of the Conversion Shares.
- (b) The Company must procure the official quotation of the Ordinary Shares (including Conversion Shares) on the ASX.

## 8 The Conversion Price and adjustment

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### 8.1 Initial Conversion Price

- (a) The initial Conversion Price is A\$0.50.
- (b) The Conversion Price will be adjusted in accordance with clause 8.2.

### 8.2 Adjustment of Conversion Price

The Conversion Price will from time to time be adjusted in accordance with the following provisions:

- (a) **Consolidation, sub-division or reclassification:** If there is any consolidation, sub-division or reclassification of Ordinary Shares, the Conversion Price in force immediately prior to that event must be adjusted by multiplying it by the following fraction:

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

where:

- A = the aggregate number of Ordinary Shares on issue immediately before such consolidation, reclassification or sub-division; and
- B = the aggregate number of Ordinary Shares on issue immediately after, and as a result of, such consolidation, reclassification or sub-division.

Each such adjustment will be effective from the close of business on the day immediately preceding the date on which the consolidation, reclassification or sub-division becomes effective.

- (b) **Issue of Equity Securities:** If the Company issues any Equity Securities (other than Ordinary Shares), and the Effective Consideration per Share receivable for such Equity Securities is less than the Conversion Price in force, the Conversion Price will be adjusted to equal that lower Effective Consideration per Share. Each such adjustment will be effective as at the date on which such issue of Equity Securities takes effect.
- (c) **Issue of Ordinary Shares:** If the Company issues any Ordinary Shares at a price per Ordinary Share which is less than the Conversion Price in force, the Conversion Price will be adjusted to equal that lower price. Each such adjustment will be effective as at the date on which such issue takes effect.
- (d) **Other events:** If the Noteholders:
  - (1) disagree with the amount of any adjustment to the Conversion Price made by the Company as a result of an event or circumstance referred to in this clause 8.2; or
  - (2) determine that an adjustment should be made to the Conversion Price as a result of one or more events or circumstances not referred to in this clause 8.2,

the Noteholders may give a written notice to the Company (copied to the Security Trustee) setting out in reasonable detail, the adjustment to the Conversion Price taking into account the relevant event or circumstance (**Adjustment Notice**).

The Company and the Noteholders must use reasonable endeavours to agree the adjustment to the Conversion Price. If the Company and the Noteholders cannot agree on that adjustment within 10 Business Days of the date of the Adjustment Notice, the Company must appoint an Independent Expert to

determine the fair and reasonable adjustment to the Conversion Price after taking into account the relevant event or circumstance. Each such adjustment (provided that the adjustment would result in a reduction in the Conversion Price) will take effect in accordance with the Independent Expert's determination.

### 8.3 Adjustment conditions

- (a) Notwithstanding anything to the contrary contained in this agreement, no adjustment will be made to the Conversion Price when Ordinary Shares or other Equity Securities are issued, offered or granted pursuant to an Excluded Issue.
- (b) An adjustment to the Conversion Price must not involve an increase in the Conversion Price (except upon any consolidation of the Shares pursuant to clause 8.2(a)) and where an adjustment may be made under more than one clause, the Company or Independent Expert (as applicable) must apply the adjustment mechanism that results in the greatest reduction to the Conversion Price.
- (c) Any adjustment to the Conversion Price must be made to the nearest one tenth of one cent so that any amount under one fiftieth of a cent will be rounded down and any amount of one fiftieth of a cent or more will be rounded up.

### 8.4 Appointment of Independent Expert

- (a) Any Independent Expert appointed:
  - (1) under clause 8.2 to determine the Conversion Price;
  - (2) under clause 6.3(d) to determine the Private Sale Price; and
  - (3) under 11.6(e) to determine the Effective Consideration per Sale Share,must act as an expert and not as an arbitrator.
- (b) The costs of the Independent Expert will be borne by the Company.
- (c) In the absence of manifest error, the Independent Expert decision will be conclusive and binding on the Company and the Noteholders and all persons claiming through or under them respectively.
- (d) For so long as any amount of the Notes remains outstanding, the Company must make available for inspection at the Company's offices a signed copy of the Independent Expert's determination and a certificate signed by a director of the Company setting out brief particulars of the event giving rise to the adjustment, the Conversion Price in force prior to such adjustment, the adjusted Conversion Price and the effective date of such adjustment.

## 9 Restrictions on the Company

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### 9.1 Restrictions

Except with the written consent of a Noteholder, the Company must not, and Legend must ensure that the Company does not:

- (a) modify the rights attaching to the Ordinary Shares or create or issue or permit to be in issue any other class of Equity Securities carrying any right to income or capital which is more favourable than the corresponding right attaching to the Ordinary Shares;

- (b) create or permit to subsist any Security Interest over all or any part of its assets other than the Securities or an asset which is, upon its acquisition, subject to a Permitted Security Interest;
- (c) undertake an IPO other than a Qualifying IPO;
- (d) pay, make or declare any dividend or other distribution other than by a Subsidiary of the Company to the Company;
- (e) purchase its own shares or any other Equity Securities of any company, reduce its share capital, return capital to shareholders or in any other way restructure its capital;
- (f) enter into any merger or consolidation or make any acquisition of any other entity, company or business or do anything which would have the effect that it is operating a business or an activity which is not within the course of, or directly connected with, a business carried on by it as at the date of this agreement;
- (g) incur any Financial Indebtedness other than Permitted Financial Indebtedness;
- (h) deposit or invest money in or with any person except in the ordinary course of ordinary business and on ordinary commercial terms;
- (i) subject to clause 11.10(b), amend or replace its constitution;
- (j) take any action which constitutes or results in any material alteration to the nature of its business;
- (k) sell, assign, transfer or otherwise dispose of or part with possession of any of its assets except:
  - (1) an asset which is replaced by one or more assets having similar function and of comparable or superior type, value and quality on usual commercial terms;
  - (2) phosphate extracted from an area contained in the Mining Rights and sold on usual commercial terms or delivered to IFFCO pursuant to IFFCO Bulk Sample Arrangement; or
  - (3) as permitted under clause 9.1(v);
- (l) allow any other person to have a right or power to receive or claim any rents, profits, receivables, royalties, money or moneys worth (whether capital or income) in respect of its assets other than under a Transaction Document or Existing Security Interest;
- (m) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts in circumstances where the arrangement is in connection with:
  - (1) the raising of Financial Indebtedness; or
  - (2) the acquisition of an asset,except for a netting-off or set-off arrangement in the ordinary course of its ordinary banking arrangements for the purpose of netting debit and credit balances;
- (n) enter into any arrangement which, if complied with, would prevent it from complying with their obligations under the Transaction Documents or Legend Transfer Agreement;
- (o) provide any financial accommodation, or give any guarantee in respect of any financial accommodation, to or for the benefit of any person, other than Permitted Financial Accommodation;
- (p) other than a Related Party Transaction approved pursuant to clause 11.10:
  - (1) enter into an agreement with a Related Party;

- (2) acquire or dispose of an asset from or to a Related Party;
  - (3) obtain or provide a service from or to a Related Party;
  - (4) obtain a right or incur an obligation from or to a Related Party; or
  - (5) implement any other transaction from or to a Related Party.
- (q) pay any director fees, management fees, consultancy fees or other like payments to any director, associate, or Related Body Corporate of it unless those fees or other payments are:
- (1) subject to clause 11.10, reasonable and are no more or less favourable than it is reasonable to expect would be the case if the relevant persons were dealing with each other at arm's length; or
  - (2) paid with the prior written consent of the Noteholders;
- (r) enter into any partnership or joint venture with any other person;
- (s) amend, or enter into any arrangement intended to amend, the Legend Transfer Agreement;
- (t) incorporate or acquire a new Subsidiary unless that Subsidiary complies with clause 14.4:
- (u) allow creditors (other than the Noteholders) to exceed \$100,000 in aggregate or to allow aged creditors (other than the Noteholders) of 90 days greater to exist unless being disputed in good faith and notified to the Noteholders; or
- (v) dispose of, encumber, surrender, allow to lapse or otherwise cease to enjoy the benefit of or compromise the Mining Rights other than the surrender, expiry or relinquishment of an area subject to the Mining Rights not required for the Paradise Phosphate Project as required under the terms of the Mining Right or any applicable Law or as otherwise contemplated by this agreement.

## 10 Warranties

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### 10.1 Warranties

Each Obligor gives the Warranties to and for the benefit of each Noteholder.

### 10.2 Noteholder Warranties

Each Noteholder gives the Noteholder Warranties to and for the benefit of the Company.

### 10.3 Repetition warranties

- (a) Each Warranty and Noteholder Warranty expressed to be given on a particular date is given on that date.
- (b) Any other Warranty or Noteholder Warranty, not expressed to be given on a particular date, is given on the date of this agreement and immediately before Completion except Warranty 1.7 which is given only at the date of Completion.

### 10.4 Survival

The Warranties and Noteholder Warranties survive the execution and Completion of this agreement.



## 10.5 Reliance

- (a) Each Obligor acknowledges that each Noteholder enters into this agreement in reliance on the Warranties.
- (b) Each Noteholder acknowledges that each Obligor enters into this agreement in reliance on each Noteholder Warranty.

## 10.6 Independent Warranties

Each Warranty and Noteholder Warranty is separate and independent and not limited by reference to any other Warranty or Noteholder Warranty or any notice or waiver given by any party in connection with anything in this agreement.

## 10.7 Indemnities

The Obligors jointly and severally indemnify each Noteholder against any Loss suffered or incurred by the Noteholder as a result of a breach of Warranty 3.

# 11 Ongoing requirements

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## 11.1 Compliance

- (a) Each Obligor must comply with all of its obligations under each Transaction Document to which it is a party.
- (b) Each Obligor must comply with:
  - (1) the Law; and
  - (2) all of its obligations under any Authorisation or Mining Right to which it is a holder.

## 11.2 Remain a company limited by shares

The Company and each Subsidiary must maintain its status as a company limited by shares incorporated under the Corporations Act. The Company and each Subsidiary must not transfer nor permit the transfer of its jurisdiction of incorporation outside Australia.

## 11.3 Authorisations and consents

- (a) Each Obligor must obtain, maintain and comply with any authorisations which it requires to carry out the transactions contemplated in, and to ensure the validity, enforceability and admissibility in evidence of, the Transaction Documents or Legend Transfer Agreement and not do anything which would prevent the renewal of any authorisation referred to in this clause 11.3(a) or cause it to be renewed on less favourable terms.
- (b) Each Obligor must comply with any conditions attaching to any approval or consent given by the Noteholders in connection with the Transaction Documents.
- (c) Each Obligor must comply with any conditions attaching to any approval or consent given by a Government Agency in connection with carrying out the transactions contemplated in the Legend Transfer Agreement.

#### 11.4 Maintain records and financial statements

- (a) The Company must keep accounting records which give a true and fair view of its financial condition and state of affairs.
- (b) The Company must ensure that the financial statements it provides to each Noteholder under clause 11.5(b) are prepared in accordance with the requirements in the Corporations Act for financial statements for a financial year.

#### 11.5 Provision of information to Noteholders

- (a) Each Obligor must provide any information in respect of it (including details of the Equity Securities of the Company) when reasonably requested by a Noteholder for the purposes of evaluating or otherwise considering Conversion or redemption of a Note.
- (b) The Company must provide the following information to each Noteholder:
  - (1) within one month after each calendar quarter, quarterly management accounts (including a profit and loss statement, balance sheet and cash flow analysis, a comparison and commentary on actual performance for the previous quarter and year to date against budget, and a forecast of future performance), a rolling 12-month cashflow forecast and a chief executive officer's report in a form acceptable to the Noteholders;
  - (2) within 3 months after the end of each financial year, audited annual financial statements of the Company and its Subsidiaries prepared in accordance with the Accounting Standards;
  - (3) all correspondence sent to, or received from, a Government Agency in connection with performing the transactions contemplated by the Legend Transfer Agreement or any Transaction Document;
  - (4) at least one month before the start of each financial year of the Company, an annual budget for the Company and its Subsidiaries;
  - (5) all correspondence and materials, at the time and in the form sent, to directors of the Company and its Subsidiaries including board papers and minutes of board meetings;
  - (6) copies of all documents issued by the Company or any of its Subsidiaries to holders of its Marketable Securities at the same time as their issue; and
  - (7) at the reasonable request of a Noteholder, any other information in respect of the financial condition or state of affairs of the Company or any of its Subsidiaries and any of its assets.
- (c) The Noteholders may access the site of the Paradise Phosphate Project and meet any employees, officers or contractors of the Company or Legend on giving reasonable notice.

#### 11.6 Restriction on transfer and issue of equity securities in the Company

Legend must:

- (a) not transfer or grant, or agree to transfer or grant, any right, title or interest in or to the Ordinary Shares held or controlled by Legend (**Legend Sell Down**); and
- (b) procure that the Company does not, and the Company must not, issue, or agree to issue, Equity Securities (**Company Equity Issue**),

unless:

- (1) Legend continues to hold, or control the exercise of voting rights attaching to, 90% or more of the total number of Ordinary Shares on issue post completion of the Legend Sell Down or Company Equity Issue (as applicable); and
  - (2) the Noteholders have provided their prior written approval to the Legend Sell Down or Company Equity Issue (as applicable).
- (c) If the Noteholders do not approve the Legend Sell Down or Company Equity Issue (as applicable), the Company may give written notice to the Noteholders (copied to the Security Trustee):
- (1) that it intends to redeem all (but not some) of the Notes held by or on behalf of the Noteholders; and
  - (2) setting out its calculation of the Effective Consideration per Sale Share,

**(Compulsory Redemption Notice).**

- (d) If the Noteholders disagree with the Effective Consideration per Sale Share calculated by the Company, the Noteholders must set out in reasonable detail the reasons why it disagrees with the Effective Consideration per Sale Share within 5 Business Days of the date of the Compulsory Redemption Notice.
- (e) The Company and Noteholders must use reasonable endeavours to agree the Effective Consideration per Sale Share. If the Company and the Noteholders cannot agree on the Effective Consideration per Sale Share within 10 Business Days of the date of notice given pursuant to clause 11.6(d), the Company must appoint an Independent Expert to determine the Effective Consideration per Sale Share by:
- (1) in the case of a Legend Sell Down:
    - (A) taking into account the amount which a willing (but not anxious) seller would be prepared to accept and a willing (but not anxious) buyer would be prepared to pay for the Ordinary Shares the subject of the Legend Sell Down (**Legend Transfer Shares**); and
    - (B) taking into account all direct and indirect benefits and consideration to be received by Legend (and any Related Party of Legend) as a result of the Legend Sell Down (including forms of consideration and benefits set out in the definition of Effective Consideration per Sale Share); and
    - (C) ignoring any premium or discount relating to whether the transfer of those Legend Transfer Shares could give rise to a controlling or minority stake in the Company,
  - (2) in the case of a Company Equity Issue:
    - (A) taking into account the amount which a willing (but not anxious) issuer would be prepared to accept and a willing (but not anxious) subscriber would be prepared to pay for the Equity Securities the subject of the Company Equity Issue (**New Company Equity Securities**);
    - (B) taking into account all direct and indirect benefits and consideration to be received by the Company (and any Related Party of the Company) as a result of the Company Equity Issue (including forms of consideration and benefits set out in the definition of Effective Consideration per Sale Share); and

- (C) ignoring any premium or discount relating to whether the issue of those New Company Equity Securities could give rise to a controlling or minority stake in the Company,
- (3) ignoring any negative effects of the Legend Sell Down or Company Equity Issue (as applicable) on the prospects of undertaking a Qualifying IPO in accordance with this agreement;
- (4) ignoring any Tax consequences to the extent that the Tax arises as a direct or indirect result of the implementation of the transactions contemplated by the Legend Sell Down or Company Equity Issue (as applicable); and
- (5) ignoring any restrictions on transfer of the Legend Transfer Shares, or issue of Equity Securities, in this agreement or the Constitution.
- (f) If the Company gives a Compulsory Redemption Notice, it must redeem all the Notes held by or on behalf of the Noteholders by paying to each Noteholder the greater of the amounts (or if the amounts calculated under each alternative formula is the same then that amount) calculated as follows:

$$A \times \frac{10}{7}$$

**OR**

$$A \times \frac{B}{C}$$

where:

A = the Outstanding Amount on the date of repayment of the Notes

B = the Effective Consideration per Sale Share receivable by (1) Legend in undertaking the Legend Sell Down or (2) the Company undertaking the Company Equity Issue (as applicable)

C = the Conversion Price on the date of repayment of the Notes, in respect of a Note multiplied by the outstanding Notes held by or on behalf that Noteholder.

- (g) Payment of the amount payable under clause 11.6(f) must be made:
- (1) in the case where the Noteholders and Company agree on the Effective Consideration per Sale Share, on the date of completion of the Legend Sell Down or Company Equity Issue (as applicable); or
- (2) in the case where the Independent Expert determines the Effective Consideration per Sale Share, the date determined by the Independent Expert.

## 11.7 Notification to Noteholders

Each Obligor must notify the Noteholders as soon as reasonably practicable after it becomes aware of any of the following:

- (a) the occurrence or potential occurrence of any Event of Default;
- (b) any Action in respect of it or any of their assets being commenced or threatened which is either:
- (1) in respect of an amount in excess of \$250,000; or

- (2) if adversely determined would have or be likely to have a Material Adverse Effect;
- (c) any Security Interest that exists over any of its assets;
- (d) any proposal of any Government Agency to compulsorily acquire any of its assets; and
- (e) the acquisition by it or any of its Subsidiaries of any interest in real property.

### 11.8 Noteholder attendance at board and shareholders meetings

Without prejudice to the rights of a Noteholder in its capacity (if any) as a shareholder of the Company, at the request of a Noteholder from time to time, the Company must permit the Noteholder or its representative to attend but not to speak or vote at any meeting of the board of directors and any general meeting of members of the Company or any of its Subsidiaries.

### 11.9 Payment of tax

- (a) Each Obligor must pay all Taxes when due, other than Contested Taxes.
- (b) Each Obligor must pay all Contested Taxes when the terms of any final determination or settlement require those Contested Taxes to be paid.

### 11.10 Majority Independent Board

- (a) The Company must ensure that, within 2 months from the Completion Date, the majority of its directors are Independent Directors (**Majority Independent Board**) and must keep the Noteholders informed of its progress towards satisfying this obligation.
- (b) The constitution of the Company must be amended within 2 months of the Completion Date to require the Company to have at all times a majority of Independent Directors.
- (c) Subject to clause 11.10(d), prior to the appointment of the Independent Directors necessary to constitute the Majority Independent Board, the Company and Legend must not enter into, renew, amend, vary, alter, release or waive any provision of any Related Party Transaction without the consent of the Noteholders.
- (d) The Company must not pay, or agree to pay, to any Related Party any amount other than:
  - (1) pursuant to a services agreement between that Related Party and the Company on arm's length terms acceptable to the Noteholders (acting reasonably); or
  - (2) without the prior written approval of the Noteholders.
- (e) Subject to clause 11.10(d), following the constitution of the Majority Independent Board, any entry, renewal, variation, alteration, release or waiver of any provision of any Related Party Transaction must be approved by the board of directors of the Company in consultation with the Noteholders.

### 11.11 Maintain assets

Each Obligor must maintain the assets the subject of the Security in good working order and condition, subject to fair wear and tear, and make all necessary repairs and replacements of assets the subject of the Security.

### 11.12 Maintain insurance

Each Obligor must insure and keep insured all its insurable assets the subject of the Security with an insurance company of repute to the full replacement value and for full reinstatement of those assets against all risks which are usually insured by companies which conduct similar types of business to that which is conducted by the Obligor and shall ensure that the Security Trustee is named as a loss payee.

### 11.13 Financial covenant

The Company must maintain Liquid Assets of at least \$1,000,000.

### 11.14 Further assurances regarding Security

Each Obligor must:

- (a) do anything which a Noteholder or the Security Trustee reasonably requests which more satisfactorily charges or secures the priority of its Security, or secures to the Security Trustee its secured property under the Security in a manner consistent with any provision of any Transaction Document, or aids in the exercise of any Power (as defined in a document granting a Security) of a Noteholder or the Security Trustee, including, the execution of any document, the delivery of Mining Rights, King Eagle Tenements or the execution and delivery of blank transfers;
- (b) when a Noteholder or the Security Trustee requests, execute a legal or statutory mortgage or other security document in favour of the Security Trustee over any real property or Mining Rights, King Eagle Tenements or any other tenements acquired by it on or after the date of this agreement in form and substance satisfactory to the Noteholders; and
- (c) use its best endeavours to register any such new mortgage or other security document.

## 12 Events of default

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### 12.1 Events of default

Each of the following is an Event of Default:

- (a) an Obligor fails to pay interest when due, or fails to pay within 2 Business Days of its due date any other amount payable, under any of the Transaction Documents or Legend Transfer Agreement;
- (b) an Obligor fails to comply with any provision of a Transaction Document or the Legend Transfer Agreement and that failure, if capable of remedy, has not been remedied within 5 Business Days after the earlier of a Noteholder receiving the notice of the Event of Default or a Noteholder requesting the Obligor in writing to remedy the default;
- (c) any representation, warranty or statement made or repeated in or in connection with the Transaction Documents or Legend Transfer Agreement by an Obligor is untrue or misleading (whether by omission or otherwise) in a material particular or to a material extent when so made or repeated or becomes untrue or misleading (or, in the case of financial forecasts, unfair or unreasonable) in a material particular or to a material extent when taken as a whole;
- (d) an order is made for the winding up of an Obligor or for the appointment of a liquidator in respect of an Obligor;

- (e) an Obligor passes a resolution for its winding up;
- (f) an Obligor is deregistered, or any steps are taken to deregister an Obligor under the Corporations Act;
- (g) a judgment in an amount exceeding \$250,000 is obtained against an Obligor and is not set aside or satisfied within 20 Business Days;
- (h) a distress, attachment, execution or other process of a Government Agency is issued against, levied or entered upon a asset of an Obligor in an amount exceeding \$250,000 and is not set aside or satisfied within 10 Business Days;
- (i) a receiver, controller (within the meaning of section 9 of the Corporations Act) or analogous person is appointed to, or the holder of a Security Interest takes possession of, all or any part of the assets of an Obligor;
- (j) an Obligor:
  - (1) suspends payment generally;
  - (2) becomes an externally-administered body corporate within the meaning of the Corporations Act;
  - (3) becomes subject to administration under Part 5.3A of Chapter 5 of the Corporations Act,; or
  - (4) is or states that it is, or is deemed by applicable Law to be, unable to pay its debts;
- (k) pursuant to section 459F of the Corporations Act an Obligor is taken to have failed to comply with a statutory demand;
- (l) an Obligor takes any step for the purpose of entering into a compromise or arrangement with its members or creditors generally;
- (m) anything which is analogous or has an effect which is substantially similar to any of the events in clauses 12.1(d) to 12.1(l) of this definition occurs under any Law;
- (n) an Obligor implements a merger, demerger or scheme of arrangement with any person without the prior approval of the Noteholders;
- (o) an Obligor ceases to carry on, or suspends operation of its, business;
- (p) a material provision of a Transaction Document or Legend Transfer Agreement is held by a court of competent jurisdiction to be illegal, void, voidable or unenforceable;
- (q) any person purports to terminate, rescind or avoid any material provision of any Transaction Document or Legend Transfer Agreement;
- (r) the execution, delivery or performance of the Transaction Documents (including the issue and Conversion of the Notes) or Legend Transfer Agreement by an Obligor:
  - (1) breaches its constitution or other constituent documents (as applicable); or
  - (2) breaches any Law or obligation, by which it is bound and which would prevent it from entering into and performing all or any material obligations under this agreement;
- (s) the process of any court of authority is invoked against an Obligor or a material part of the property of an Obligor to enforce any judgement or order for any amount;
- (t) any of the following occurs:

- (1) any Financial Indebtedness of an Obligor becomes due (other than at the option of that Obligor) prior to its stated maturity;
  - (2) any Financial Indebtedness of an Obligor is not paid when due or within any applicable period of grace;
  - (3) any Security Interest granted by an Obligor is enforced by reason of the occurrence of an event of default or analogous occurrence (however described); or
  - (4) any stock, shares, debenture, bond or similar instrument issued by the an Obligor is required to be redeemed or repurchased prior to its stated maturity by reason of the occurrence of an event of default or analogous occurrence (however described);
- (u) if any Event of Default (or occurrence which would otherwise have been or become an Event of Default) is conditionally waived by the Noteholders and an Obligor does not comply with those conditions or those conditions are not fulfilled (whether by an Obligor or any other person) or are or become incapable of fulfilment;
- (v) a person is appointed under any legislation to manage any part of the affairs of an Obligor;
- (w) all or a material part of the assets of an Obligor are compulsorily acquired by any Government Agency or an Obligor sells or divests all or a material part of its assets pursuant to a binding order from a Government Agency and full compensation is not received for the acquisition, sale or divestiture;
- (x) all or any material provision of any of the Transaction Documents or Legend Transfer Agreement:
- (1) does not have effect or ceases to have effect in accordance with its terms;
  - (2) is held to be or becomes void, voidable, illegal, invalid or unenforceable other than by reason of equitable principles or laws affecting creditors' rights generally; or
  - (3) is claimed by an Obligor to be any of the matters referred to in clause 12.1(x)(1) or 12.1(x)(2) or an Obligor or any other person commences any court proceedings to establish any of the matters referred to in clause 12.1(x)(1) or 12.1(x)(2) to be the case;
- (y) any event occurs which has or is likely to have a Material Adverse Effect;
- (z) the abandonment, suspension, cessation, destruction or shutdown of all or a substantial part of the Paradise Phosphate Project;
- (aa) termination or revocation of any of the Key Mining Rights or associated Authorisations or arrangements (including compensation and land access arrangements);
- (bb) the commencement, or pending or threatened commencement, of any Action against any Obligor which is reasonably likely to have a Material Adverse Effect;
- (cc) an Obligor ceases for any reason to be able lawfully to carry out all the transactions contemplated in any of the Transaction Documents or Legend Transfer Agreement; or
- (dd) the Company becomes a member of a Tax Consolidated Group

## 12.2 Appointment of a Controller

- (a) If the Security Trustee appoints a Controller (as defined in the Security Trust Deed) under a Security (as defined in the Security Trust Deed) on occurrence of



an Event of Default referred to in clauses 12.1(b), 12.1(o), 12.1(y), 12.1(z) or 12.1(bb), then that Controller must not enter into any agreement to sell the assets the subject of the Security for a period of 45 days from the date of its appointment.

- (b) For the avoidance of doubt, clause 9.2(a):
  - (1) only applies to the first appointment of a Controller and clause 9.2(a) does not apply to any subsequently appointed Controller provided that 45 days has expired since the date of first appointment of a Controller;
  - (2) in no way restricts or fetters the rights of the Controller to undertake a sale process for the assets the subject of the Security; and
  - (3) must in no way interfere with the performance by the Controller of its obligations under the Corporations Act.

## 13 Tax Indemnity

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### 13.1 Tax indemnity

Legend indemnifies (and must keep indemnified) the Company from and against the amount of any:

- (a) Tax payable by the Company to the extent that the Tax:
  - (1) relates to any period, or part period, up to and including Completion; or
  - (2) arises as a result of entry into this agreement or Completion (other than any duty to be paid by the Noteholders under clause 14.4(g)); and
- (b) Tax Costs incurred by or on behalf of the Company to the extent that the Tax Costs arise from or relate to any of the matters for which Legend may be liable under clause 13.1(a).

### 13.2 Gross up

If the amount received by the Company is treated as income under the Tax Law such that the payment increases the income tax payable by the Company under the Tax Law, then the payment must be grossed-up by such amount as is necessary to ensure that the net amount retained by the Company after deduction of Tax or payment of the increased income tax equals the amount the Company would have retained had the Tax or increased income tax not been payable, after taking into account any benefits or relief relating to Tax.

## 14 Tax Claims

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### 14.1 Notice of claims

The Company must promptly notify Legend if:

- (a) a Tax Claim is made which the Company believes will give rise to a claim under clause 13;
- (b) the Company decides to make a claim under clause 13; or

- (c) the Company becomes aware of any events, matters or circumstances (including any potential or threatened Tax Claim) which are reasonably likely to give rise to a claim under clause 13, whether alone or with any other claim or circumstances.

## 14.2 Details required

The Company must include in a notice given under clause 14.1:

- (a) all relevant details (including the amount) then known to the Company of the Tax Claim;
- (b) the events, matters or circumstances giving rise to the Claim;
- (c) an extract of any part of a Tax Claim that identifies the liability or amount to which the Tax Claim relates or other evidence of the amount of the Tax Claim; and
- (d) if available or relevant, any corresponding part of any adjustment sheet or other explanatory material issued by a Government Agency which specifies the basis for the Tax Claim or other evidence of that basis.

## 14.3 Payment of Tax Claims

The Company may not:

- (a) accept, compromise or pay,
- (b) agree to arbitrate, compromise or settle; or
- (c) make any admission or take any action in relation to,

a Tax Claim without the prior consent of Legend. However, nothing in this clause shall prevent the Company from making payments of Tax, where such payments are due under a Tax Law.

## 14.4 Disputing Tax Claims

- (a) Following receipt of a notice under clause 14.1 in respect of a Tax Claim, Legend may by written notice to the Company (but no later than 5 Business Days before the due date for payment of the relevant Tax) advise the Company that it wishes to contest the Tax Claim.
- (b) If Legend advises the Company that it wishes to contest the Tax Claim then:
  - (1) Legend must pay the Company so much of the Tax as is required by the relevant Government Agency to be paid while any action is being taken under this clause 12.4 by the later of:
    - (A) 2 Business Days before the due date for payment to the Government Agency; and
    - (B) 10 Business Days after receipt of the notice given by the Buyer under clause 14.1;
- (c) At Legend's written request, the Company must take, or procure that the person required to pay the Tax takes such Disputing Action in a timely manner in relation to the Tax Claim as Legend may reasonably require.
- (d) The Company will not be obliged to take any Disputing Action under this clause 14.4 unless the grounds of objection are considered to have a reasonable chance of success.

- (e) The Company must follow, all reasonable directions of Legend relating to the conduct of any Disputing Action referred to in this clause 14.4 including using professional advisers nominated by Legend.
- (f) In making any directions under this clause 14.4, Legend must;
  - (1) act in good faith;
  - (2) liaise with the Company in relation to conduct of Disputing Action; and
  - (3) provide the Company with reasonable access to a copy of any notice, correspondence or other document relating to that Disputing Action; and
  - (4) act reasonably in all the circumstances, including, having regard to the likelihood of success and the effect of the directions on the goodwill or reputation of the Company or any party to this agreement.
- (g) The Company must provide Legend with all reasonable assistance requested by it in relation to the Tax Claim and the Disputing Action, including providing, at Legend's cost, access to witnesses and documentary or other evidence relevant to the Tax Claim or the Disputing Action, allowing it and its legal advisers to inspect and take copies of all relevant books, records, files and documents, and providing it with reasonable access to the personnel, premises and chattels of the Company.

## 15 Duties, costs and expenses

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### 15.1 Duties

The Noteholders must pay all duty in respect of the execution, delivery and performance of this agreement and any agreement or document entered into or signed under this agreement, however the Company is liable for any duty payable on the transactions contemplated in the Legend Transfer Agreement.

### 15.2 Costs and expenses

- (a) The Company must pay each Noteholders' costs and expenses in relation to the negotiation, preparation, execution and delivery of the Transaction Documents.
- (b) Unless otherwise provided for in this agreement, each party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and registration of this agreement and any other agreement or document entered into or signed under this agreement and each Transaction Agreement.
- (c) Any action to be taken by the Noteholders or Legend in performing its obligations under this agreement must be taken at its own cost and expense unless otherwise provided in this agreement.

## 16 GST

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### 16.1 Definitions

Words used in this clause 16 which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

## 16.2 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (b) To the extent that any supply made under or in connection with this agreement is a taxable supply (other than any supply made under another agreement which contains a specific provision dealing with GST), the recipient must pay, in addition to the consideration provided under this agreement for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (c) Whenever an adjustment event occurs in relation to any taxable supply to which this clause 16.2 applies:
  - (1) the supplier must determine the amount of the GST component of the consideration payable; and
  - (2) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

## 16.3 Tax invoices

The supplier must issue a Tax Invoice to the recipient of a supply to which clause 16.2 applies no later than 7 days following payment of the GST inclusive consideration for that supply under that clause.

## 16.4 Reimbursements

If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

# 17 Note certificates and register

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## 17.1 Note certificates

- (a) Upon registration of a transfer of Notes, the Company must cancel the Note Certificate in respect of those Notes and re-issue a Note Certificate in respect of the Notes to the transferee (and, if the transferor has retained any Notes represented by the cancelled Note Certificate, re-issue a Note Certificate in respect of those Notes to the transferor).
- (b) Upon repayment of the amount due in respect of Notes on redemption of the Notes or Conversion of Notes, the Company must cancel the Note Certificate in respect of those Notes and re-issue a Note Certificate in respect of the remaining Notes (if any) represented by the cancelled Note Certificate to the holder of those remaining Notes.

## 17.2 Maintenance of register

The Company must prepare and maintain a register of the Noteholders containing all usual and proper information relating to the Notes including, without limitation:

- (a) the name and address of each Noteholder;
- (b) the number and Face Value of Notes held by or on behalf of each Noteholder;
- (c) whether Notes held by or on behalf of a Noteholder have been repaid, converted or issued to or transferred to or from the Noteholder;
- (d) the date of issue, transfer, repayment or conversion of each Note;
- (e) if a Note held by or on behalf of the Noteholder has been converted into Ordinary Shares, the number and class of Ordinary Shares issued pursuant to the conversion; and
- (f) the number of each Note Certificate.

## 17.3 Effect of inscription

- (a) Each inscription in the register of Noteholders is sufficient and conclusive evidence to all persons and for all purposes that the person whose name is so inscribed is the registered holder of the Note, except in the case of manifest error, fraud or a breach by the Company of its obligations under clause 17.2.
- (b) The Company must, if directed by a Noteholder, record on the register of Noteholders that a Noteholder (or nominee) holds Notes as trustee or custodian for another party.

## 17.4 Inspection

The Company must make the register of Noteholders available for inspection by Noteholders during Business Hours and as required by the Corporations Act.

## 17.5 Replacement

If any Note Certificate:

- (a) becomes worn out or defaced, the Company must upon the Note Certificate being provided to the Company and upon request by the Noteholder who holds the Notes represented by the Note Certificate cancel the Note Certificate and issue a replacement Note Certificate to the Noteholder; and
- (b) is lost or destroyed, the Company must upon request by the Noteholder who holds the Notes represented by the Note Certificate cancel the Note Certificate and issue a replacement Note Certificate to the Noteholder.

# 18 Cross guarantee and indemnity

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## 18.1 Cross guarantee and indemnity

Each Obligor:

- (a) unconditionally and irrevocably guarantees to the Noteholders on demand, the due and punctual performance of each Obligor's obligations under this agreement, including without limitation the payment of any Scheduled Repayment Amount or Redemption Amount; and

- (b) as a separate and additional liability, indemnifies the Noteholders against all Loss, actions, proceedings and judgments of any nature, incurred by, brought, made or recovered against the Noteholders arising from any default or delay in the due and punctual performance of an Obligor's obligations under this agreement including without limitation the payment of any Scheduled Repayment Amount or Redemption Amount.

## 18.2 Extent of cross guarantee and indemnity

The liability of each Obligor under this clause 18 is not affected by anything which, but for this clause 18 might operate to release or exonerate any Obligor in whole or in part from its obligations including any of the following, whether with or without the consent of any Obligor:

- (a) the grant to any Obligor or any other person of any time, waiver or other indulgence, or the discharge or release of any Obligor or any other person from any liability or obligations;
- (b) any transaction or arrangement that may take place between any Obligor, the Noteholders or any other person;
- (c) the Noteholders exercising or refraining from exercising their rights under any security or any other rights, powers or remedies against any Obligor or any other person;
- (d) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part, and either with or without consideration, of any security now or in the future held by the Noteholders from any Obligor or any other person or by taking of or failure to take any security;
- (e) the failure or omission or any delay by any Obligor or the Noteholders to give notice to any Obligor of any default by any Obligor under this agreement; and
- (f) any legal limitation, disability, incapacity or other circumstances related to any Obligor or any other person.

## 18.3 Assignment benefit

The Noteholders may assign the benefit of this clause 18 without the consent of any Obligor if the Noteholders assign the benefit of this agreement with the consent of the Company.

## 18.4 Accession of new Security Provider

If the Company incorporates or acquires a new Subsidiary, then within 10 Business Days following incorporation or acquisition of the new Subsidiary, the Company must procure that the Subsidiary:

- (a) becomes a party to this agreement as a Security Provider by executing a New Security Provider Accession Deed;
- (b) becomes party to the Security Trust Deed in the capacity of a Security Provider by executing an 'Accession Deed (Security Provider)'; and
- (c) provides Security Interests over its assets to the Security Trustee, and provides copies of all relevant documents to the parties (copied to the Security Trustee).

## 19 Information

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### 19.1 Confidentiality

Each party (**recipient**) must keep secret and confidential, and must not divulge or disclose any information relating to another party or its business (which is disclosed to the recipient by the other party, its representatives or advisers), this agreement or the terms of the Notes other than to the extent that:

- (a) the information is in the public domain as at the date of this agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the recipient);
- (b) the recipient is required to disclose the information by applicable law, order of court of competent jurisdiction, order of Government Authority having the power to do so or the rules of any recognised stock exchange on which its shares or the shares of any of its related bodies corporate are listed, provided that the recipient has to the extent possible having regard to the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
- (c) the disclosure is made by the recipient to its financiers or lawyers, accountants, investment bankers, consultants, Permitted Transferee, investors, potential investors, or other professional advisers to the extent necessary to enable the recipient to properly perform its obligations under this agreement or to conduct their business generally, in which case the recipient must ensure that such persons keep the information secret and confidential and do not divulge or disclose the information to any other person;
- (d) the disclosure is required for use in legal proceedings regarding this agreement or the Notes; or
- (e) the party to whom the information relates has consented in writing before the disclosure.

### 19.2 Extent of obligation

Each recipient must ensure that its directors, officers, employees, agents, investors, potential investors, representatives, financiers, advisers and related bodies corporate (collectively "**Confidential Associates**") comply in all respects with the recipient's obligations under clause 19.1 and shall be liable in full for any disclosure by such Confidential Associate.

## 20 Notices

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### 20.1 How and where Notices may be sent

A notice or other communication under this agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post to a party at the address for that party in Schedule 1 or as otherwise specified by a party by Notice.

### 20.2 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.

- (b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

## 21 Trustee provisions

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### 21.1 Capacity

- (a) Each of MIT 1 and MIT 2 (in this clause 21, each a **Trustee**) enters into this agreement only in its capacity as trustee, of Microcap Investment Trust 1 and Microcap Investment Trust 2, respectively (in this clause 21, each a **Trust**) and in no other capacity.
- (b) Any obligation or liability of whatever kind undertaken or incurred by, or devolving upon a Trustee under or in respect of this agreement (**Obligation**) is incurred by that Trustee in its capacity as trustee of the Trust and the Trustee will cease to have any such obligation or liability under this agreement if it ceases for any reason to be the trustee or responsible entity (as the case may be) of Trust. This limitation does not apply to any obligation or liability incurred by a Trustee which arises under this agreement before it ceases to be the trustee of the Trust and which does not become a liability of the new trustee under any applicable law.
- (c) No Trustee will be liable to pay or satisfy any Obligation except out of the assets of the Trust against which it is entitled to be indemnified in respect of any Liability incurred by it as trustee or responsible entity (as the case may be) of the Trust.
- (d) A party may enforce its rights against a Trustee arising from non-performance or breach of the Obligations only to the extent that the Trustee is entitled to be indemnified out of the assets of the Trust.
- (e) If a party does not recover under clauses 21.1(c) or 21.1(d) all money owing to it arising from non-performance or breach of the Obligations, it may not seek to recover the shortfall by:
  - (1) bringing proceedings against the Trustee (as relevant) in its personal capacity; or
  - (2) applying to have the Trustee wound up or proving in the winding up of the Trustee.
- (f) Nothing in this clause 21.1 limits the Trustee's personal liability to the extent such liability results from the Trustee's fraud, dishonesty, negligence, default or breach of trust or breach of duty.

### 21.2 Trustee representations and warranties

Each Trustee represents and warrants to each other party that, in respect of the Trust of which it is trustee:

- (a) it is the only trustee of the Trust and no action has been taken or is proposed to remove it as trustee of the Trust;
- (b) it has the power under the terms of the Trust to enter into and comply with its obligations under this agreement;
- (c) it has carefully considered the purpose of this agreement and considers that entry into this agreement is for the benefit of the beneficiaries of the Trust;



- (d) it has a right to be fully indemnified out of the Trust assets in respect of obligations incurred by it under this agreement and the assets of the Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Trustee has a right to be indemnified out of the Trust assets;
- (e) it is not, and has never been, in default under the terms of the Trust;
- (f) no action has been taken or proposed to terminate the Trust; and
- (g) as far as it is aware, it and its directors and other officers have complied with their obligations in connection with the Trust.

### 21.3 Restrictions

Until all obligations under this agreement are discharged, each Trustee must not, unless required by law or by a contractual arrangement with any beneficiary of the Trust, without the prior written consent of all other parties (not to be unreasonably withheld), do anything which:

- (a) could restrict the Trustee's right of indemnity from the Trust assets in respect of obligations incurred by the Trustee under this agreement; and
- (b) could restrict or impair the ability of the Trustee to comply with its obligations under this agreement.

## 22 General matters

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### 22.1 Noteholders

The rights and obligations of each Noteholder are several among the Noteholders.

### 22.2 Waiver

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 22.2 are set out below.

<b>Term</b>	<b>Meaning</b>
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this agreement and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### 22.3 Invalidity and enforceability

- (a) If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 22.3(a) does not apply where enforcement of the provision of this agreement in accordance with clause 22.3(a) would materially affect the nature or effect of the parties' obligations under this agreement.

### 22.4 Severance

If any provision of this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

### 22.5 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together, constitute one instrument. A party may execute this agreement by signing any counterpart.

### 22.6 Separate capacities

If a person is a party or a Noteholder in more than one capacity of trustee, responsibility entity, agent, custodian or nominee, the person will for the purposes of this agreement be treated as a separate person in respect of each such capacity.

### 22.7 Further action to be taken at each party's own expense

Subject to clause 15, the Company must do, and must ensure that each Subsidiary does, at its own expense, all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it.

### 22.8 Cumulative rights

The rights, powers, authorities, discretions and remedies which arise out of or under this agreement are cumulative and do not exclude any other rights, powers, authorities, discretions and remedies of a party (including those which arise as a result of a breach of this agreement or of any other obligation).

### 22.9 Survival

Clauses 1.1 - 1.5, 7.5, 19, 20, 21.1 and any rights, powers, authorities, discretions, remedies and obligations which arise in respect of a breach of this agreement survive termination of this agreement.

### 22.10 Variation

A variation of any term of this agreement must be in writing and signed by the parties.

### 22.11 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in State of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in State of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

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Notice details

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**Company and Legend**

Address	Level 8, 580 St Kilda Road, Melbourne, 3004
Attention	Craig Michael/Tony Chay
Phone	+613 85322866

**Noteholders**

Address	Acorn Capital Limited, Level 12, 90 Collins Street, Melbourne 3000
Attention	Robert Routley / Matthew Sheehan
Phone	+613 9639 0522

Form of Note certificate

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**Convertible Note Certificate**

**Certificate Number: [insert number]**

Insert name, ACN and name of underlying beneficiary (if any)

(the Company)

THIS IS TO CERTIFY that [insert name, ACN or ABN (if any) and address] in its capacity as custodian for [**insert Noteholder**] (the Noteholder) is the registered holder of [insert number] convertible notes with a face value of \$1 each issued under the convertible note agreement dated [insert date] between [insert parties].

The common seal of  
**[insert name of company]**  
is fixed to this document in the presence of

sign here ► \_\_\_\_\_  
Company Secretary/Director

print name \_\_\_\_\_

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

This certificate must be surrendered to the Company on transfer, conversion, repayment or purchase by the Company of any convertible note represented by it.

Warranties

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1 General

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1.1 Registration

Each Obligor is a corporation registered (or taken to be registered) and validly existing under the Laws of its incorporation.

1.2 Incorporation

Each Obligor is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation.

1.3 Power and capacity

Each Obligor has full power and capacity to enter into and perform its obligations under this agreement.

1.4 Corporate authorisations

All necessary authorisations for the execution, delivery and performance by each Obligor of this agreement in accordance with its terms have been obtained or will be obtained prior to Completion or other date required for their performance under a Transaction Document.

1.5 No legal impediment

The execution, delivery and performance by each Obligor of this agreement:

- (a) complies with its constitution; and
- (b) does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Security Interest, by which each Obligor is bound.

1.6 Solvency

- (a) No Obligor has gone, or proposed to go, into liquidation.
- (b) No Obligor has passed a winding-up resolution or commenced steps for winding-up or dissolution.
- (c) No Obligor has been presented or threatened with a petition or other process for winding-up or dissolution and there are no circumstances justifying a petition or other process.
- (d) No receiver, receiver and manager, judicial manager, liquidator, administrator, official manager has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of an Obligor, and there are no circumstances justifying such an appointment.

- (e) No Obligor has entered into, or taken steps or proposed to enter into, any arrangement, compromise or composition with or assignment of the benefit of its creditors or class of them.
- (f) Each Obligor is solvent and will not become insolvent by entering into and performing its obligations under each Transaction Document to which is a party.

## 1.7 Capital Structure

The capital structure of the Company is as set out in Schedule 7.

## 1.8 Ownership

- (a) Each Noteholder will acquire at Completion the full legal and beneficial ownership of the Notes free and clear of all Security Interests, subject to registration of the Noteholder in the register of noteholders.
- (b) The Notes are free of competing rights, including pre-emptive rights or rights of first refusal and are fully paid and have no money owing in respect of them.

# 2 Business Warranties

---

## 2.1 The Notes

- (a) The Notes have been duly authorised by the Company and, when issued in accordance with this agreement, will constitute valid and legally binding obligations of the Company.
- (b) The Company has authority to allot and issue, free from pre-emption rights, sufficient Ordinary Shares to enable the conversion rights attaching to the Notes and all other rights on issue of and Conversion into Ordinary Shares to be satisfied in full.
- (c) The Ordinary Shares to be issued on Conversion of the Notes will:
  - (1) not violate any pre-emptive rights of any holder of Ordinary Shares;
  - (2) be issued credited as fully-paid and will not be subject to calls for further funds; and
  - (3) rank *pari passu* with the outstanding Ordinary Shares on the relevant Conversion Date.
- (d) There are no restrictions upon the voting or transfer of any of the Ordinary Shares whether pursuant to the Company's constitution, any Law or any agreement or otherwise.
- (e) No action or thing is required to be taken, fulfilled or done (including without limitation the obtaining of any consent or licence or the making of any filing or registration) for the issue of the Notes, the issue of Ordinary Shares on Conversion of the Notes, or the compliance by each Obligor with the terms of the Notes and the agreement as the case may be.
- (f) The execution, delivery and performance of this agreement by an Obligor, does not and will not breach any applicable Law, rule, regulation, or breach any judgment, order or decree of any government, governmental body or court, domestic or foreign, having jurisdiction over any Obligor.



## 2.2 The Mining Rights

- (a) The Obligors (as applicable) have, or will be entitled to, a 100% legal and beneficial right and title to and interest in the Mining Rights, free of all Security Interests (save for the Existing Security Interests and Securities contemplated under this agreement) and other third party rights.
- (b) Other than the Mining Rights and the applications for Mining Rights, the Obligors:
  - (1) do not have an interest in any tenements;
  - (2) have not applied for any tenements;
  - (3) do not have any access rights or rights to infrastructure (other than as a member of the public); and
  - (4) do not have any water licencesrelating to the Paradise Phosphate Project.
- (c) All operations in respect to the Mining Rights have been conducted in all material respects in accordance with applicable Laws and the terms or conditions of the Mining Rights and there have not been any breaches or defaults that give rise, or may give rise, to:
  - (1) liabilities under any environmental law or practice or form the basis of reclamation or remediation requirements; or
  - (2) grounds for the forfeiture, cancellation or revocation of the Mining Rights.
- (d) Any material Tax which is payable in respect of the Mining Rights has been paid when due.
- (e) No notice has been served on Legend or an Obligor in respect of any of the Mining Rights which might materially impair, prevent or otherwise interfere with the use of or any of the proprietary rights in the Mining Rights.
- (f) Any tenements overlapping the Mining Rights does not extend over any area relating to the Paradise Phosphate Project where such overlap, will, or would reasonably be likely to have, a Material Adverse Effect.

## 2.3 Intellectual Property

The Company owns or has an enforceable right to use any and all intellectual property necessary or desirable to develop and exploit (including by beneficiation) the Paradise Phosphate Project (**Paradise IP**). The Paradise IP does not infringe the intellectual property of any third party. All registrations relating to the Paradise IP are valid and enforceable.

## 2.4 Contractual Arrangements

The Company is not a party to any contract, arrangement or understanding that has not been disclosed to the Noteholders.

## 2.5 Related Party Loans

Except as specifically provided in this agreement, the Company does not owe any amount of money, or is otherwise indebted, to any Related Party.

## 2.6 Related Party Contracts

The Company is not a party to any Related Party Transaction other than the Legend Transfer Agreement, the Legend Services Agreement and this agreement.

## 2.7 The Accounts

- (a) The Accounts:
- (1) have been prepared in accordance with the Accounting Standards;
  - (2) show a true and fair view of the financial position and the assets and liabilities of the Obligors on a consolidated basis at the Accounts Date and of the income, expenses and results of the operations of the Obligors for the financial period ended on the Accounts Date;
  - (3) are not affected by any unusual or non-recurring item;
  - (4) take account of all gains or losses, whether realised or unrealised, arising from foreign currency transactions;
  - (5) provide appropriately for all liabilities of the Obligors at the Accounts Date; and
  - (6) note all contingent liabilities of the Obligors as at the Accounts Date.
- (b) Since the Accounts Date:
- (1) the business of each Obligor has been conducted in the ordinary course of ordinary business and in a proper and efficient manner;
  - (2) no Obligor has entered into a contract or assumed or incurred any liability or obligation or made any payment not provided for in the Accounts except in the ordinary course of ordinary business;
  - (3) no dividend or other distribution or repayment of any loan is in arrears or has been declared or paid by the Company; and
  - (4) there has been no Material Adverse Change affecting any Obligor.

## 2.8 Compliance with laws

- (a) Each Obligor has complied in all material respects with applicable Laws and administrative requirements, where non-compliance will, or would reasonably be likely to, have a Material Adverse Change.
- (b) Each Obligor has, or will have at Completion all necessary Authorisations material to conduct the business as it is being carried on at Completion and has paid all fees due in relation to them as they fell due.
- (c) No Obligor is in default, or would be in default but for the requirements of notice or lapse of time, under any agreement to which it is a party, where such default will, or would reasonably be likely to, have a Material Adverse Effect on the Obligor.

## 2.9 No litigation

No Obligor is or has in the last 3 years been:

- (a) a party to any investigation, prosecution, litigation, arbitration proceedings or any other form of mediation or dispute resolution; or
- (b) subject to any investigation by any Government Agency; and

- (c) no investigation, prosecution, litigation, proceeding or any other form of mediation or dispute resolution is pending or threatened by, against or in respect of any Obligor, and there are no circumstances which might give rise to any such investigation, prosecution, litigation, proceeding or other form of mediation or dispute resolution.

## 2.10 Corporate structure

Except as specifically provided under this agreement (or under any transactions contemplated by this agreement), no Obligor is under any obligation to:

- (a) grant or create any Security Interest over any interest in any security; or
- (b) issue, allot, create, sell, transfer or otherwise dispose of any interest in any security.

## 2.11 Information

- (a) All information given by, or on behalf of, an Obligor or their advisers to a Noteholder or its advisers is accurate, complete and not misleading in any material respect (including by omission) and is all information that would be material to the assessment of the value, nature and the amount of risk undertaken by a prudent investor intending to invest in a company holding the legal and beneficial interest in the Mining Rights.
- (b) No information has been included in, or omitted from, the:
  - (1) McCullough Robertson independent solicitors report; or
  - (2) Cornwall Stodart due diligence report,provided to the Noteholders that would render that due diligence report misleading in any material respect.
- (c) All budgets, forecasts and projections given by, or on behalf of, an Obligor or their advisers to a Noteholder or its advisers have been honestly and carefully prepared with due care and diligence on a reasonable basis.

## 3 Tax Warranties

---

### 3.1 Withholding

Any obligation on the Company under any Tax Law to withhold amounts at source has been complied with.

### 3.2 Records

The Company has maintained proper and adequate records to enable it to comply in all material respects with its obligations to:

- (a) prepare and submit any information, notices, computations, returns and payments required in respect of any Tax Law;
- (b) prepare any accounts necessary for compliance with any Tax Law; and
- (c) support any position taken by the Company; and
- (d) retain necessary records as required by any Tax Law.

So far as the Obligors are aware, such records are accurate in all material respects.

### 3.3 Returns submitted

- (a) The Company has submitted any necessary information, notices, computations and returns to the relevant Governmental Agency in respect of any Tax relating to the Company.
- (b) So far as the Obligors are aware, any information, notice, computation and return which has been submitted by the Company to a Government Agency in respect of any Tax:
  - (1) discloses all material facts required to be disclosed under any Tax Law;
  - (2) is not misleading in any material particular; and
  - (3) has been submitted with the relevant Government Agency.

### 3.4 Audit and disputes

- (a) The Obligors are not aware of any pending or threatened Tax audit relating to the Company.
- (b) There are no disputes between any of the Company, Legend, or any Government Agency in respect of any Tax.

### 3.5 Stamping

All documents and transactions entered into by the Legend or the Company which are required to be stamped have been duly stamped.

### 3.6 No tainting

The Company's share capital account:

- (a) is not tainted within the meaning of Division 197 of the Tax Act; and
- (b) is not taken to be tainted under section 197-20 of the Income Tax (Transitional Provisions) Act 1997.

### 3.7 GST

- (a) The Company has complied in all material respects with all laws, contracts, agreements or arrangements binding on it relating to GST and, where the Company has the right to require another party to any such agreement or arrangement to pay to it an amount on account of GST, it has enforced that right.
- (b) The Company:
  - (1) is registered for GST;
  - (2) as far as Legend is aware, has complied with the GST Law;
  - (3) as far as each of Legend is aware, has adequate systems established for it to ensure it complies with the GST Law;
  - (4) is a member of Legend's GST Group.
- (c) So far as the Obligors are aware, the representative member of Legend's GST Group has paid or accounted for all GST on supplies made by that entity and has accounted to that entity for all input tax credits and decreasing adjustments for creditable acquisitions and creditable importations of that entity.

- (d) So far as the Obligors are aware, for each period when the Company was not a member of Legend's GST group, the Company has paid or accounted for all GST on supplies for which that entity was liable and has always remitted correct net amounts relating to GST to the relevant Government Agency.
- (e) So far as the Obligors are aware, there is no contract, agreement or arrangement requiring a the Company to supply anything where the consideration for the supply does not include an amount in respect of GST and which does not contain a provision enabling the Company as supplier to recover from the other party to the contract, agreement or arrangement an amount equal to the amount of GST payable on the supply.

**Noteholder Warranties**

---

**1 Power and Capacity**

---

Each Noteholder has full power and capacity to enter into and perform its obligations under this agreement.

**2 Corporate authorisations**

---

Each Noteholder has obtained, or will obtain prior to Completion, all necessary authorisations for the execution, delivery and performance of this agreement in accordance with its terms.

**3 No legal impediment**

---

The execution, delivery and performance by each Noteholder of this agreement:

- (a) complies with the Noteholder's constitution or constituent documents (as applicable); and
- (b) does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Security Interest, by which the Noteholder is bound.

Form of Redemption Notice

---

**REDEMPTION NOTICE**

To: The Directors  
Paradise Phosphate Pty Ltd

I/We refer to the agreement constituting 1year secured unsubordinated convertible notes (Notes) executed by, among others, Paradise Phosphate Pty Ltd (the Company) on [\*] 2011 (the Agreement).

Capitalised terms used but not defined in this notice have the meanings given in the Agreement.

We, being the holder(s) of [*insert number*] Notes (or on whose behalf the Notes are held), hereby exercise our right under clause [**to be inserted**] of the Agreement to redeem [*insert number of Notes*] on [*insert date*] (Redemption Date).

We require the Company to pay [*insert amount*] in Same Day Funds into [*insert account details*] on [**to be inserted**].

The original certificate for the Notes is enclosed.

[Insert execution block]

Dated: [\*]

Cash Flow Model

---



Capital Structure

---

100,000,002 Ordinary Shares

**Mining Rights**

---

**4 Granted mining tenements**

---

<b>Project</b>	<b>Tenement</b>
Paradise South	EPM 16942 EPM 17447
Paradise North	ML 90191 EPM 17330 EPM 17441 EPM 15015 EPM 15014
D-Tree	ML 90190 EPM 14753 EPM 15763 EPM 17446 EPM 17333
Other tenements	Farm in Rights under King Eagle Farm-In/Joint Venture Agreement EPM 14905 EPM 14906 EPM 14912

**5 Applications for mining tenements**

---

<b>Project</b>	<b>Application</b>
Paradise South	MLA 90197

Paradise North	EPMA 17087
	EPMA 18209

---

D-Tree	EPMA 17443
--------	------------

---

Other tenements

---

## 6 Access, water and infrastructure rights

---

<b>Project</b>	<b>Application</b>
----------------	--------------------

---

Paradise South	MLA 90221
	MLA 90222
	MLA 90223
	MLA 90224
	MLA 90225
	MLA 90226
	MLA 90227

---

Paradise North	MLA 90210
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---

D-Tree

---

Other tenements

---

Officer's certificate

---

**To: [Acorn Capital Limited]**  
(the Noteholders)

I refer to the convertible note agreement between Paradise Phosphate Pty Ltd, [insert Acorn entities] (Convertible Note Agreement).

I [*insert name*] am a director of [*insert name(s) of Company / Security Providers*] (each an **Obligor**).

A term defined in the Convertible Note Agreement has the same meaning when used in this certificate.

I have been authorised by each Obligor to give this certificate.

I certify as follows:

**1 Relevant Documents**

---

Attached to this certificate are true, complete and up-to-date copies of each of the following:

- (a) **constitution:** the constitution of each Obligor;
- (b) **power of attorney:** a duly executed power of attorney granted by the each Obligor authorising execution of the Transaction Documents to which it is a party;]
- (c) **board minutes:** extracts of minutes of a meeting of the directors of the each Obligor approving the execution and performance of its obligations under the Transaction Documents to which it is expressed to be a party and the granting of the power of attorney referred to in clause 1(b).]

**2 No revocation**

---

Each document[, power of attorney] and resolution referred to in clause 1 is in full force and effect and has not been amended, modified or revoked.

**3 Officers**

---

The following signatures are the true signatures of each of the officers of the each Obligor as at the date of this certificate:

<b>Name</b>	<b>Position</b>	<b>Signature</b>
<hr/>		

*[insert name]* *[insert details of position]*

---

*[insert name]* *[insert details of position]*

---

*[insert name]* *[insert details of position]*

---

#### 4 Representations

---

I represent and warrant that no Event of Default has occurred which is continuing or will occur as a result of the issue of the Notes.

#### 5 Certification

---

I certify that as at the date of execution of each Transaction Document:

- (a) each Obligor, before entering into any Transaction Document to which it is a party, has, in connection with the execution, delivery and performance of each such Transaction Document, complied with chapter 2E and Part 2J.3 of the Corporations Act; and
- (b) each Obligor is solvent and will not become insolvent by entering into and performing its obligations under each Transaction Document to which is a party.

sign here ►

\_\_\_\_\_  
Director *[insert name and capacity – director/secretary]*

date

\_\_\_\_\_

Executed as an agreement

---

**Initial Noteholder**

Executed by Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1  
by

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

*sign here* ▶ /s/ M Sheehan  
Director/Secretary

*print name* M Sheehan

---

**Initial Noteholder**

Executed by Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2  
by

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

*sign here* ▶ /s/ M Sheehan  
Director/Secretary

*print name* M Sheehan

---

**Company**

Executed by  
**Paradise Phosphate Pty Ltd**  
by

*sign here* ▶ /s/ P J Lee  
Company Secretary/~~Director~~

*print name* P J Lee

*sign here* ▶ /s/ J I Gutnick  
Director

*print name* J I Gutnick

---

**Legend**

Executed by  
**Legend International Holdings, Inc**  
by

*sign here* ▶ /s/ J I Gutnick

*print name* J I Gutnick

*sign here* ▶ /s/ P J Lee

*print name* P J Lee

---

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**Deed of adherence**

**New Security Provider Accession Deed Poll**



## Deed of adherence

---

Date ►

This deed poll is made by

---

New Noteholder      *[insert name of New Noteholder]*  
    *[insert address of New Noteholder]*

---

Recitals

- 1    *[insert name of transferor]* proposes to transfer the Relevant Notes to the New Noteholder in accordance with the Convertible Note Agreement.
- 2    The New Noteholder wishes to make this deed poll to enable such transfer of the Relevant Notes to occur.

---

This deed witnesses as follows:

---

## 1 Definitions and interpretation

---

### 1.1 Definitions

The meanings of the terms used in this deed, including the recitals to this deed, are set out below.

Term	Meaning
<b>Applicable Provisions</b>	<p>the terms and conditions of the Convertible Note Agreement, except to the extent that any such terms and conditions:</p> <ol style="list-style-type: none"> <li>1    have been fully performed before Registration; or</li> <li>2    are incapable of application to the New Noteholder.</li> </ol>
<b>Convertible Note Agreement</b>	<p>the convertible note agreement dated <i>[insert date]</i> between the Company, Legend, MIT 1 and MIT 2.</p>

<b>Term</b>	<b>Meaning</b>
<b>Party</b>	a party to the Convertible Note Agreement.
<b>Registration</b>	the entry of the New Noteholder in the register of Noteholders of the Company as the holder of any Note.
<b>Relevant Notes</b>	<b><i>[insert number and class of Notes which are to be transferred to the New Noteholder].</i></b>

## 1.2 Definitions in Convertible Note Agreement

A word or phrase defined in the Convertible Note Agreement has the same meaning when used in this agreement (except as otherwise specified or the context otherwise provides).

## 2 Adherence

---

Subject to the transfer of the Relevant Notes from ***[insert name of transferor]*** to the New Noteholder being executed and delivered to the New Noteholder, the New Noteholder agrees for the benefit of the Parties to observe and perform and be bound by the Applicable Provisions to the intent and effect that the New Noteholder will as from Registration be deemed to:

- (a) be a party to the Convertible Note Agreement; and
- (b) have the rights and obligations of a Noteholder under the Applicable Provisions.

## 3 Amendment

---

For the purpose of clause 20 of the Convertible Note Agreement, the address details of the New Noteholder are as follows:

The address of ***[insert name of new Noteholder]*** is:

***[insert address of new Noteholder]***

Attention: ***[insert name of contact for new Noteholder]***

Facsimile: ***[insert facsimile number of new Noteholder]***

#### 4 One instrument

---

This deed poll will be read together with the Convertible Note Agreement, both of which will together be construed as one and the same instrument.

Executed as a deed poll

---

*[insert relevant execution clause]*

New Security Provider Accession Deed Poll

---

Date ▶

This deed poll is made by

\_\_\_\_\_  
New Security Provider                **[insert name of New Security Provider]**  
   **[insert ACN/ABN/ARBN] of [insert address]**

---

Recitals     **[insert details]**

---

This deed poll witnesses as follows:

---

**1 Interpretation**

---

**1.1 Incorporated definitions**

A word or phrase (other than one defined in clause 1.2) defined in the Convertible Note Agreement has the same meaning in this deed poll.

**1.2 Definitions**

The meanings of the terms used in this deed poll are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Applicable Provisions</b>	the terms and conditions of the Convertible Note Agreement, except to the extent that any such terms and conditions: <ol style="list-style-type: none"><li>1 have been fully performed before accession; or</li><li>2 are incapable of application to the New Security Provider.</li></ol>
<b>Effective Date</b>	the date of this deed poll.
<b>Convertible</b>	the convertible note agreement dated <b>[insert date]</b> between the Company,

---

<b>Term</b>	<b>Meaning</b>
<b>Note Agreement</b>	Legend, MIT 1 and MIT 2.
<b>Party</b>	a party to the Convertible Note Agreement

### 1.3 Definitions and Interpretation

A word or phrase defined, and the interpretation provisions, in the Convertible Note Agreement apply to this deed poll as if set out in full in this deed poll.

## 2 New Security Provider becomes a party

---

With effect on and from the Effective Date, the New Security Provider agrees for the benefit of the Parties:

- (a) to be a party to the Convertible Note Agreement;
- (b) bound by the Applicable Provisions and has the same rights and assumes the same obligations as if it were a party to the Convertible Note Agreement as a Security Provider; and
- (c) each reference in the Convertible Note Agreement to 'Security Provider' includes a reference to the New Security Provider.

## 3 Acknowledgments

---

### 3.1 Copies of documents

The New Security Provider acknowledges that it has received a copy of the Convertible Note Agreement together with the other information it has required in connection with this deed poll.

## 4 Notices

---

For the purposes of clause 20 of the Convertible Note Agreement, the details of the New Security Provider are as follows:

Name:

Office:

Address:

Attention:

Facsimile:

## 5 One instrument

---

This deed poll will be read together with the Convertible Note Agreement, both of which will together be construed as one and the same instrument.

## 6 Attorneys

---

Each of the attorneys executing this deed states that the attorney has no notice of revocation of the attorney's power of attorney.

Executed as a deed poll

---

*[insert execution clauses]*

Deed

# Security Agreement

---

Legend International Holdings, Inc  
(as **Grantor**)

Acorn Capital Limited  
(as **Security Trustee**)

**Freehills**

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## Security Agreement

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Date ► **7 February 2012**

Between the parties

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Grantor                      **Legend International Holdings, Inc**  
ARBN 120 855 352 of Level 8, 580 St Kilda Road, Melbourne VIC  
3004  
**(Grantor)**

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Security Trustee            **Acorn Capital Limited**  
ACN 082 694 531 of Level 12, 90 Collins Street, Melbourne Vic 3000  
**(Security Trustee)**

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Recitals                      1 The Grantor is, or will be, the legal and beneficial owner of the  
Secured Property.  
2 The Grantor has agreed to create the Security to secure the  
payment of the Secured Moneys.

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This deed witnesses        that, for valuable consideration, the receipt and sufficiency of which is  
acknowledged, the parties agree as follows:

# 1 Definitions, interpretation and deed components

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## 1.1 Definitions

The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Accession</b>	has the meaning set out in the PPSA.
<b>Account</b>	has the meaning set out in the PPSA.
<b>After-Acquired Property</b>	has the meaning set out in the PPSA.
<b>Assigned Property</b>	all of the Grantor's present and future Accounts arising in connection with the Mining Rights and any other present or future right to payment in connection with the Mining Rights.
<b>Attorney</b>	an attorney appointed under this any Transaction Document.
<b>Collateral Security</b>	any present or future Security Interest, Guarantee or other document or agreement created or entered into by the Grantor, a Transaction Party or any other person as security for, or to credit enhance, the payment of any of the Secured Moneys.
<b>Commingled</b>	has the meaning set out in the PPSA.
<b>Contested Tax</b>	a Tax payable by the Grantor where the Grantor is contesting its liability to pay that Tax in good faith and has reasonable grounds to do so.
<b>Control</b>	control as defined in section 50AA of the Corporations Act.
<b>Controlled Account</b>	a bank account opened by the Grantor in accordance with clause 2.4.
<b>Control Event</b>	<ol style="list-style-type: none"><li>in respect of all of the Secured Property:<ul style="list-style-type: none"><li>a Receiver or any other receiver or receiver and manager is appointed in respect of any of the Secured Property;</li><li>the Security or any other Security Interests over any of the Secured</li></ul></li></ol>

Term	Meaning
	<p>Property is enforced in any other way; or</p> <ul style="list-style-type: none"> <li>• an order is made or a resolution is passed for the liquidation of the Grantor;</li> </ul> <p>2 in respect of a particular asset of the Secured Property:</p> <ul style="list-style-type: none"> <li>• the Grantor breaches clause 5.3 in respect of the asset;</li> <li>• any step is taken to issue, levy or enforce any distress, attachment, execution or other process against or on that asset;</li> <li>• any Security Interest over that asset is, or becomes capable of being, enforced or any other event occurs under a Security Interest over that asset which results in the Grantor ceasing to be entitled to deal with that asset under the terms of any Security Interest;</li> <li>• a notice which affects that asset is issued, signed or given under Subdivision 260-A of Schedule 1 of the <i>Taxation Administration Act 1953</i> (Cth) by, or on behalf of, the Commissioner of Taxation or the Deputy Commissioner of Taxation, or under any similar legislation;</li> <li>• any thing occurs which may result in any amounts, including Tax or moneys owing to employees, ranking ahead of the Security with respect to that asset;</li> <li>• which is the proceeds of any Assigned Property, the Security Trustee gives a notice to the Grantor stating that a Control Event has occurred in relation to those proceeds; or</li> <li>• the Security Trustee gives a notice in respect of that asset to the Grantor upon or any time after the occurrence of an Event of Default stating that a Control Event has occurred in relation to that asset.</li> </ul>
<b>Controller</b>	a controller as defined in section 9 of the Corporations Act.
<b>Convertible Note Agreement</b>	the convertible note agreement dated on or around the date of this deed between Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2, the Company and the Grantor.
<b>debt</b>	includes debts owing by a bank or other financial institution, including in relation to a current trading account.
<b>Default</b>	<p>1 an Event of Default; or</p> <p>2 a Potential Event of Default.</p>
<b>Designated Bank</b>	the bank with which a Controlled Account is maintained.
<b>Distribution</b>	any dividend, distribution or other amount declared or paid by the Grantor on any Marketable Security issued by it.

<b>Term</b>	<b>Meaning</b>
<b>Dollars, A\$ and \$</b>	the lawful currency of the Commonwealth of Australia.
<b>Excluded Tax</b>	a Tax imposed by any jurisdiction on the net income of the Security Trustee.
<b>Finance Party</b>	<ol style="list-style-type: none"><li>1 the Noteholders;</li><li>2 the Nominee; and</li><li>3 the Security Trustee.</li></ol>
<b>Guarantee</b>	<p>any guarantee, suretyship, letter of credit, letter of comfort or any other obligation:</p> <ol style="list-style-type: none"><li>1 to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;</li><li>2 to indemnify any person against the consequences of default in the payment of; or</li><li>3 to be responsible for,</li></ol> <p>any debt or monetary liability or obligation (whether or not it involves the payment of money) of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.</p>
<b>Investment Instrument</b>	has the meaning set out in the PPSA.
<b>Loss</b>	any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment.
<b>Mining Information</b>	all information in the possession or under the control or the Grantor regarding the Mining Rights, including original source, geological, drill cores, studies and development data and analysis, samples and physical or electronic records, plans, maps, reports, records, approvals and documents.
<b>Mining Rights</b>	has the meaning set out in the Convertible Note Agreement.
<b>Permitted Caveats</b>	each caveat in favour of Real Grumpy Pty Ltd or Ernst Alfred Kohler in respect of the royalty agreement in connection with the Mining Rights existing as at the date of this deed.
<b>Negotiable Instrument</b>	has the meaning set out in the PPSA.

<b>Term</b>	<b>Meaning</b>
<b>Officer</b>	<ol style="list-style-type: none"><li>1 in relation to the Grantor, a director or a secretary, or a person notified to be an authorised officer of the Grantor;</li><li>2 in relation to the Security Trustee, any person whose title includes the word 'Director', 'Managing Director', 'Manager' or 'Vice President', and any other person appointed by the Security Trustee to act as its authorised officer for the purposes of this deed; and</li><li>3 in relation to a Receiver or an Attorney which is a corporation, any officer, as that expression is defined in section 9 of the Corporations Act, of that Receiver or Attorney.</li></ol>
<b>Payment Currency</b>	the currency in which any payment is actually made.
<b>Potential Event of Default</b>	any thing which would become an Event of Default on the giving of notice (whether or not notice is actually given), the expiry of time, the satisfaction or non-satisfaction of any condition, or any combination of the above.
<b>Power</b>	any right, power, authority, discretion or remedy conferred on the Security Trustee, a Receiver or an Attorney by any Transaction Document or any applicable law.
<b>PPS Regulations</b>	the regulations made under the PPSA.
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPSA Secured Party</b>	a secured party as defined in the PPSA.
<b>PPSA Security Interest</b>	a security interest as defined in the PPSA.
<b>Receiver</b>	a receiver or receiver and manager appointed under this deed.
<b>Relevant Currency</b>	the currency in which a payment is required to be made under the Transaction Documents and, if not expressly stated to be another currency, is Dollars.
<b>Secured Moneys</b>	all debts and monetary liabilities of: <ol style="list-style-type: none"><li>1 the Grantor to a Finance Party on any account and in any capacity; and</li><li>2 each Transaction Party (other than the Grantor) to a Finance Party on any account and in any capacity,</li></ol> irrespective of whether the debts or liabilities:

<b>Term</b>	<b>Meaning</b>
	<p>3 are present or future;</p> <p>4 are actual, prospective, contingent or otherwise;</p> <p>5 are at any time ascertained or unascertained;</p> <p>6 are owed or incurred by or on account of the Grantor or another Transaction Party alone, or severally or jointly with any other person;</p> <p>7 are owed to or incurred for the account of a Finance Party alone, or severally or jointly with any other person;</p> <p>8 are owed to any other person as agent (whether disclosed or not) for or on behalf of a Finance Party;</p> <p>9 are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;</p> <p>10 are owed to or incurred for the account of a Finance Party directly or as a result of:</p> <ul style="list-style-type: none"><li>• the assignment or transfer to a Finance Party of any debt or liability of the Grantor or another Transaction Party; or</li><li>• any other dealing with any such debt or liability;</li></ul> <p>11 are owed to or incurred for the account of a Finance Party before the date of this deed, or before the date of any assignment of this deed to a Finance Party by any other person or otherwise; or</p> <p>12 comprise any combination of the above.</p>
<b>Secured Property</b>	<p>1 all of the Grantor's present and future interest in the Mining Rights, any environmental authorities in connection with any Mining Rights and the Mining Information;</p> <p>2 all of the Grantor's present and future interest in any minerals or other property produced in connection with the Mining Rights; and</p> <p>3 the Assigned Property.</p>
<b>Security</b>	the security created or expressed to be created by this deed.
<b>Security Trust</b>	the "Paradise Phosphate Security Trust" as constituted under the Security Trust Deed.
<b>Security Trust Deed</b>	the security trust deed dated on or about the date of this deed between the Grantor and others and the Security Trustee as security trustee constituting the Security Trust.
<b>Tax Invoice</b>	includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.



<b>Term</b>	<b>Meaning</b>
<b>Title Document</b>	any original, duplicate or counterpart certificate or document of title including any real property certificate of title, a certificate of units in a unit trust, share certificate or certificate evidencing an Investment Instrument or Negotiable Instrument.
<b>Transaction Document</b>	<ol style="list-style-type: none"><li>1 this deed;</li><li>2 each Collateral Security;</li><li>3 the Security Trust Deed;</li><li>4 the Convertible Note Agreement; and</li><li>5 any other Transaction Document as defined in the Convertible Note Agreement,</li></ol> or any document or agreement entered into or given under any of the above.
<b>Transaction Party</b>	<ol style="list-style-type: none"><li>1 the Grantor;</li><li>2 the Company; or</li><li>3 any other Transaction Party as defined in a Transaction Document.</li></ol>

## 1.2 Interpretation

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation.
- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.

- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A promise on the part of 2 or more persons binds them jointly and severally.
- (l) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) A reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits.
- (n) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (o) A reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind.
- (p) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.
- (q) A reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (r) References to time are to Melbourne time.
- (s) Where this deed confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.
- (t) An Event of Default is 'continuing' or 'subsisting' if it has not been:
  - (1) remedied to the satisfaction of the Security Trustee before a Power relating to that Event of Default is exercised; or
  - (2) waived in writing by the Security Trustee.

### **1.3 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### **1.4 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### **1.5 Convertible Note Agreement incorporated definitions**

A word or phrase (other than one defined in clauses 1.1) defined in the Convertible Note Agreement has the same meaning in this deed.

## 1.6 Security Trust Deed

This deed is a 'Security' and a 'Transaction Document' for the purposes of the Security Trust Deed.

## 1.7 Capacity of Security Trustee

The Security Trustee enters into this deed as security trustee under the Security Trust Deed. Clause 1.4 of the Security Trust Deed is incorporated in this deed as if set out in full.

# 2 Security

---

## 2.1 Security

As security for the due and punctual payment of the Secured Moneys, the Grantor:

- (a) charges all the Security Property to the Security Trustee; and
- (b) assigns and transfers all of the Assigned Property to the Security Trustee.

## 2.2 Priority

- (a) The parties intend that the Security take priority over all other Security Interests and other interests in the Secured Property at any time other than any Permitted Security Interest mandatorily preferred by law.
- (b) Nothing in this deed will be construed as an agreement by the Security Trustee to subordinate the Security to any other Security Interest or interest affecting the Secured Property at any time.

## 2.3 Nature of charge

- (a) The charge under clause 2.1 is a fixed charge.
- (b) To the extent that the charge fails to take effect as a fixed charge in relation to any asset forming part of the Secured Property then it takes effect as a floating charge in relation to the asset which automatically and immediately crystallises and becomes fixed if a Control Event occurs in relation to that asset.

## 2.4 Collection of proceeds of Assigned Property

The Grantor may collect as agent for the Security Trustee for this purpose the proceeds of any Assigned Property subject to using those proceeds as permitted under the Transaction Documents.

## 2.5 Controlled Account

- (a) The Security Trustee may require the Grantor to open and maintain a bank account at a bank and branch approved by the Security Trustee on terms that:
  - (1) nominated Officers of the Security Trustee must be signatories to the Controlled Account;
  - (2) no withdrawals can be made from the Controlled Account without the signature of one of those Officers;

- (3) funds may be disposed of from the Controlled Account at the direction of the Security Trustee without further consent by the Grantor; and
- (4) depositing an amount in the Controlled Account will not result in any person coming under a present liability (within the meaning of section 341(3)(d) of the PPSA) to pay:
  - the Grantor; or
  - a Related Body Corporate of the Grantor.
- (b) If the Security Trustee is not the Designated Bank, the Grantor must cause the Designated Bank to enter into an agreement between the Designated Bank, the Grantor and the Security Trustee in form and substance satisfactory to the Security Trustee in which the Designated Bank agrees that:
  - (1) it will comply with and give effect to the terms set out in clause 2.5(a);
  - (2) it has no Security Interest or other interest in the Controlled Account and it waives all rights of set-off and combination in respect of the Controlled Account;
  - (3) if despite clause 2.5(b)(2) it has any Security Interest or other interest in the Controlled Account, that Security Interest or other interest is subordinated in right and priority of payment to the Security Trustee's Security Interest or other interest and will not be exercised without the Security Trustee's consent; and
  - (4) it agrees that the laws specified in clause 16.5(b) will govern the Security Trustee's PPSA Security Interest in the Controlled Account.

## 2.6 Authorisation

- (a) The Grantor must ensure that it obtains all Authorisations necessary to permit the grant of the Security in respect of any asset before it acquires any rights in that asset.
- (b) Without limiting clauses 2.6(a) and 16.6, if the grant of the Security in respect of an asset would invalidate, avoid or render ineffective the Security, whether in respect of that asset only or otherwise then that asset is excluded from the Security, but only for so long as that effect prevails.
- (c) If the Security could be granted in respect of an asset referred to in clause 2.6(b) without clause 2.6(b) applying if an Authorisation was obtained or other action taken, the Grantor must promptly obtain that Authorisation or take that action.

## 3 Discharge of the Security

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### 3.1 Discharge

Subject to clause 3.2, at the written request of the Grantor, the Security Trustee must discharge the Security and reassign and retransfer to the Grantor its right and interest in the Assigned Property if:

- (a) the Secured Moneys have been paid in full; and
- (b) the Grantor and each other Transaction Party has fully observed and performed its respective obligations under this deed and each other Transaction Document.

### 3.2 Final discharge

- (a) The Security Trustee is not obliged to discharge the Security under clause 3.1 if, at the time the requirements of clause 3.1 are satisfied, the Security Trustee is of the opinion that the Grantor or any other Transaction Party owes further Secured Moneys contingently or otherwise to the Security Trustee; or
- (b) Clause 3.2(a) overrides any other clause to the contrary in this deed.

## 4 Representations and warranties

---

### 4.1 Representations and warranties

The Grantor represents and warrants to and for the benefit of the Security Trustee that:

- (a) **representations true:** each of its representations and warranties contained in the Transaction Documents is correct and not misleading when made or repeated;
- (b) **legal and beneficial owner:** it is the legal and beneficial owner of the Secured Property;
- (c) **no other interests:**
  - (1) no person other than the Security Trustee holds or has the benefit of a Security Interest or other interest in the Secured Property other than under a Permitted Security Interest;
  - (2) there is no agreement, filing or registration that would enable another person to obtain a priority over the Security which is inconsistent with the priority contemplated by this deed;
- (d) **Security:**
  - (1) this deed creates the Security Interest purported to be created by it over the assets purported to be encumbered by it; and
  - (2) the Security has been, or in the case of After-Acquired Property, on its acquisition will be perfected; and
  - (3) the Security has the priority contemplated by this deed;
- (e) **not a trustee:** it does not enter into any Transaction Document as trustee of any trust or settlement;
- (f) **serial numbers:** no item of Secured Property:
  - (1) is required under the PPSA Regulations to be described by serial number in a registration under the PPSA; and
  - (2) with a value greater than \$100,000 is permitted under the PPSA Regulations to be described by serial number in a registration under the PPSA;
- (g) **location of assets:** it has no Secured Property with a value greater than \$100,000 located outside Australia; and
- (h) **Authorisations:** it has obtained all Authorisations necessary to permit the grant of the Security in respect of any asset in which it presently has rights.

#### **4.2 Survival of representations and warranties**

The representations and warranties given under this deed:

- (a) survive the execution of this deed; and
- (b) are repeated on the last day of each calendar month with respect to the facts and circumstances then subsisting.

#### **4.3 Reliance by Security Trustee**

The Grantor acknowledges that the Security Trustee has entered into each Transaction Document in reliance on the representations and warranties given by the Grantor under this deed.

#### **4.4 No Reliance by Grantor**

The Grantor acknowledges that it has not entered into this deed or any Transaction Document in reliance on any representation, warranty, promise or statement made by the Security Trustee or any person on behalf of the Security Trustee.

### **5 Undertakings of the Grantor**

---

#### **5.1 Performance under the Transaction Documents**

- (a) The Grantor must fully and punctually perform its obligations under each Transaction Document.
- (b) Without limiting the generality of clause 5.1(a), the Grantor must pay the Secured Moneys to the Security Trustee in accordance with this deed, each other Transaction Document and each other obligation under which the Secured Moneys are payable.
- (c) The Grantor must ensure that no Event of Default occurs. Without affecting the liability of the Grantor or the Powers in any other respect (including where a breach of this clause 5.1(c) is also a breach of another provision of a Transaction Document), the Grantor is not liable in damages for breach of this clause 5.1(c) but the Security Trustee may exercise its Powers consequent upon or following that breach.

#### **5.2 Notices to the Security Trustee**

The Grantor must notify the Security Trustee as soon as the Grantor becomes aware of any of any data contained in a registration under the PPSA with respect to the Security being or becoming incorrect.

#### **5.3 Negative pledge and disposal of assets**

- (a) The Grantor must not create or allow to exist or agree to any Security Interest over any of its assets other than a Permitted Security Interest.
- (b) The Grantor must not acquire an asset which is, or upon its acquisition will be, subject to a Security Interest which is not a Permitted Security Interest.
- (c) The Grantor must not sell, assign, transfer or otherwise dispose of or part with possession of any of its assets.

- (d) The Grantor must not allow any other person to have a right or power to receive or claim any rents, profits, receivables, money or moneys worth (whether capital or income) in respect of its assets other than under a Transaction Document.
- (e) The Grantor must not permit any of the Secured Property to become:
  - (1) Commingled with any asset that is not Secured Property except in the ordinary course of the Grantor's ordinary business; or
  - (2) an Accession to or to be affixed to any asset that is not Secured Property.
- (f) The Grantor must not enter into any arrangement which, if complied with, would prevent the Grantor from complying with its obligations under the Transaction Documents.
- (g) If, by mandatory operation of law, this clause 5.3 may not prevent the Grantor creating a Security Interest:
  - (1) this clause 5.3 does not prevent the Grantor creating that Security Interest;
  - (2) before that Security Interest is created the Grantor must ensure that the Security Trustee receives the benefit of a deed of priority or subordination granting first ranking priority to the Security in a form and of substance required by the Security Trustee; and
  - (3) until that deed of priority is executed and delivered to the Security Trustee, the Security Trustee is not required to provide any further moneys or do any other thing which would increase the amount of the Secured Moneys.

#### **5.4 Maintenance of the Secured Property**

The Grantor must:

- (a) maintain and protect its Secured Property;
- (b) keep its Secured Property in a good state of repair and in good working order allowing for fair wear and tear;
- (c) remedy every defect in its title to any part of its Secured Property;
- (d) take or defend all legal proceedings to protect or recover any of its Secured Property;
- (e) keep its Secured Property valid and subsisting and free from liability to forfeiture, cancellation, avoidance or loss; and
- (f) take all commercially reasonable steps to identify, protect and perfect with the highest priority reasonably available any PPSA Security Interest in respect of which the Grantor is or is to become the PPSA Secured Party.

#### **5.5 Further assurances**

The Grantor must:

- (a) do anything which the Security Trustee reasonably requests to:
  - (1) ensure, or enable the Security Trustee to ensure, that this deed, the Security, and the Powers are fully effective, enforceable and perfected with the contemplated priority;

- (2) more satisfactorily assure or secure to the Security Trustee the Secured Property in a manner consistent with the Transaction Documents; or
- (3) aid the exercise of any Power,  
including executing any document, delivering Title Documents, executing and delivering blank transfers or giving notice of the Security to any third party.
- (b) without limiting clause 5.5(a), when the Security Trustee requests, execute:
  - (1) a legal or statutory mortgage in favour of the Security Trustee over any real property; or
  - (2) any other form of security which the Security Trustee considers appropriate for the property to be subject to that security,  
each in form and substance required by the Security Trustee.
- (c) without limiting clause 5.5(a), use best endeavours to cause a third party to provide any Authorisation or take any other action (including executing any document) required to give effect to clause 5.5(a).

## **5.6 Title Documents**

- (a) The Grantor must deposit with the Security Trustee, or as the Security Trustee directs all the Title Documents in respect of any of the Secured Property together with executed blank transfers in respect of the Secured Property to which the Title Documents relate immediately on:
  - (1) its execution of this deed; and
  - (2) acquisition of any asset which forms part of the Secured Property.
- (b) Subject to clause 5.6(c), the Security Trustee may retain the Title Documents deposited with the Security Trustee until the Security in respect of all the Secured Property is discharged under clause 3.
- (c) If the Security is enforced by the Security Trustee, the Security Trustee, Receiver or Attorney is entitled:
  - (1) to deal with the Title Documents as if it was the absolute and unencumbered owner of the Secured Property to which the Title Documents relate; and
  - (2) in exercising a power of sale, to deliver any Title Document to a purchaser of the Secured Property to which the Title Document relates.

## **5.7 Perfection, registration and protection of Security**

- (a) The Grantor must ensure that:
  - (1) the Security is perfected in relation to all the Secured Property in all jurisdictions; and
  - (2) this deed and the Security are registered and filed in all registers in all jurisdictions  
in which it must be perfected, registered and filed, to ensure its enforceability, validity, perfection and priority against all persons and to be effective as a security.



- (b) Whenever the Security Trustee requires that the Security be perfected in a particular way in relation to any part of the Secured Property, the Grantor must ensure that the Security is perfected in that way.
- (c) The Grantor will not be in breach of its obligation under this clause 5.7 and its representation and warranty under clause 4.1(d)(2) will not be incorrect or misleading if the Security Trustee fails to take any action which can only be taken by the Security Trustee to enable the Security to be perfected as required under this clause 5.7, after written request from the Grantor to take that action.
- (d) Whenever any part of the Secured Property is transferred to or retained in a place where this deed or the Security, because of an increase in the Secured Moneys or otherwise, bears insufficient stamp duty or is not registered or recorded, or for any other reason is of limited or of no force or effect, unenforceable, inadmissible in evidence or of reduced priority, the Grantor must within 14 days after that transfer or retention ensure that:
  - (1) this deed is stamped to the satisfaction of the Security Trustee;
  - (2) this deed is in full force and effect, enforceable, perfected, admissible in evidence and not of reduced priority; and
  - (3) this deed and the Security are registered in that place, or that part of the Secured Property is removed from that place.

### **5.8 No caveats**

The Grantor must ensure that any caveat lodged in respect of the Secured Property, other than the Permitted Caveats and a caveat lodged by the Security Trustee, is removed as soon as reasonably practicable.

### **5.9 Inspection**

The Grantor must permit any representatives designated by the Security Trustee to visit and inspect the financial records and the property of the Grantor, at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives of the Grantor to discuss the affairs, finances, accounts and condition of the Grantor with the officers, employees and advisors of the Security Trustee (including independent accountants).

### **5.10 Term of undertakings**

Each of the Grantor's undertakings in this clause 5 continue in full force and effect from the date of this deed until the Security in respect of all the Secured Property is discharged under clause 3.

## **6 Enforcement**

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### **6.1 When enforceable**

- (a) If an Event of Default occurs:
  - (1) the Security and each Collateral Security are immediately enforceable without the need for any demand or notice to be given to the Grantor or any other person; and
  - (2) the Secured Moneys are immediately due and payable by the Grantor without the need for any demand or notice to be given to the Grantor

or any other person other than a notice expressly required by a Transaction Document.

- (b) The Security Trustee agrees that it will not exercise any Power to enforce the Security under Chapter 4 of the PPSA until an Event of Default occurs.

## **6.2 No dealing with assets**

Any right of the Grantor to deal, for any purpose, with any asset which forms part of the Secured Property, other than by or through a Receiver appointed under this deed, immediately ceases if:

- (a) the Security Trustee declares that the Secured Moneys are immediately due and payable; or
- (b) the Security Trustee takes any step to enforce the Security; or
- (c) a Control Event occurs in relation to the asset.

## **6.3 Assistance in realisation**

After the Security has become enforceable, the Grantor must take all action required by the Security Trustee, Receiver or Attorney to assist any of them to realise the Secured Property and exercise any Power including:

- (a) executing all transfers, conveyances, assignments and assurances of any of the Secured Property;
- (b) doing anything necessary or desirable under the law in force in any place where the Secured Property is situated;
- (c) giving all notices, orders, directions and consents which the Security Trustee, Receiver or Attorney thinks expedient; and
- (d) doing anything necessary:
  - (1) for a call to be made on the uncalled capital of the Grantor; or
  - (2) to collect all called but unpaid capital of the Grantor.

## **6.4 Postponing or delaying realisation or enforcement**

The Security Trustee, a Receiver or Attorney may postpone or delay the exercise of any Power for such period as the Security Trustee, Receiver or Attorney may in its absolute discretion decide.

# **7 Receiver**

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## **7.1 Appointment of Receiver**

If an Event of Default occurs, the Security Trustee may at any time after its occurrence:

- (a) appoint any person or any 2 or more persons jointly, or severally, or jointly and severally to be a receiver or a receiver and manager of the Secured Property;
- (b) remove any Receiver and on the removal, retirement or death of any Receiver, appoint another Receiver; and

- (c) fix the remuneration and direct payment of that remuneration and any costs, charges and expenses of the Receiver out of the proceeds of any realisation of the Secured Property.

## 7.2 Agency of Receiver

- (a) Subject to clause 7.5, each Receiver is the agent of the Grantor.
- (b) The Grantor is responsible for the acts, defaults and remuneration of the Receiver.

## 7.3 Powers of Receiver

Subject to any express exclusion by the terms of the Receiver's appointment, the Receiver has, in addition to any powers conferred on the Receiver by applicable law, and whether or not in possession of the Secured Property or any part of it, the following powers:

- (a) **manage, possession or control:** to manage, enter into possession or assume control of any of the Secured Property;
- (b) **lease or licence:** to accept the surrender of, determine, grant or renew any lease or licence in respect of the use or occupation of any of the Secured Property:
  - (1) on any terms or special conditions that the Security Trustee or Receiver thinks fit; and
  - (2) in conjunction with the sale, lease or licence of any other property by any person;
- (c) **sale:** to sell or concur in selling any of the Secured Property to any person:
  - (1) by auction, private treaty or tender;
  - (2) on such terms and special conditions as the Security Trustee or the Receiver thinks fit;
  - (3) for cash or for a deferred payment of the purchase price, in whole or in part, with or without interest or security;
  - (4) in conjunction with the sale of any property by any other person; and
  - (5) in one lot or in separate parcels;
- (d) **grant options to purchase:** to grant to any person an option to purchase any of the Secured Property;
- (e) **acquire property:** to acquire any interest in any property, in the name or on behalf of the Grantor, which on acquisition forms part of the Secured Property;
- (f) **carry on business:** to carry on or concur in carrying on any business of the Grantor in respect of the Secured Property;
- (g) **borrowings and security:**
  - (1) to raise or borrow any money, in its name or the name or on behalf of the Grantor, from the Security Trustee or any person approved by the Security Trustee in writing; and
  - (2) to secure money raised or borrowed under clause 7.3(g)(1) by a Security Interest over any of the Secured Property, ranking in priority to, equal with, or after, the Security or any Collateral Security;

- (h) **maintain or improve Secured Property:** to do anything to maintain, protect or improve any of the Secured Property including completing, repairing, erecting a new improvement on, demolishing or altering any of the Secured Property;
- (i) **income and bank accounts:** to do anything to manage or obtain income or revenue from any of the Secured Property including operating any bank account which forms part of the Secured Property or opening and operating a new bank account;
- (j) **access to Secured Property:** to have access to any of the Secured Property, the premises at which the business of the Grantor is conducted and any of the administrative services of the business of the Grantor;
- (k) **insure Secured Property:** to insure any of the Secured Property;
- (l) **sever fixtures:** to sever fixtures in respect of any of the Secured Property;
- (m) **compromise:** to make or accept any compromise or arrangement;
- (n) **surrender Secured Property:** to surrender or transfer any of the Secured Property to any person;
- (o) **exchange Secured Property:** to exchange with any person any of the Secured Property for any other property whether of equal value or not;
- (p) **employ or discharge:** to employ or discharge any person as an employee, contractor, agent, professional advisor or auctioneer for any of the purposes of this deed;
- (q) **delegate:** to delegate to any person any Power of the Receiver;
- (r) **perform or enforce documents:** to observe, perform, enforce, exercise or refrain from exercising any right, power, authority, discretion or remedy of the Grantor under, or otherwise obtain the benefit of:
  - (1) any document, agreement or right which attaches to or forms part of the Secured Property; and
  - (2) any document or agreement entered into in exercise of any Power by the Receiver;
- (s) **receipts:** to give effectual receipts for all moneys and other assets which may come into the hands of the Receiver;
- (t) **take proceedings:** to commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of the Grantor, any proceedings including proceedings in relation to any insurance in respect of any of the Secured Property;
- (u) **insolvency proceedings:** to make any debtor bankrupt, wind-up any company, corporation or other entity and do all things in relation to any bankruptcy or winding-up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
- (v) **execute documents:** to enter into and execute any document or agreement in the name of the Receiver or the name or on behalf of the Grantor including bills of exchange, cheques or promissory notes for any of the purposes of this deed;
- (w) **make calls:** to make calls on any member of the Grantor in respect of uncalled capital of the Grantor;
- (x) **vote:** to exercise any voting rights or powers in respect of any part of the Secured Property;
- (y) **collect called capital:** to collect or enforce payment of any called but unpaid capital of the Grantor whether or not the calls were made by the Receiver;

- (z) **ability of Grantor:** to do anything the Grantor could do in relation to the Secured Property; and
- (aa) **incidental power:** to do anything necessary or incidental to the exercise of any Power of the Receiver.

#### **7.4 Nature of Receiver's Powers**

The Powers of the Receiver must be construed independently and no one Power limits the generality of any other Power. Any dealing under any Power of the Receiver will be on the terms and conditions the Receiver thinks fit.

#### **7.5 Status of Receiver after commencement of winding-up**

- (a) The power to appoint a Receiver under clause 7.1 may be exercised even if, at the time an Event of Default occurs or if at the time a Receiver is appointed, an order has been made or a resolution has been passed for the winding-up of the Grantor.
- (b) If for any reason, including operation of law, a Receiver:
  - (1) appointed in the circumstances described in clause 7.5(a); or
  - (2) appointed at any other time,ceases to be the agent of the Grantor as a result of, an order being made or a resolution being passed for the winding-up of the Grantor, then the Receiver immediately becomes the agent of the Security Trustee.

#### **7.6 Powers exercisable by the Security Trustee**

- (a) Whether or not a Receiver is appointed under clause 7.1, the Security Trustee may, on or after the occurrence of an Event of Default and without giving notice to any person, exercise any Power that could be conferred on a Receiver in addition to any Power of the Security Trustee.
- (b) The exercise of any Power by the Security Trustee, Receiver or Attorney does not cause or deem the Security Trustee, Receiver or Attorney:
  - (1) to be a mortgagee in possession;
  - (2) to account as mortgagee in possession; or
  - (3) to be answerable for any act or omission for which a mortgagee in possession is liable.

#### **7.7 Set-off**

If any Event of Default is subsisting, the Security Trustee may apply any credit balance in any currency in any of the Grantor's accounts with the Security Trustee in and towards satisfaction of any of the Secured Moneys.

#### **7.8 Notice of exercise of rights**

The Security Trustee, Receiver or Attorney is not required:

- (a) to give notice of the Security or any Collateral Security to any debtor or creditor of the Grantor or to any other person;
- (b) to enforce payment of any money payable to the Grantor including any of the debts or monetary liabilities secured by this deed or by any Collateral Security; or

- (c) to obtain the consent of the Grantor to any exercise of a Power.

## 7.9 Termination of receivership and possession

The Security Trustee may, at any time, terminate the appointment of a Receiver and may, at any time, give up, or re-take, possession of the Secured Property.

# 8 Application and receipts of money

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## 8.1 Order of application

- (a) At any time after the Security is enforceable, all money received by the Security Trustee, Receiver, Attorney or any other person acting on their behalf under this deed or any Collateral Security may be appropriated and applied towards any amount and in any order that the Security Trustee, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by law.
- (b) Failing a determination under clause 8.1(a), the money must be applied in the following manner and order:
- (1) *first*, in payment of all costs, charges and expenses (including any GST) of the Security Trustee, Receiver or Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any Power;
  - (2) *second*, in payment of any other outgoings the Security Trustee, Receiver or Attorney thinks fit to pay;
  - (3) *third*, in payment to the Receiver of his remuneration;
  - (4) *fourth*, in payment and discharge, in order of their priority, of any Security Interests of which the Security Trustee, Receiver or Attorney is aware and which have priority to the Security;
  - (5) *fifth*, in payment to the Security Trustee towards satisfaction of the Secured Moneys and applied against interest, principal or any other amount the Security Trustee, Receiver or Attorney thinks fit;
  - (6) *sixth*, in payment only to the extent required by law, in order of their priority, of other Security Interests in respect of the Secured Property of which the Security Trustee, Receiver or Attorney is aware and which are due and payable in accordance with their terms; and
  - (7) *seventh*, in payment of the surplus, if any, without interest to the Grantor. The Security Trustee, Receiver or Attorney may pay the surplus to the credit of an account in the name of the Grantor in the books of any bank carrying on business within Australia and having done so is under no further liability in respect of that surplus.
- (c) Any amount required by law to be paid in priority to any amount specified in clause 8.1(b) must be paid before any money is applied in payment of the amount specified in clause 8.1(b).

## 8.2 Money actually received

In applying any money towards satisfaction of the Secured Moneys, the Grantor is to be credited only with so much of the money which is available for that purpose (after

deducting any GST imposed) and which is actually received by the Security Trustee, Receiver or Attorney. The credit dates from the time of receipt.

### **8.3 Amounts contingently due**

- (a) If at the time of a distribution of any money under clause 8.1 any part of the Secured Moneys is contingently owing to the Security Trustee, the Security Trustee, Receiver or Attorney may retain an amount equal to the amount contingently owing or any part of it.
- (b) If the Security Trustee, Receiver or Attorney retains any amount under clause 8.3(a) it must place that amount on short-term interest bearing deposit until the amount contingently owing becomes actually due and payable or otherwise ceases to be contingently owing at which time the Security Trustee, Receiver or Attorney must:
  - (1) pay to the Security Trustee the amount which has become actually due to it; and
  - (2) apply the balance of the amount retained, together with any interest on the amount contingently owing, in accordance with clause 8.1.

### **8.4 Notice of a Security Interest**

- (a) If the Security Trustee receives actual or constructive notice of a Security Interest over the Secured Property or of the perfection of a Security Interest, the Security Trustee:
  - (1) may open a new account in the name of the Grantor in its books; or
  - (2) is regarded as having opened a new account in the name of the Grantor in its books,on the date it received or was regarded as having received notice of the Security Interest or perfection.
- (b) From the date on which that new account is opened or regarded as opened:
  - (1) all payments made by the Grantor to the Security Trustee; and
  - (2) all financial accommodation and advances by the Security Trustee to the Grantor,are or are regarded as credited and debited, as the case may be, to the new account unless otherwise specified by the Security Trustee.
- (c) The payments by the Grantor under clause 8.4(b) must be applied in the manner determined by the Security Trustee or, failing a determination:
  - (1) first, in reduction of the debit balance, if any, in the new account; and
  - (2) second, if there is no debit balance in the new account, in reduction of the Secured Moneys which have not been debited or regarded as debited to the new account.

### **8.5 Security Trustee's statement of indebtedness**

A certificate signed by any Officer of the Security Trustee stating:

- (a) the amount of the Secured Moneys due and payable; or
  - (b) the amount of the Secured Moneys, whether currently due and payable or not,
- is sufficient evidence of that amount as at the date stated on the certificate, or failing that as at the date of the certificate, unless the contrary is proved.

**8.6 Security Trustee's receipts**

- (a) The receipt of any Officer of the Security Trustee for any money payable to or received by the Security Trustee under this deed exonerates the payer from all liability to enquire whether any of the Secured Moneys have become payable.
- (b) Every receipt of an Officer of the Security Trustee effectually discharges the payer from:
  - (1) any future liability to pay the amount specified in the receipt; and
  - (2) being concerned to see to the application of, or being answerable or accountable for any loss or misapplication of, the amount specified in the receipt.

**8.7 Conversion of currencies on application**

In making an application under clause 8.1, the Security Trustee, Receiver or Attorney may itself, or through its bankers, purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the time it thinks fit.

**8.8 Payments in gross**

Any payment which the Grantor is required to make under a Transaction Document must be without:

- (a) any set-off, counter-claim or condition; or
- (b) any deduction or withholding for any Tax or any other reason unless the Grantor is required to make a deduction or withholding by applicable law.

**8.9 Additional payments**

If:

- (a) the Grantor is required to make a deduction or withholding in respect of Tax (other than an Excluded Tax) from any payment to be made to the Security Trustee under any Transaction Document; or
- (b) the Security Trustee is required to pay any Tax (other than an Excluded Tax) in respect of any payment it receives from the Grantor under any Transaction Document,

then the Grantor:

- (c) indemnifies the Security Trustee against that Tax; and
- (d) must pay to the Security Trustee an additional amount which the Security Trustee determines is necessary to ensure that the Security Trustee receives when due a net amount (after payment of any Tax in respect of that additional amount) that is equal to the full amount it would have received if a deduction, withholding or payment of Tax had not been made.

**8.10 Taxation deduction procedures**

If clause 8.9(a) applies:

- (a) the Grantor must pay the amount deducted or withheld to the appropriate Government Agency as required by law; and



- (b) the Grantor must:
  - (1) use reasonable endeavours to obtain a payment receipt from the Government Agency (and any other documentation ordinarily provided by the Government Agency in connection with the payment); and
  - (2) within 2 Business Days after receipt of the documents referred to in clause 8.10(b)(1), deliver copies of them to the Security Trustee.

### **8.11 Tax Credit**

If the Grantor makes an additional payment under clause 8.9 for the benefit of the Security Trustee, and the Security Trustee determines that:

- (a) a credit against, relief or remission for, or repayment of any Tax (**Tax Credit**) is attributable to that additional payment; and
- (b) the Security Trustee has obtained, utilised and retained that Tax Credit,

then the Security Trustee must pay an amount to the Grantor which the Security Trustee determines will leave it (after that payment) in the same after Tax position as it would have been in had the additional payment not been made by the Grantor.

### **8.12 Tax affairs**

Nothing in clause 8.11:

- (a) interferes with the right of the Security Trustee to arrange its tax affairs in any manner it thinks fit;
- (b) obliges the Security Trustee to investigate the availability of, or claim, any Tax Credit; or
- (c) obliges the Security Trustee to disclose any information relating to its tax affairs or any tax computations.

### **8.13 Amounts payable on demand**

If an amount payable under a Transaction Document is not expressed to be payable on a specified date, that amount is payable by the Grantor on demand by the Security Trustee.

### **8.14 Currency of payments**

The Grantor must make each payment under this deed in the Relevant Currency.

## **9 Power of attorney**

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### **9.1 Appointment of Attorney**

For consideration received, the Grantor irrevocably appoints the Security Trustee and each Receiver severally its attorney for the purposes set out in clause 9.2.

### **9.2 Purposes of appointment**

The Attorney may, in its name or in the name of the Grantor, Security Trustee or Receiver, do any of the following:

- (a) do any thing which ought to be done by the Grantor under this deed or any other Transaction Document;
- (b) exercise any right, power, authority, discretion or remedy of the Grantor under:
  - (1) this deed;
  - (2) any other Transaction Document; or
  - (3) any agreement forming part of the Secured Property;
- (c) do any thing which in the opinion of the Security Trustee, Receiver or Attorney is necessary or desirable for securing or perfecting the Security and any Collateral Security;
- (d) execute in favour of the Security Trustee any legal mortgage, transfer, assignment and any other assurance of any of the Secured Property;
- (e) execute deeds of assignment, composition or release;
- (f) sell or otherwise part with the possession of any of the Secured Property; and
- (g) generally, do any other thing, whether or not of the same kind as those set out in clause 9.2(a) to (f), which in the opinion of the Security Trustee, Receiver or Attorney is necessary or desirable:
  - (1) to more satisfactorily secure to the Security Trustee the payment of the Secured Moneys; or
  - (2) in relation to any of the Secured Property.

### **9.3 Exercise after Event of Default**

An Attorney must not exercise any Power under clause 9.2 until an Event of Default occurs but a breach of this clause 9.3 does not affect the validity of the Attorney's act.

### **9.4 Delegation and substitution**

The Attorney may appoint a substitute attorney to perform any of its Powers.

## **10 Protection**

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### **10.1 Protection of third parties**

- (a) No person dealing with the Security Trustee, Receiver or Attorney is bound to enquire whether:
  - (1) the Security has become enforceable;
  - (2) the Receiver or Attorney is duly appointed; or
  - (3) any Power has been properly or regularly exercised.
- (b) No person dealing with the Security Trustee, Receiver or Attorney is affected by express notice that the exercise of any Power was unnecessary or improper.
- (c) The irregular or improper exercise of any Power is, as regards the protection of any person, regarded as authorised by the Grantor and this deed, and is valid.

**10.2 Protection of the Security Trustee, Receiver and Attorney**

- (a) The Security Trustee, Receiver or Attorney is not liable for any loss or damage including consequential loss or damage, arising directly or indirectly from:
  - (1) any omission or delay in the exercise or non-exercise of any Power; or
  - (2) the neglect, default or dishonesty of any manager, Officer, employee, agent, accountant, auctioneer or solicitor of the Grantor, the Security Trustee, Receiver or Attorney.
- (b) Clause 10.2(a) does not apply:
  - (1) in respect of the Security Trustee, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Security Trustee; and
  - (2) in respect of a Receiver or Attorney, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Receiver or Attorney.

**11 Indemnities**

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**11.1 General indemnity**

- (a) The Grantor indemnifies the Security Trustee against any Loss which the Security Trustee, Receiver (whether acting as agent of the Grantor or of the Security Trustee) or Attorney pays, suffers, incurs or is liable for, in respect of any of the following:
  - (1) the occurrence of any Default;
  - (2) the Security Trustee exercising its Powers consequent upon or arising out of the occurrence of any Default;
  - (3) the non exercise, attempted exercise, exercise or delay in the exercise of any Power;
  - (4) any act or omission of the Grantor or any of its employees or agents;
  - (5) the occupation, use or ownership of any of the Secured Property by the Grantor or any of its employees or agents;
  - (6) any workers' compensation claim by any employee of the Grantor;
  - (7) any insurance policy in respect of the Secured Property;
  - (8) any compulsory acquisition or statutory or judicial divestiture of any of the Secured Property;
  - (9) the Security Trustee acting in connection with a Transaction Document in good faith on fax instructions purporting to originate from the offices of the Grantor or to be given by the Grantor; and
  - (10) any other thing in respect of the Security or the Secured Property.
- (b) The indemnity contained in clause 11.1(a) includes:
  - (1) the amount determined by the Security Trustee as being incurred by reason of the liquidation or re-employment of deposits or other funds acquired or contracted for by the Security Trustee to fund or maintain the Secured Moneys; and
  - (2) loss of margin.

## 11.2 Foreign currency indemnity

If, at any time:

- (a) the Security Trustee, Receiver or Attorney receives or recovers any amount payable by the Grantor for any reason including:
  - (1) under any judgment or order of any Government Agency;
  - (2) for any breach of any Transaction Document;
  - (3) on the liquidation or bankruptcy of the Grantor or any proof or claim in that liquidation or bankruptcy; or
  - (4) any other thing into which the obligations of the Grantor may have become merged; and

- (b) the Payment Currency is not the Relevant Currency,

the Grantor indemnifies the Security Trustee against any shortfall between the amount payable in the Relevant Currency and the amount actually or notionally received or recovered by the Security Trustee, Receiver or Attorney after the Payment Currency is converted or translated into the Relevant Currency under clause 8.7.

## 11.3 Continuing indemnities and evidence of loss

- (a) Each indemnity of the Grantor contained in a Transaction Document is a continuing obligation of the Grantor, despite:
  - (1) any settlement of account; or
  - (2) the occurrence of any other thing,and remains in full force and effect until:
  - (3) the Secured Moneys have been fully and finally paid; and
  - (4) the Security in respect of all the Secured Property has been finally discharged under clause 3.
- (b) Each indemnity of the Grantor in a Transaction Document is an additional, separate and independent obligation of the Grantor and no one indemnity limits the general nature of any other indemnity.
- (c) Each indemnity of the Grantor in a Transaction Document survives the termination of any Transaction Document.
- (d) A certificate given by an Officer of the Security Trustee detailing the amount of any Loss covered by any indemnity in a Transaction Document is sufficient evidence unless the contrary is proved.

# 12 Tax, costs and expenses

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## 12.1 Tax

- (a) The Grantor must pay any Tax, other than an Excluded Tax in respect of the Security, which is payable in respect of a Transaction Document (including in respect of the execution, delivery, performance, release, discharge, amendment, or enforcement of any Transaction Document).
- (b) The Grantor must pay any fine, penalty or other cost in respect of a failure to pay any Tax described in clause 12.1(a) except to the extent that the fine,

penalty or other cost is caused by the Security Trustee's failure to lodge money received from the Grantor within 2 Business Days before the due date for lodgement.

- (c) The Grantor indemnifies the Security Trustee against any amount payable under clause 12.1(a) or clause 12.1(b) or both.

## **12.2 Costs and expenses**

The Grantor must pay to the Security Trustee:

- (a) all reasonable costs and expenses of the Security Trustee in relation to the negotiation, preparation, execution, delivery, stamping, registration, perfection, completion, variation and discharge of any Transaction Document or any Security Interest provided for by a Transaction Document;
- (b) all costs and expenses of the Security Trustee in relation to the enforcement, protection or waiver of any rights under any Transaction Document;
- (c) all reasonable costs and expenses of the Security Trustee in relation to the consent or approval of the Security Trustee given under any Transaction Document; and
- (d) all reasonable costs and expenses of the Security Trustee in relation to any enquiry by a Government Agency involving the Grantor,

including:

- (e) any administration costs of the Security Trustee in relation to the matters described in clauses 12.2(b), (c) and (d); and
- (f) any legal costs and expenses and any professional consultant's fees on a full indemnity basis.

## **12.3 GST**

- (a) If GST is or will be imposed on a supply made under or in connection with a Transaction Document by the Security Trustee, the Security Trustee may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
- (1) increase the consideration otherwise provided for that supply under the Transaction Document by the amount of that GST; or
- (2) otherwise recover from the recipient of the supply the amount of that GST.
- (b) The Security Trustee must issue a Tax Invoice to the recipient of the supply no later than 5 Business Days after payment to the Security Trustee of the GST inclusive consideration for that supply.

# **13 Interest on overdue amounts**

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## **13.1 Payment of interest**

The Grantor must pay interest on:

- (a) any of the Secured Moneys due and payable by it, but unpaid; and
- (b) any interest payable but unpaid under this clause 13.

### 13.2 Accrual of interest

The interest payable under clause 13.1:

- (a) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the Secured Moneys becomes merged; and
- (b) may be capitalised by the Security Trustee, Receiver or Attorney at monthly intervals.

### 13.3 Rate of interest

The rate of interest payable under this clause 13 is the highest of:

- (a) any rate specified in any Transaction Document;
- (b) the rate fixed or payable under a judgment or other thing referred to in clause 13.2(a); and
- (c) 5%.

## 14 Savings provisions

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### 14.1 Statutory powers

- (a) Subject to clause 14.1(b), the powers of the Security Trustee under this deed or any Collateral Security are in addition to any powers the Security Trustee has under applicable law.
- (b) Where the Security Trustee or a Controller exercises a Power conferred both under Chapter 4 of the PPSA and otherwise than under Chapter 4, the Security Trustee or Controller only exercises the Power under Chapter 4 if the Security Trustee or Controller states so in writing at the time of exercising the Power.
- (c) To the extent not prohibited by law, before enforcing this deed or any Collateral Security, or exercising any Power, the Security Trustee is not required to give any notice or allow the expiration of any time to any person.
- (d) If a law which requires a period of notice to be given cannot be excluded, but the law allows the period to be specified or changed, then that period of time is one day.

### 14.2 Continuing security

The Security is a continuing security despite:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and remains in full force and effect until the Security Trustee has given a discharge of the Security in respect of all the Secured Property under clause 3.

### 14.3 No merger of security

- (a) Nothing in this deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects:

- (1) any Security Interest or indemnity in favour of the Security Trustee; or
  - (2) any Power.
- (b) No other Security Interest or Transaction Document which the Security Trustee has the benefit of in any way prejudicially affects any Power.

#### **14.4 Exclusion of moratorium**

To the extent not excluded by law, a provision of any legislation which directly or indirectly:

- (a) lessens, varies or affects in favour of the Grantor any obligations under this deed or any Transaction Document;
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by the Security Trustee, Receiver or Attorney of any Power; or
- (c) confers any right on the Grantor or imposes any obligation on the Security Trustee or a Receiver or Attorney in connection with the exercise of any Power,

is negated and excluded from this deed and any Transaction Document and all relief and protection conferred on the Grantor by or under that legislation is also negated and excluded.

#### **14.5 Exclusion of PPSA provisions**

Without limiting clause 14.4:

- (a) the provisions of the PPSA specified in section 115(1) of that Act (except sections 96 (*when a person with an interest in the whole may retain an accession*), 117 (*obligations secured by interests in personal property and land*), 120 (*enforcement of liquid assets*), 123 (*right to seize collateral*), 126 (*apparent possession*), 128 (*secured party may dispose of collateral*), 129 (*disposal by purchase*), 134 (*retention of collateral*) and Division 6 of Part 4.3 (*seizure and disposal or retention of crops and livestock*)) are excluded in full and will not apply to the Security;
- (b) in the circumstances permitted under section 115(7) of the PPSA, sections 132 (*secured party to give statement of account*) and 136(5) (*retaining collateral free of interests*) of the PPSA are also excluded and will not apply to the Security; and
- (c) to the extent not prohibited by the PPSA the Grantor waives its right to receive any notice otherwise required to be given by the Security Trustee under section 157 (*verification statements*) or any other provision of the PPSA.

#### **14.6 Conflict**

Where any right, power, authority, discretion or remedy conferred on the Security Trustee, Receiver or Attorney by this deed or any Transaction Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

#### **14.7 Consent of Security Trustee**

- (a) Whenever the doing of any thing by the Grantor is dependent on the consent of the Security Trustee, the Security Trustee may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Transaction Document.

- (b) Any conditions imposed on the Grantor under clause 14.7(a) must be complied with by the Grantor.

#### **14.8 Completion of blank securities**

- (a) The Security Trustee, a Receiver, Attorney or any Officer of the Security Trustee may at any time complete, in favour of the Security Trustee, any appointee of the Security Trustee or any purchaser, any instrument executed in blank by or on behalf of the Grantor and deposited with the Security Trustee as security under this deed or under any Collateral Security.
- (b) The Security Trustee, a Receiver, Attorney or any Officer of the Security Trustee must not exercise any Power under clause 14.8(a) until an Event of Default occurs but a breach of this clause 14.8(b) does not affect the validity of the act of the Security Trustee, Receiver, Attorney or Officer of the Security Trustee.

#### **14.9 Principal obligations**

The Security and each Collateral Security is:

- (a) a principal obligation and is not ancillary or collateral to any other Security Interest (other than another Collateral Security) or other obligation; and
- (b) independent of, and unaffected by, any other Security Interest or other obligation which the Security Trustee may hold at any time in respect of the Secured Moneys.

#### **14.10 No obligation to marshal**

The Security Trustee is not required to marshal or to enforce or apply under, or appropriate, recover or exercise:

- (a) any Security Interest or Collateral Security held, at any time, by the Security Trustee; or
- (b) any moneys or assets which the Security Trustee, at any time, holds or is entitled to receive.

#### **14.11 Non-avoidance**

If any payment by the Grantor to the Security Trustee is avoided for any reason including any legal limitation, disability or incapacity of or affecting the Grantor or any other thing, and whether or not:

- (a) any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of the Security Trustee,

the Grantor:

- (c) as an additional, separate and independent obligation, indemnifies the Security Trustee against that avoided payment; and
- (d) acknowledges that any liability of the Grantor under the Transaction Documents and any Power is the same as if that payment had not been made.



**14.12 Increase in financial accommodation**

The Security Trustee may at any time increase the financial accommodation provided under any Transaction Document or otherwise provide further financial accommodation.

**14.13 Suspense account**

- (a) The Security Trustee may apply to the credit of a suspense account any:
  - (1) amounts received under this deed;
  - (2) dividends, distributions or other amounts received in respect of the Secured Moneys in any liquidation; and
  - (3) other amounts received from any Transaction Party or any other person in respect of the Secured Moneys.
- (b) The Security Trustee may retain the amounts in the suspense account for as long as it determines and is not obliged to apply them in or towards satisfaction of the Secured Moneys.

**15 Third party provisions**

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**15.1 Independent obligations**

This deed is enforceable against the Grantor:

- (a) without first having recourse to any Collateral Security;
- (b) whether or not the Security Trustee or any other person has:
  - (1) made demand on any Transaction Party other than the Grantor;
  - (2) given notice to any Transaction Party (other than the Grantor) or any other person in respect of any thing; or
  - (3) taken any other steps against any Transaction Party (other than the Grantor) or any other person;
- (c) whether or not any Secured Moneys is then due and payable; and
- (d) despite the occurrence of any event described in clause 15.2.

**15.2 Unconditional nature of obligations**

- (a) The Security and the obligations of the Grantor under the Transaction Documents are absolute, binding and unconditional in all circumstances and are not released or discharged or otherwise affected by anything which but for this provision might have that effect, including:
  - (1) the grant to any Transaction Party or any other person of any time, waiver, covenant not to sue or other indulgence;
  - (2) the release (including a release as part of any novation) or discharge of any Transaction Party or any other person;
  - (3) the cessation of the obligations, in whole or in part, of any Transaction Party or any other person under any Transaction Document or any other document or agreement;
  - (4) the liquidation of any Transaction Party or any other person;

- (5) any arrangement, composition or compromise entered into by the Security Trustee, any Transaction Party or any other person;
- (6) any Transaction Document or any other document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
- (7) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compounding, composition or compromise, in whole or in part of any Transaction Document or any other document or agreement;
- (8) any Collateral Security being given to the Security Trustee or any other person by any Transaction Party or any other person;
- (9) any alteration, amendment, variation, supplement, renewal or replacement of any Transaction Document or any other document or agreement or any increase in the limit or maximum principal amount available under the Transaction Documents;
- (10) any moratorium or other suspension of any Power;
- (11) the Security Trustee, Receiver or Attorney exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any Power;
- (12) the Security Trustee obtaining a judgment against any Transaction Party or any other person for the payment of any of the Secured Moneys;
- (13) any transaction, agreement or arrangement that may take place with the Security Trustee, any Transaction Party or any other person;
- (14) any payment to the Security Trustee, Receiver or Attorney, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (15) any failure to give effective notice to any Transaction Party or any other person of any default under any Transaction Document or any other document or agreement;
- (16) any legal limitation, disability or incapacity of any Transaction Party or of any other person;
- (17) any breach of any Transaction Document or any other document or agreement;
- (18) the acceptance of the repudiation of, or termination of, any Transaction Document or any other document or agreement;
- (19) any Secured Moneys being irrecoverable for any reason;
- (20) any disclaimer by any Transaction Party or any other person of any Transaction Document or any other document or agreement;
- (21) any assignment, novation, assumption or transfer of, or other dealing with, any Powers or any other rights or obligations under any Transaction Document or any other document or agreement;
- (22) the opening of a new account of any Transaction Party with the Security Trustee or any transaction on or relating to the new account;
- (23) any prejudice (including material prejudice) to any person as a result of any thing done, or omitted by the Security Trustee, any Transaction Party or any other person;

- (24) any prejudice (including material prejudice) to any person as a result of the Security Trustee, Receiver, Attorney or any other person selling or realising any property the subject of a Collateral Security at less than the best price;
  - (25) any prejudice (including material prejudice) to any person as a result of any failure or neglect by the Security Trustee, Receiver, Attorney or any other person to recover the Secured Moneys from any Transaction Party or by the realisation of any property the subject of a Collateral Security;
  - (26) any prejudice (including material prejudice) to any person as a result of any other thing;
  - (27) the receipt by the Security Trustee of any dividend, distribution or other payment in respect of any liquidation;
  - (28) the capacity in which a Transaction Party executed a Transaction Document not being the capacity disclosed to the Security Trustee before the execution of the Transaction Document;
  - (29) the failure of any other Transaction Party or any other person who is intended to become a co-surety or co-indemnifier of that Transaction Party to execute any Transaction Document or any other document; or
  - (30) any other act, omission, matter or thing whether negligent or not;
- (b) Clauses 15.2(a) applies irrespective of:
- (1) the consent or knowledge or lack of consent or knowledge, of the Security Trustee, any Transaction Party or any other person of any event described in clause 15.2(a) (and the Grantor irrevocably waives any duty on the part of the Security Trustee to disclose such information); or
  - (2) any rule of law or equity to the contrary.

### **15.3 No competition**

- (a) Until the Secured Moneys have been fully paid and the Security has been finally discharged under clause 3, the Grantor is not entitled to:
- (1) be subrogated to the Security Trustee;
  - (2) claim or receive the benefit of any Security Interest, Guarantee (including any Transaction Document) or other document or agreement of which the Security Trustee has the benefit;
  - (3) claim or receive the benefit of any moneys held by the Security Trustee;
  - (4) claim or receive the benefit of any Power;
  - (5) either directly or indirectly prove in, claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the liquidation of any Transaction Party, except in accordance with clause 15.3(b);
  - (6) make a claim or exercise or enforce any right, power or remedy (including under a Security Interest or Guarantee or by way of contribution) against any Transaction Party liable to pay the Secured Moneys or against any asset of any such Transaction Party, whether such right, power or remedy arises under or in connection with this deed, any other Transaction Document or otherwise;

- (7) accept, procure the grant of, or allow to exist any Security Interest in favour of the Grantor from any Transaction Party liable to pay the Secured Moneys;
  - (8) exercise or attempt to exercise any right of set-off against, nor realise any Security Interest taken from, any Transaction Party liable to pay the Secured Moneys; or
  - (9) raise any defence or counterclaim in reduction or discharge of its obligations under the Transaction Documents.
- (b) If required by the Security Trustee, the Grantor must prove in any liquidation of a Transaction Party liable to pay the Secured Moneys for all moneys owed to the Grantor.
- (c) The Grantor must not do or seek, attempt or purport to do anything referred to in clause 15.3(a).

## 16 General

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### 16.1 Confidential information

The Security Trustee must not disclose to any person:

- (a) this deed; or
- (b) any information about any Transaction Party, except:
- (c) in connection with an actual or proposed permitted assignment, novation, participation or securitisation or entry by the Security Trustee into a credit default swap where the disclosure is made on the basis that the recipient of the information will comply with this clause 16.1 in the same way that the Security Trustee is required to do;
- (d) to any professional or other adviser consulted by it in relation to any of its rights or obligations under the Transaction Documents;
- (e) to the Reserve Bank of Australia, the Australian Tax Office, the Australian Transaction Reports and Analysis Centre or any Government Agency in Australia or elsewhere requiring or requesting disclosure of the information;
- (f) in connection with the enforcement of its rights under the Transaction Documents;
- (g) to any Related Body Corporate of the Security Trustee where the disclosure is made on the basis that the recipient of the information will comply with this clause 16.1 in the same way that the Security Trustee is required to do;
- (h) where the information is already in the public domain, or where the disclosure would not otherwise breach any duty of confidentiality;
- (i) if required by law in Australia or elsewhere (other than under section 275 of the PPSA to the extent that disclosure would not be required under that section if the disclosure would breach a duty of confidence); or
- (j) otherwise with the prior written consent of the relevant Transaction Party (such consent not to be unreasonably withheld or delayed).

**16.2 Performance by Security Trustee of the Grantor's obligations**

If the Grantor defaults in fully and punctually performing any obligation contained or implied in any Transaction Document, the Security Trustee may, without prejudice to any Power, do all things necessary or desirable, in the opinion of the Security Trustee, to make good or attempt to make good that default to the satisfaction of the Security Trustee.

**16.3 Grantor to bear cost**

Any thing which must be done by the Grantor under this deed, whether or not at the request of the Security Trustee, must be done at the cost of the Grantor.

**16.4 Notices**

Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be given in accordance with the notice requirements of the Convertible Note Agreement.

**16.5 Governing law and jurisdiction**

- (a) This deed is governed by the laws of Queensland.
- (b) Without limiting clause 16.5(a), for the purposes of section 237 of the PPSA, the law of the Commonwealth of Australia as that law applies in the jurisdiction specified in clause 16.5(a) governs the Security to the extent it is permitted to apply to the Secured Property under that section.
- (c) The Grantor irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- (d) The Grantor irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (e) The Grantor irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.
- (f) The Grantor appoints Paradise Phosphate Pty Ltd of Level 8, 580 St Kilda Road, Melbourne VIC 3004 in relation to proceedings in Australia as its agent to receive service of any legal process on its behalf without excluding any other means of service permitted by the law of the relevant jurisdiction.

**16.6 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, any Transaction Document or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, any Transaction Document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

**16.7 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (2) a Power created or arising upon default under this deed or upon the occurrence of an Event of Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

**16.8 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

**16.9 Cumulative rights**

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Security Trustee, Receiver or Attorney.

**16.10 Assignment**

- (a) Subject to any Transaction Document, the Security Trustee may assign its rights under this deed and each Collateral Security without the consent of the Grantor.
- (b) The Grantor must not assign any of its rights under this deed or any Collateral Security without the prior written consent of the Security Trustee.

**16.11 Counterparts**

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.

**16.12 Attorneys**

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Executed as a deed

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**Grantor**

Signed sealed and delivered by  
**Legend International Holdings, Inc**  
by

*sign here* ▶ /s/ J I Gutnick

*print name* J I Gutnick

*sign here* ▶ /s/ P J Lee

*print name* P J Lee

---

**Security Trustee**

Signed sealed and delivered for and on behalf of  
**Acorn Capital Limited**  
by

*sign here* ▶ /s/ M Sheehan  
Company Secretary/Director

*print name* M Sheehan

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

**Annexure 'A'**  
**Mining Mortgage**

This is the annexure of \_\_\_ pages marked 'A' referred to in the Form No. MRA-25 executed by Legend International Holdings, Inc. ARBN 120 855 352 (**Mortgagor**) and Acorn Capital Limited ACN 082 694 531 as mortgagee (**Security Trustee**) in its capacity as security trustee of the Security Trust.



# Mining Mortgage

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Legend International Holdings, Inc.  
(as **Mortgagor**)

Acorn Capital Limited  
(as **Security Trustee**)

**Freehills**

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## Mining Mortgage

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Date ► **7 February 2012**

Between the parties

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Mortgagor	<b>Legend International Holdings, Inc.</b> ARBN 120 855 352 of Level 8, 580 St Kilda Road, Melbourne VIC 3004 <b>(Mortgagor)</b>
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Security Trustee	<b>Acorn Capital Limited</b> ACN 082 694 531 of Level 12, 90 Collins Street, Melbourne Vic 3000 <b>(Security Trustee)</b>
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Background	<ol style="list-style-type: none"><li>1 The Mortgagor is, or will be, the legal and beneficial owner of the Secured Property.</li><li>2 The Mortgagor has agreed to mortgage the Secured Property to secure the payment of the Secured Money.</li></ol>
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This deed witnesses	that in consideration of, among other things, the mutual promises contained in this deed, the parties agree as set out in the Operative part of this deed.
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# 1 Definitions

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## 1.1 Definitions

These meanings apply unless the contrary intention appears:

<b>Term</b>	<b>Meaning</b>
<b>Attorney</b>	each attorney appointed by the Mortgagor under clause 19.
<b>Collateral Security</b>	any present or future Security Interest or other document or agreement created or entered into by a Transaction Party or any other person as security for, or to credit enhance, the payment of the Secured Money.
<b>Contaminant</b>	anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that presents or could present a risk of harm to human health or the Environment.
<b>Controller</b>	has the meaning it has in the Corporations Act.
<b>Convertible Note Agreement</b>	the convertible note agreement dated on or around the date of this deed between, among others, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2 and the Mortgagor.
<b>Costs</b>	includes costs, mortgages and expenses, including those incurred in connection with advisers.
<b>Environment</b>	components of the earth, including: <ol style="list-style-type: none"><li>1 land, air and water;</li><li>2 any layer of the atmosphere;</li><li>3 any organic or inorganic matter and any living organism; and</li><li>4 human made or modified structures and areas,</li></ol> and includes interacting natural ecosystems that include components referred to in paragraphs 1 to 3 inclusive.
<b>Environmental Law</b>	any legislation regulating Pollutants in connection with the protection of the environment or health and safety.

<b>Term</b>	<b>Meaning</b>
<b>Finance Party</b>	<ol style="list-style-type: none"> <li>1 the Noteholders;</li> <li>2 the Finance Party; and</li> <li>3 the Security Trustee.</li> </ol>
<b>Licence</b>	any licence, permit or authorisation (including to sell liquor, to discharge hazardous waste, to draw water, or to develop and use property) which allows activity to be carried out, on or in connection with property.
<b>Mineral Resources Act</b>	the <i>Mineral Resources Act 1989</i> (Qld).
<b>Minerals</b>	has the meaning given to that term in the Mineral Resources Act and including such minerals whether or not processed or refined and whether or not contained in ore or concentrate or in some other form of compound.
<b>Minister</b>	the Minister for the Crown responsible for the Secured Property.
<b>Mortgagor</b>	the person or persons named in this mortgage as Mortgagor. If there are more than one, the Mortgagor means each of them individually and every two or more of them jointly.
<b>Officer</b>	<ol style="list-style-type: none"> <li>1 in relation to the Mortgagor, a director or a secretary, or a person notified to be an authorised officer of the Mortgagor;</li> <li>2 in relation to the Security Trustee, any person whose title includes the word 'Director', 'Managing Director', 'Manager' or 'Vice President', and any other person appointed by the Security Trustee to act as its authorised officer for the purposes of this deed; and</li> <li>3 in relation to a Receiver or an Attorney which is a corporation, any officer, as that expression is defined in section 9 of the Corporations Act, of that Receiver or Attorney.</li> </ol>
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPS Law</b>	<ol style="list-style-type: none"> <li>1 the PPSA;</li> <li>2 any regulations made at any time under the PPSA;</li> <li>3 any provision of the PPSA or regulations referred to in paragraph 2 above;</li> <li>4 any amendment to any of the above, made at any time; or</li> <li>5 any amendment made at any time to the Corporations Act or any other legislation in connection with the implementation or as a</li> </ol>

Term	Meaning
	consequence of the PPSA.
<b>Pollutant</b>	a pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, industrial or other waste.
<b>Potential Event of Default</b>	an event which, with the giving of notice, lapse of time or fulfilment of any condition, would be likely to become an Event of Default.
<b>Receiver</b>	includes a receiver or receiver and manager.
<b>Resumption</b>	a resumption, appropriation, confiscation, or compulsory acquisition of, or freezing, restraining or forfeiture order in relation to, the Secured Property under a statute or otherwise, including a restriction or order under which compensation is payable in connection with the Secured Property.
<b>Secured Money</b>	<p>all debts and monetary liabilities of:</p> <ol style="list-style-type: none"> <li>1 the Mortgagor to a Finance Party on any account and in any capacity; and</li> <li>2 each Transaction Party (other than the Mortgagor) to a Finance Party on any account and in any capacity,</li> </ol> <p>irrespective of whether the debts or liabilities:</p> <ol style="list-style-type: none"> <li>3 are present or future;</li> <li>4 are actual, prospective, contingent or otherwise;</li> <li>5 are at any time ascertained or unascertained;</li> <li>6 are owed or incurred by or on account of the Mortgagor or another Transaction Party alone, or severally or jointly with any other person;</li> <li>7 are owed to or incurred for the account of a Finance Party alone, or severally or jointly with any other person;</li> <li>8 are owed to any other person as agent (whether disclosed or not) for or on behalf of a Finance Party;</li> <li>9 are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;</li> <li>10 are owed to or incurred for the account of a Finance Party directly or as a result of: <ul style="list-style-type: none"> <li>• the assignment and transfer to a Finance Party of any debt or liability of the Mortgagor or another Transaction Party; or</li> <li>• any other dealing with any such debt or liability;</li> </ul> </li> <li>11 are owed to or incurred for the account of a Finance Party before the date of this deed or before the date of any assignment of this</li> </ol>



Term	Meaning
	<p>deed to a Finance Party by any other person or otherwise; or</p> <p>12 comprise any combination of the above.</p>
<b>Secured Property</b>	<p>all the Mortgagor's interests in each Tenement and all the Mortgagor's rights relating to those interests:</p> <ol style="list-style-type: none"> <li>1 of whatever kind and wherever situated; and</li> <li>2 whether present or future.</li> </ol>
<b>Security Trust</b>	<p>the "Paradise Phosphate Security Trust" as constituted under the Security Trust Deed.</p>
<b>Security Trust Deed</b>	<p>the security trust deed dated on or about the date of this deed between the Mortgagor and others and the Security Trustee, a security trustee constituting the Security Trust.</p>
<b>Tenement</b>	<ol style="list-style-type: none"> <li>1 the mining tenements described in Schedule 1;</li> <li>2 renewals, extensions, substitutions, amalgamations, subdivisions and variations of that tenement; and</li> <li>3 all applications for that tenement, or any renewal, extension, substitution, amalgamation, subdivision or variation of that tenement.</li> </ol>
<b>Transaction Documents</b>	<ol style="list-style-type: none"> <li>1 this deed;</li> <li>2 each Collateral Security;</li> <li>3 the Security Trust Deed;</li> <li>4 the Convertible Note Agreement; and</li> <li>5 any other Transaction Document as defined in the Convertible Note Agreement; or</li> </ol> <p>or any document or agreement entered into or given under any of the above.</p>
<b>Transaction Party</b>	<ol style="list-style-type: none"> <li>1 the Mortgagor;</li> <li>2 the Company; or</li> <li>3 any other Transaction Party as defined in a Transaction Document.</li> </ol>
<b>Works</b>	<p>building work, excavation or earthworks on the Secured Property, work demolishing, removing or altering any part of the Secured Property, or any building or development work required by an authority in connection with the Secured Property.</p>

## 1.2 Interpretation

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation.
- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) A reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits.
- (m) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (n) A reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind.
- (o) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.
- (p) A reference to a body, other than a party to this deed (including, an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (q) Where this agreement confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.
- (r) An Event of Default is 'continuing' or 'subsisting' if it has not been:

- (1) remedied to the satisfaction of the Security Trustee before a Power relating to that Event of Default is exercised; or
- (2) waived in writing by the Security Trustee.

### **1.3 Incorporated definitions**

- (a) A word or phrase (other than one defined in clause 1.1) defined in the Convertible Note Agreement or in the Security Trust Deed has the same meaning in this deed.
- (b) If a word or phrase is defined in both the Convertible Note Agreement and the Security Trust Deed the definition in the Convertible Note Agreement prevails to the extent of any inconsistency.

### **1.4 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### **1.5 Personal Property Securities (PPS) Law**

If:

- (a) a PPS Law applies, or will at a future date apply to any of the Transaction Documents or any of the transactions contemplated by them, or the Security Trustee determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
- (b) in the reasonable opinion of the Security Trustee, the PPS Law:
  - (1) adversely affects or would or may adversely affect the Security Trustee's security position or the rights or obligations of the Security Trustee under or in connection with the Transaction Documents; or
  - (2) enables or would enable the Security Trustee's security position to be improved without adversely affecting the Mortgagor in a material respect,

the Security Trustee may from time to time give notice to the Mortgagor requiring the Mortgagor to do anything, including:

- (c) promptly providing all necessary information and taking all necessary action (including entering into any agreement, obtaining any consent or giving any notice) to enable any PPSA Security Interest held or intended to be held by the Security Trustee under the Transaction Documents at any time to be perfected by control (within the meaning of Part 2.3 of the PPSA) to the extent possible under the PPSA and to enable the Security Trustee to register fully valid and effective Financing Statements or Financing Change Statements with respect to any PPSA Security Interest;
- (d) amending any Transaction Document or executing any new Transaction Document, that in the Security Trustee's reasonable opinion is necessary to ensure that, to the maximum possible extent, the Security Trustee's security position, and rights and obligations, are not adversely affected as contemplated by clause 1.5(b)(1) (or that any such adverse effect is overcome to the maximum extent possible), or that the Security Trustee's security position is improved as contemplated in clause 1.5(b)(2). The Mortgagor must comply with the requirements of that notice within the time stipulated in the notice.

### **1.6 Security Trust Deed**

This deed is a 'Security' and a 'Transaction Document' for the purposes of the Security Trust Deed.

### **1.7 Capacity of Security Trustee**

The Security Trustee enters into this deed as security trustee under the Security Trust Deed. Clause 1.4 of the Security Trust Deed is incorporated in this deed.

## **2 What the Mortgagor undertakes in this mortgage**

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### **2.1 Effect of mortgage**

By signing this mortgage, the Mortgagor undertakes certain obligations. The Mortgagor also gives the Security Trustee rights concerning the Mortgagor and the Secured Property - for example, if the Mortgagor does not comply with its obligations, the Security Trustee may take possession of the Secured Property, sell or otherwise deal with it, and sue the Mortgagor for any money it owes the Security Trustee.

### **2.2 Joint and individual liability**

The Mortgagor is liable for all the obligations under this mortgage both individually and jointly with any one or more other persons named in this mortgage as Mortgagor.

### **2.3 When the Mortgagor must pay**

The Mortgagor agrees to pay the Secured Money in accordance with the terms of any agreement in writing to do so. However, if either:

- (a) there is no such agreement; or
- (b) an Event of Default is continuing,

the Security Trustee may declare at any time by notice to the Mortgagor that the Secured Money is either payable on demand or immediately due for payment.

### **2.4 Survival of obligations**

The Mortgagor's obligations under this mortgage continue even if the Security Trustee releases the Secured Property from this mortgage.

## **3 Mortgage**

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### **3.1 Mortgage of Tenements**

The Mortgagor, as beneficial owner, mortgages the whole of its interest in the Tenements (including all buildings, improvements, machinery and appliances in or upon the land comprised in each such mining tenement) to the Security Trustee for the purpose of securing to the Security Trustee payment of the Secured Money.

### **3.2 Mandatory action**

To the extent that any law, including but not limited to the Mineral Resources Act, requires that something must be done (such as obtaining consent) before the Mortgagor may validly charge any of the Secured Property, the mortgage under clause 3.1 only takes effect in relation to that Secured Property when the thing required is done. The Mortgagor agrees to do anything necessary to ensure that it is done.

### **3.3 Consideration**

The Mortgagor acknowledges giving this mortgage and incurring obligations and giving rights under this mortgage for valuable consideration.

## **4 Dealings – such as selling or mortgaging**

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### **4.1 Restricted dealings with any of the Secured Property**

Without the consent of the Security Trustee, the Mortgagor may not, and may not agree, attempt or take any step to, do any of the following:

- (a) create or allow to exist another Security Interest over the Secured Property, or
- (b) assign or otherwise deal with this mortgage or any interest in it, or allow any interest in it to arise or be varied.

### **4.2 Where the law allows for creation of Security Interest without consent**

If a law entitles the Mortgagor to create another Security Interest over the Secured Property without the consent of the Security Trustee, this clause 4 does not operate to require the Mortgagor to obtain the Security Trustee's consent before creating that other Security Interest. However:

- (a) if the Mortgagor intends to create another Security Interest, it agrees to notify the Security Trustee at least seven days before it proposes to do so; and
- (b) if the Security Trustee requests an agreement under clause 5.1 and the Mortgagor has not complied with that request by the time the Security Interest is created, financial accommodation need not be made available under any Transaction Document.

## **5 Other Security Interests**

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### **5.1 Priority agreement**

If the Security Trustee asks, the Mortgagor agrees to obtain an agreement acceptable to the Security Trustee regulating priority between this mortgage and any other Security Interest over the Secured Property.

### **5.2 Amount secured by other Security Interest**

The Mortgagor agrees to ensure that the amount secured under any other Security Interest over the Secured Property is not increased without the Security Trustee's consent.

### **5.3 Obligations under other Security Interest**

The Mortgagor agrees to comply with all obligations under any other Security Interest over the Secured Property.

#### 5.4 Security Trustee may rely on third party certificates

The Security Trustee may rely on a certificate from any other person with a Security Interest over the Secured Property as to the amount that is owed to that other person.

## 6 Representations and warranties

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### 6.1 Representations and warranties

The Mortgagor represents and warrants that:

- (a) **(representations true)** each of its representations and warranties in each Transaction Document are, or will be true, and correct in all respects when made or regarded as having been made;
- (b) **(owner of the Secured Property)** it is the legal and beneficial owner of, and has good title to, the Secured Property free from any Security Interest other than a Permitted Security Interest;
- (c) **(Resumption, Contaminant, claim)** there is no:
  - (1) Resumption or proposed Resumption;
  - (2) Contaminant on, in, under or migrating to or from the Secured Property; or
  - (3) native title, or native title application, determination or claim, affecting the Secured Property.

### 6.2 Repetition of representations and warranties

The representations and warranties given under this deed:

- (a) survive the execution of this deed; and
- (b) are repeated on the last day of each calendar month with respect to the facts and circumstances then subsisting.

### 6.3 Reliance

The Mortgagor acknowledges that the Security Trustee and each Creditor has entered into the Transaction Documents to which it is a party in reliance on the representations and warranties in this clause 6.

### 6.4 No Reliance by Mortgagor

The Mortgagor acknowledges that it has not entered into this deed or any Transaction Document in reliance on any representation, warranty, promise or statement made by the Security Trustee or any person on behalf of the Security Trustee.

## 7 Maintaining the Secured Property

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### 7.1 General undertakings

The Mortgagor agrees to:

- (a) **(financial obligations)** pay or cause to be paid its financial obligations, including without limitation, all rates, rents and other outgoings payable by it, as and when the same respectively become due and payable;
- (b) **(rates and Taxes)** pay on time all amounts for which the Mortgagor is liable as owner of the Secured Property, including rates and Taxes;
- (c) **(protection from theft, loss, damages)** protect the Secured Property from theft, loss or damage;
- (d) **(notify interest in land)** notify the Security Trustee promptly of the particulars of any mining tenements or other real property acquired by the Mortgagor;
- (e) **(good condition)** keep the Secured Property in good working order and condition and correct any defect to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect;
- (f) **(loss)** protect the Secured Property from theft, loss or damage;
- (g) **(value)** not do anything, or permit anything to be done, or fail to do anything, that materially lowers or might materially lower the value of the Secured Property;
- (h) **(serious damage)** notify the Security Trustee if all or a substantial part of the Secured Property is defective or seriously damaged;
- (i) **(orders or notices)** give the Security Trustee a copy of any material order or notice from an authority concerning the use or condition of the Secured Property as soon as the Mortgagor becomes aware of it;
- (j) **(laws)** comply with all laws and requirements of Government Agencies and the Mortgagor's other obligations in connection with the Secured Property to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect;
- (k) **(compliance by occupiers)** ensure that each person who uses or occupies the Secured Property complies with all laws and requirements of Government Agencies and any other obligations in connection with the Secured Property to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect; and
- (l) **(Works)** obtain the Security Trustee's consent before the Mortgagor conducts major Works relating to land or any fixture, structure or improvement on land or fixed to it forming part of the Secured Property or enter into a contract to carry them out.

## 7.2 Environmental undertakings

The Mortgagor agrees:

- (a) to notify the Security Trustee if there is a Contaminant on, in, under or migrating to or from the Secured Property;
- (b) not to have a Contaminant on, in or under the Secured Property, release a Contaminant from the Secured Property or allow a Contaminant to escape or migrate from it;
- (c) to immediately remove any Contaminant from the Secured Property and make good any damage caused by the Contaminant or its removal;
- (d) if a Contaminant is released, escapes or migrates from the Secured Property, to minimise its impact on the Environment and make good any damage it causes; and
- (e) not to deal with the Secured Property or any Contaminant in such a way as to increase the risk of harm from any Contaminant.

### 7.3 Undertakings in respect of Tenements

Without limiting clauses 7.1, 7.2 or 7.4, the Mortgagor agrees to:

- (a) **(work and expenditure)** pay all moneys necessary to satisfy work and expenditure obligations relevant to the Tenements in accordance with the Mineral Resources Act;
- (b) **(royalties)** pay all royalties payable in relation to any Minerals won or derived from the Tenements in accordance with the Mineral Resources Act;
- (c) **(Mining Tenements)** ensure that it:
  - (1) holds and maintains its interest in the Tenements free of Security Interests other than Permitted Security Interests and the Tenements are not cancelled, suspended, reduced, surrendered, defaulted against or transferred except with the prior written consent of the Security Trustee;
  - (2) duly and punctually complies with and observes and performs all conditions and requirements of the Tenements and does whatever may be reasonably required to keep the Tenements in full force and effect; and
  - (3) has rights of access to and entry upon all relevant freehold, leasehold and other land and rights to carry out all activities required to enable the Tenements to be developed;
- (d) **(no forfeiture)** not do or permit to be done any act, matter or thing which may prejudice the Tenements or render the Tenements liable to be forfeited;
- (e) **(Mineral Resources Act)** duly and punctually observe and comply with the provisions of the Mineral Resources Act and any other statute, regulation or law of any jurisdiction affecting the holder, occupier or Security Trustee of the mining tenements comprising the Secured Property;
- (f) **(Environmental Laws)** give prompt written notice to the Security Trustee of every request, notification or demand received in connection with breaches or potential breaches of Environmental Laws, the Tenements or any mining operations carried out on any of them;
- (g) **(native title)** promptly notify the Security Trustee in writing if any claim for native title or traditional usage rights over any part of the land comprised in the Tenements is made;
- (h) **(stoppages)** advise the Security Trustee within one Business Day of any unscheduled stoppage or disruption to production on the Tenements for a period of greater than 3 consecutive days;
- (i) **(access)** to take all reasonable steps to ensure that any representative designated by the Security Trustee is allowed at all reasonable times, on reasonable notice and with reasonable frequency to have access to the Tenements and any other Secured Property, and to inspect or observe all or any facilities or operations of the Mortgagor or any other Secured Property; and
- (j) **(care and maintenance)** to ensure that the Tenements are not abandoned or placed on a 'care and maintenance' basis without the prior consent of the Security Trustee.

### 7.4 Negative Undertakings

The Mortgagor may not:

- (a) do or omit to do anything or knowingly permit or cause anything to be done or omitted which could mean in the reasonable opinion of the Security Trustee that



- the Secured Property or this deed is or is likely to become materially lessened in value or prejudicially effected;
- (b) without the Security Trustee's consent:
- (1) cause or permit any Tenement comprising the Secured Property to be varied, repudiated, rescinded or terminated;
  - (2) abandon, settle, compromise or discontinue or become nonsuited in respect of proceedings against any person in connection with the Secured Property including, without limitation, a Governmental Agency; or
  - (3) without the Security Trustee's consent, change the use of the Secured Property or discontinue any business or change the general character of any business carried on by the Mortgagor on the Secured Property which change or discontinuance may result in a Material Adverse Effect; or
- (c) without the Security Trustee's consent, take any steps under any law which could adversely affect the rights of the Security Trustee in relation to the Secured Property.

## 8 Licences

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### 8.1 Obligations if licenceholder

If a Licence is required for any activity carried out on or in connection with the Secured Property and the Mortgagor is the holder of the Licence, then the Mortgagor agrees:

- (a) when carrying out that activity, to do so in a proper, orderly and efficient manner;
- (b) to comply with all laws and requirements of Government Agencies in connection with the Licence to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect;
- (c) to obtain, comply with and do everything necessary to maintain the Licence (including renew it on time and oppose any application to restrict or cancel the Licence);
- (d) not, without the Security Trustee's consent, to:
  - (1) create or allow to exist another Security Interest over the Licence other than a Permitted Security Interest;
  - (2) dispose of the Licence;
  - (3) remove or apply to remove the Licence from the Secured Property;
  - (4) surrender or attempt to surrender the Licence;
  - (5) amend, or allow any amendment of, the Licence;
  - (6) do anything which could cause the Licence to be forfeited or cancelled; or
  - (7) deal in any way with the Licence or any interest in it, or allow any interest in it to arise or be varied; and
- (e) to give the Security Trustee a copy of each material notice, order, summons or conviction in connection with the Licence.

## **8.2 Obligations if Licence held by third party**

If the Mortgagor is not the holder of a Licence which is required for an activity carried out on or in connection with the Secured Property, the Mortgagor agrees to ensure that:

- (a) the holder complies with the obligations set out in clause 8.1 if it were the Mortgagor; and
- (b) the holder gives the Security Trustee an authority to apply for information from Government Authorities and a power of attorney relating to the Licence, each in a form satisfactory to the Security Trustee.

## **8.3 Transfer of Licence after default**

If an Event of Default is continuing and the Security Trustee asks, the Mortgagor agrees to use its best endeavours to ensure that any Licence which is required for an activity carried out on or in connection with the Secured Property is transferred to the Security Trustee or the Security Trustee's nominee.

# **9 Payments**

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## **9.1 Manner of payment**

The Mortgagor agrees to make payments under this mortgage:

- (a) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (b) if the payment relates to the Secured Money, in the currency in which the payment is due, and otherwise in Australian dollars in immediately available funds.

## **9.2 Currency of payment**

The Mortgagor waives any right it has in any jurisdiction to pay an amount other than in the currency in which it is due. However, if the Security Trustee receives an amount in a currency other than that in which it is due:

- (a) it may convert the amount received into the due currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate. It may deduct its usual Costs in connection with the conversion; and
- (b) the Mortgagor satisfies its obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the Costs of the conversion.

# **10 Interest on overdue amounts**

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## **10.1 Payment of interest**

The Mortgagor must pay interest on:

- (a) any of the Secured Moneys due and payable by it, but unpaid; and

- (b) any interest payable but unpaid under this clause 10.

## **10.2 Accrual of interest**

The interest payable under clause 10.1:

- (a) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the Secured Moneys becomes merged; and
- (b) may be capitalised by the Security Trustee, Receiver or Attorney at monthly intervals.

## **10.3 Rate of interest**

The rate of interest payable under this clause 10 is the highest of:

- (a) any rate specified in any Transaction Document;
- (b) the rate fixed or payable under a judgment or other thing referred to in clause 10.2(a); and
- (c) 5%.

# **11 Costs and indemnities**

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## **11.1 What the Mortgagor agrees to pay**

- (a) The Mortgagor agrees to pay or reimburse the Security Trustee for:
- (1) the Security Trustee's reasonable Costs in connection with:
    - (A) the negotiation, preparation, execution and registration of, and payment of Taxes on, this mortgage; and
    - (B) the general on-going administration of this mortgage (including giving and considering consents, waivers, variations, discharges and releases and producing title documents);
  - (2) the Security Trustee's and any Attorney's or Receiver's Costs in otherwise acting in connection with this mortgage, such as enforcing or preserving rights (or considering doing so), or doing anything in connection with any enquiry by an authority involving the Mortgagor or any of its Related Entities; and
  - (3) Taxes and fees (including registration fees) and fines and penalties in respect of any fees paid, or that the Security Trustee reasonably believes are payable, in connection with this mortgage or a payment or receipt or any other transaction contemplated by this mortgage. However, the Mortgagor need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Security Trustee in sufficient cleared funds for the Security Trustee to be able to pay the Taxes or fees by the due date.
- (b) The Security Trustee agrees to pay amounts due under this clause on demand from the Security Trustee.

**11.2 Indemnity**

- (a) The Mortgagor indemnifies the Security Trustee against any liability or loss arising from, and any Costs incurred in connection with:
  - (1) an Event of Default;
  - (2) any person exercising, or attempting to exercise, a right or remedy in connection with this mortgage after an Event of Default;
  - (3) the Secured Property or this mortgage; or
  - (4) any indemnity the Security Trustee gives a Controller or administrator of the Mortgagor.
- (b) The Mortgagor agrees to pay amounts due under this indemnity on demand from the Security Trustee.

**11.3 Items included in loss, liability and Costs**

The Mortgagor agrees that the Costs referred to in clause 11.1(a)(1) and 11.1(a)(2) include those paid, or that the Security Trustee reasonably believes are payable, to persons engaged by the Security Trustee in connection with this mortgage (such as consultants).

**11.4 Payment of third party losses**

The Mortgagor agrees to pay the Security Trustee on demand an amount equal to any liability or loss and any Costs of the kind referred to in clause 11.2 suffered or incurred by:

- (a) any Receiver or Attorney; or
- (b) any of the Security Trustee's employees, officers, agents, or contractors; or
- (c) any lessee, purchaser or occupier of the Secured Property.

**11.5 Currency conversion on judgment debt**

- (a) If a judgment, order or proof of debt for an amount in connection with this mortgage is expressed in a currency other than the currency in which the amount is due under this mortgage, then the Mortgagor indemnifies the Security Trustee against:
  - (1) any difference arising from converting the other currency if the rate of exchange used by the Security Trustee under clause 9.2 for converting currency when it receives a payment in the other currency is less favourable to the Security Trustee than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
  - (2) the Costs of conversion.
- (b) The Mortgagor agrees to pay amounts under this indemnity on demand from the Security Trustee.

**11.6 Payment for Mortgagor's obligations**

Except as expressly provided in the Transaction Documents, the Mortgagor agrees to pay for anything that it agrees to do under this mortgage (including paying its own Costs).

## 12 Application of payments

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### 12.1 Application of money

The Security Trustee must apply money it receives under this mortgage towards paying the Secured Money unless the Security Trustee is obliged to pay the money to anyone with a prior claim. However, if money received represents proceeds of an insurance claim, the Security Trustee may use it to reinstate the Secured Property or carry out work on it.

### 12.2 Order of payment

The Security Trustee may use money received under this mortgage towards paying any part of the Secured Money the Security Trustee chooses, including by paying a later instalment before an earlier instalment. This applies even if that part only falls due after the Security Trustee gives a notice of demand.

### 12.3 Remaining money

The Security Trustee agrees to pay any money remaining after the Secured Money is paid either to the Mortgagor (which the Security Trustee may do by paying it into an account in the Mortgagor's name) or to another person entitled to it (such as another person with a Security Interest over the Secured Property). In doing so, it does not incur any liability to the Mortgagor. The Security Trustee is not required to pay the Mortgagor interest on any money remaining after the Secured Money is paid.

### 12.4 Credit from date of receipt

The Mortgagor is only credited with money from the date the Security Trustee actually receives it (including, where the Security Trustee has appointed a Receiver, the date the Receiver pays money to the Security Trustee).

## 13 Administrative matters

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### 13.1 Deposit of documents

The Mortgagor agrees to deposit with the Security Trustee:

- (a) all documents of title relating to the Secured Property; and
- (b) any other documents the Security Trustee requests relating to the Secured Property.

### 13.2 Registration of mortgage

The Security Trustee may register this mortgage at the Mortgagor's expense.

### 13.3 Further steps

The Mortgagor agrees to do anything the Security Trustee asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to:

- (a) provide more effective security over the Secured Property for payment of the Secured Money;

- (b) enable the Security Trustee to register this mortgage with the priority required by the Security Trustee;
- (c) enable the Security Trustee to exercise the Security Trustee's rights in connection with the Secured Property;
- (d) bind the Mortgagor and any other person intended to be bound under this mortgage;
- (e) enable the Security Trustee to register the power of attorney in clause 19 or a similar power; or
- (f) show whether the Mortgagor is complying with this mortgage.

#### **13.4 Authority to fill in blanks**

The Mortgagor agrees that the Security Trustee may fill in any blanks in this mortgage or a document connected with it (such as Corporations Act forms or transfers for the Secured Property).

#### **13.5 Supply of information**

If the Security Trustee asks, the Mortgagor agrees to supply the Security Trustee with any information about or documents affecting:

- (a) the Secured Property;
- (b) this mortgage; or
- (c) the Mortgagor's financial affairs or business or the financial affairs or business of the Mortgagor's Subsidiaries.

### **14 Rights the Security Trustee may exercise at any time**

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#### **14.1 Authority to deal**

The Security Trustee may assign or otherwise deal with its rights under this mortgage in any way it considers appropriate. If the Security Trustee does this, the Mortgagor may not claim against any assignee (or any other person who has an interest in this mortgage) any right of set-off or other rights the Mortgagor has against the Security Trustee.

#### **14.2 Security Trustee may enter Secured Property**

- (a) If the Security Trustee reasonably believes that an Event of Default is, or may be, continuing, the Security Trustee may enter land and buildings owned or occupied by the Mortgagor, any place where the Secured Property is located, the Mortgagor's places of business or its registered office:
  - (1) to inspect the Secured Property;
  - (2) to find out whether the Mortgagor is complying with this mortgage;
  - (3) to carry out the Security Trustee's rights under this mortgage;
  - (4) to inspect and copy records relating to the Mortgagor or the Secured Property; or
  - (5) to investigate the Mortgagor's financial affairs or business.
- (b) The Mortgagor agrees to help the Security Trustee enter, such as by obtaining any necessary consent.

**14.3 Reasonable notice of entry**

Unless there is an emergency, the Security Trustee agrees to give the Mortgagor reasonable notice before entering under clause 14.2.

**14.4 Right to rectify**

The Security Trustee may do anything which the Mortgagor should have done under this mortgage but which the Mortgagor either has not done, or in the Security Trustee's reasonable opinion, has not done properly. If the Security Trustee does so, the Mortgagor agrees to pay the Security Trustee's Costs on demand.

**14.5 Security Trustee not mortgagee in possession**

The Security Trustee does not become a mortgagee in possession because it enters the Secured Property under clause 14.2 or exercises its rights under clause 14.4.

**14.6 Payment of income to Security Trustee**

If an Event of Default is continuing and the Security Trustee asks, the Mortgagor agrees to ensure that rent and other income from the Secured Property are paid to the Security Trustee. If, despite this, they are paid to the Mortgagor, the Mortgagor agrees to pay them to the Security Trustee. In each case, the Security Trustee agrees to use the money it receives as set out in clause 12.

**15 Default**

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**15.1 Ensure no default**

The Mortgagor agrees to ensure that no Event of Default occurs.

**15.2 Investigation of default**

If the Security Trustee reasonably believes that an Event of Default is, or may be, continuing, the Security Trustee may appoint a person to investigate this. The Mortgagor agrees to co-operate with the person and comply with every reasonable request they make. If there is or was an Event of Default, the Mortgagor agrees to pay the Security Trustee all Costs in connection with the investigation.

**15.3 Security Trustee's powers on default**

If an Event of Default is continuing, the Security Trustee may do one or more of the following in addition to anything else the law allows the Security Trustee to do as mortgagee:

- (a) sue the Mortgagor for the Secured Money;
- (b) appoint one or more Receivers;
- (c) do anything that a Receiver could do under clause 17.5.

**15.4 Order of enforcement**

- (a) The Security Trustee may enforce this mortgage before it enforces other rights or remedies:

- (1) against any other person; or
  - (2) under another document, such as another Security Interest.
- (b) If the Security Trustee has more than one Security Interest, it may enforce them in any order it chooses.

## 16 Exclusion of time periods

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### 16.1 No notice required unless mandatory

Neither the Security Trustee nor any Receiver need give the Mortgagor any notice or demand or allow time to elapse before exercising a right under this mortgage or conferred by law (including a right to sell) unless the notice, demand or lapse of time is required by law and cannot be excluded.

### 16.2 Mandatory notice period

If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this mortgage or conferred by law may be exercised, then:

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the Security Trustee; and
- (b) when the law provides that a period of notice or lapse of time may be stipulated or fixed by this mortgage, one day is stipulated and fixed as that period of notice or lapse of time including, if applicable, as the period of notice or lapse of time during which:
  - (1) an Event of Default must continue before a notice is given or requirement otherwise made for payment of the Secured Money or the observance of other obligations under this mortgage; and
  - (2) a notice or request for payment of the Secured Money or the observance of other obligations under this mortgage must remain not complied with before the Security Trustee or a Receiver may exercise rights.

## 17 Receivers

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### 17.1 Other rights to appoint

In addition to its powers under clause 15.3, the Security Trustee may appoint a Receiver of the Secured Property:

- (a) if an Event of Default is continuing; or
- (b) if the directors of the Mortgagor request it to do so.

### 17.2 Terms of appointment of Receiver

In exercising its power to appoint a Receiver, the Security Trustee may:

- (a) appoint a Receiver to all or any part of the Secured Property or its income; and



- (b) set a Receiver's remuneration at any figure the Security Trustee determines appropriate, remove a Receiver and appoint a new or additional Receiver.

### **17.3 More than one Receiver**

If the Security Trustee appoints more than one Receiver, the Security Trustee may specify whether they may act individually or jointly.

### **17.4 Receiver is Mortgagor's agent**

Any Receiver appointed under this mortgage is the Mortgagor's agent unless the Security Trustee notifies the Mortgagor that the Receiver is to act as the Security Trustee's agent. The Mortgagor is solely responsible for anything done, or not done, by a Receiver and for the Receiver's remuneration and Costs.

### **17.5 Receiver's powers**

Unless the terms of appointment restrict a Receiver's powers, the Receiver may do one or more of the following in the manner and on terms which the Receiver thinks fit (and the Security Trustee may vary these powers at any time by notice given to the Mortgagor and the Receiver):

- (a) improve the Secured Property;
- (b) sell, transfer or otherwise dispose of the Secured Property or any interest in it;
- (c) lease or licence the Secured Property or any interest in it, or deal with any existing lease or licence (including allowing a surrender or variation);
- (d) take or give up possession of the Secured Property as often as it chooses;
- (e) sever, remove and sell fixtures attached to the Secured Property; and
- (f) do anything else the law allows an owner or a Receiver of the Secured Property to do.

## **18 Disposal of the Secured Property is final**

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The Mortgagor agrees that if the Security Trustee or a Receiver sells or otherwise disposes of the Secured Property:

- (a) the Mortgagor will not challenge the acquirer's right to acquire the Secured Property (including on the ground that the Security Trustee or the Receiver was not entitled to dispose of the Secured Property or that the Mortgagor did not receive notice of the intended disposal) and the Mortgagor will not seek to reclaim that property; and
- (b) the person who acquires the Secured Property need not check whether the Security Trustee or the Receiver has the right to dispose of the Secured Property or whether the Security Trustee or the Receiver exercises that right properly.

## 19 Power of attorney

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### 19.1 Appointment

The Mortgagor irrevocably appoints the Security Trustee, each Officer of the Security Trustee, and each Receiver individually as the Mortgagor's attorney and agrees to ratify anything an Attorney does under clause 19.2.

### 19.2 Powers

If an Event of Default is continuing, an Attorney may:

- (a) do anything which the Mortgagor can lawfully authorise an attorney to do in connection with this mortgage, the Secured Property or a Licence for any activity carried out on or in connection with the Secured Property, or which the Attorney believes is expedient to give effect to any of the Security Trustee's or a Receiver's rights (these things may be done in the Mortgagor's name or the Attorney's name, and they include signing and delivering documents, transferring, selling or leasing the Secured Property, transferring, selling or surrendering any lease, lodging or withdrawing caveats, starting, conducting and defending legal proceedings, and dealing with a Licence for any activity carried out on or in connection with the Secured Property);
- (b) delegate their powers (including this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

### 19.3 Third party dealing with Attorney

Any person dealing with the Attorney is not required to enquire whether an Event of Default has occurred or is subsisting.

## 20 Approval of Minister

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If the Secured Property includes an interest in a mining tenement and the Mining Resources Act requires the Minister to grant prior approval in writing to a dealing in that interest, then to the extent that the mortgage created by this mortgage applies to that mining tenement, the mortgage is conditional upon and is of no force or effect until the granting of that approval in writing.

## 21 Third party provisions

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### 21.1 Independent obligations

This deed is enforceable against the Mortgagor:

- (a) without first having recourse to any Collateral Security;
- (b) whether or not the Security Trustee or any other person has:
  - (1) made demand on any Transaction Party other than the Mortgagor;
  - (2) given notice to any Transaction Party (other than the Mortgagor) or any other person in respect of any thing; or

- (3) taken any other steps against any Transaction Party (other than the Mortgagor) or any other person;
- (c) whether or not any Secured Money is then due and payable; and
- (d) despite the occurrence of any event described in clause 21.2(b).

## **21.2 Unconditional nature of obligations**

- (a) The Mortgage and the obligations of the Mortgagor under the Transaction Documents are absolute, binding and unconditional in all circumstances.
- (b) The Mortgage and the obligations of the Mortgagor under the Transaction Documents are not released or discharged or otherwise affected by anything which but for this provision might have that effect, including:
  - (1) the grant to any Transaction Party or any other person of any time, waiver, covenant not to sue or other indulgence;
  - (2) the release (including a release as part of any novation) or discharge of any Transaction Party or any other person;
  - (3) the cessation of the obligation, in whole or in part, of any Transaction Party or any other person under any Transaction Document or any other document or agreement
  - (4) the liquidation of any Transaction Party or any other person;
  - (5) any arrangement, composition or compromise entered into by the Security Trustee, a Creditor, or any Transaction Party or any other person;
  - (6) any Transaction Document or any other document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
  - (7) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compounding, composition or compromise, in whole or in part of any Transaction Document or any other document or agreement;
  - (8) any Collateral Security being given to the Security Trustee, a Creditor or any other person by any Transaction Party or any other person;
  - (9) any alteration, amendment, variation, supplement, renewal or replacement of any Transaction Document or any other document or agreement;
  - (10) any moratorium or other suspension of any Power;
  - (11) the Security Trustee, Receiver or Attorney of a Creditor exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any Power;
  - (12) the Security Trustee or a Creditor obtaining a judgment against any Transaction Party or any other person for the payment of any of the Secured Moneys;
  - (13) any transaction, agreement or arrangement that may take place with the Security Trustee, a Creditor, any Transaction Party or any other person;
  - (14) any payment to the Security Trustee, Receiver or Attorney or a Creditor, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;

- (15) any failure to give effective notice to any Transaction Party or any other person of any default under any Transaction Document or any other document or agreement;
  - (16) any legal limitation, disability or incapacity of any Transaction Party or of any other person;
  - (17) any breach of any Transaction Document or any other document or agreement;
  - (18) the acceptance of the repudiation of, or termination, of any Transaction Document or any other document or agreement;
  - (19) any Secured Moneys being irrecoverable for any reason;
  - (20) any disclaimer by any Transaction Party or any other person of any Transaction Document or any other document or agreement;
  - (21) any assignment, novation, assumption or transfer of, or any other dealing with, any Powers or any other rights or obligations under any Transaction Document or any other document or agreement;
  - (22) the opening of a new account of any Transaction Party with the Security Trustee or a Creditor or any transaction on or related to the new account;
  - (23) any prejudice (including, material prejudice) to any person as a result of any thing done, or omitted by the Security Trustee, a Creditor, any Transaction Party or any other person;
  - (24) any prejudice (including, material prejudice) to any person as a result of the Security Trustee, Receiver, Attorney or a Creditor or any other person selling or realising any property the subject of a Collateral Security at less than the best price;
  - (25) any prejudice (including, material prejudice) to any person as a result of any failure or neglect by the Security Trustee, Receiver, Attorney or a Creditor or any other person to recover the Secured Moneys from any Transaction Party or by the realisation of any property the subject of a Collateral Security;
  - (26) any prejudice (including, material prejudice) to any person as a result of any other thing;
  - (27) the receipt by the Security Trustee or a Creditor of any dividend, distribution or other payment in respect of any liquidation;
  - (28) the failure of any other Transaction Party or any other person to execute any Transaction Document or any other document; or
  - (29) any other act, omission, matter or thing whether negligent or not.
- (c) Clauses 21.2(a) and (b) apply irrespective of:
- (1) the consent or knowledge or lack of consent or knowledge, of the Security Trustee, any Beneficiary, any Transaction Party or any other person of any event described in clause 21.2(b).
  - (2) any rule of law or equity to the contrary.

### **21.3 No competition**

- (a) Until the Secured Moneys have been fully paid to the Mortgagee has been finally discharged, the Mortgagor is not entitled to:
  - (1) be subrogated to the Security Trustee or any Creditor;

- (2) claim or receive the benefit of any Security Interest (including any Transaction Document) or other document or agreement of which the Security Trustee or any Creditor has the benefit;
  - (3) claim or receive the benefit or any moneys held by the Security Trustee or any Creditor;
  - (4) claim or receive the benefit of any Power;
  - (5) either directly or indirectly prove in, claim or receive the benefit or any distribution, dividend or payment arising out of or related to the liquidation of any Transaction Party, except in accordance with clause 21.2(b).
  - (6) make a claim or exercise or enforce any right, power or remedy (including under a Security Interest or by way of contribution) against any Transaction Party liable to pay the Secured Moneys;
  - (7) accept, procure the grant of, or allow to exist any Security Interest in favour of the Mortgagor from any Transaction Party liable to pay the Secured Moneys;
  - (8) exercise or attempt to exercise any right of set-off against, nor realise any Security Interest taken from, any Transaction Party liable to pay the Secured Moneys; or
  - (9) raise any defence or counterclaim in reduction or discharge of its obligations under the Transaction Documents.
- (b) If required by the Security Trustee, the Mortgagor must prove in any liquidation of a Transaction Party liable to pay the Secured Moneys for all moneys owed to the Mortgagor.
- (c) All moneys recovered by the Mortgagor from any liquidation or any Security Interest from a Transaction Party liable to pay the Secured Moneys must be received and held in trust by the Mortgagor for the Security Trustee to the extent of the unsatisfied liability of the Mortgagor under the Transaction Documents.
- (d) The Mortgagor must not do or seek, attempt or purport to do anything referred to in clause 21.2(a).

## 22 General

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### 22.1 Reinstatement of rights

- (a) Under law relating to Insolvency, a person may claim that a transaction (including a payment) in connection with the Secured Money is void or voidable. If a claim is made and upheld, conceded or compromised, then:
- (1) the Security Trustee is immediately entitled as against the Mortgagor to the rights in respect of the Secured Money to which it was entitled immediately before the transaction; and
  - (2) on request from the Security Trustee, the Mortgagor agrees to do anything (including signing any document) to restore to the Security Trustee any Security Interest (including this mortgage) it held from the Mortgagor immediately before the transaction.
- (b) The Mortgagor's obligations under this clause are continuing obligations, independent of the Mortgagor's other obligations under this mortgage and continue after this mortgage ends.

**22.2 Suspense account**

- (a) The Security Trustee may apply to the credit of a suspense account any:
  - (1) amounts received under this deed;
  - (2) dividends, distributions or other amounts received in respect of the Secured Moneys in any liquidation; and
  - (3) other amounts received from any Transaction Party or any other person in respect of the Secured Moneys.
- (b) The Security Trustee may retain the amounts in the suspense account for as long as it determines and is not obliged to apply them in or towards satisfaction of the Secured Moneys.

**22.3 Mortgagor to bear cost**

Any thing which must be done by the Mortgagor under this deed, whether or not at the request of the Security Trustee, must be done at the cost of the Mortgagor.

**22.4 Notices**

Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be given in accordance with the notice requirements of the Convertible Note Agreement.

**22.5 Notices under the PPS Law**

The Mortgagor waives and will cause each Transaction Party to waive to the extent permitted by the PPS Law its right to receive any notice of a Verification Statement or any other notice the Security Trustee is required to give under the PPS Law.

**22.6 Governing law and jurisdiction**

- (a) This deed is governed by the laws of Queensland.
- (b) The Mortgagor irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- (c) The Mortgagor irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) The Mortgagor irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.
- (e) The Mortgagor appoints Paradise Phosphate Pty Ltd of Level 8, 580 St Kilda Road, Melbourne VIC 3004 in relation to proceedings in Australia as its agent to receive service of any legal process on its behalf without excluding any other means of service permitted by the law of the relevant jurisdiction.

**22.7 Prompt performance**

Subject to clause 22.23:

- (a) if this mortgage specifies when the Mortgagor agrees to perform an obligation, the Mortgagor agrees to perform it by the time specified; and
- (b) the Mortgagor agrees to perform all other obligations promptly.

**22.8 Consents**

The Mortgagor agrees to comply with all conditions in any consent the Security Trustee gives in connection with this mortgage.

**22.9 Certificates**

The Security Trustee may give the Mortgagor a certificate about an amount payable or other matter in connection with this mortgage. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect

**22.10 Set-off**

- (a) If an Event of Default is continuing, the Security Trustee may set off any amount owing by the Security Trustee to the Mortgagor (whether or not due for payment) against any amount due for payment by the Mortgagor to the Security Trustee under this mortgage.
- (b) The Security Trustee may do anything necessary to effect any set-off under this clause (including varying the date for payment of any amount owing by the Security Trustee to the Mortgagor and making currency exchanges). This clause applies despite any other agreement between the Mortgagor and the Security Trustee.

**22.11 Discretion in exercising rights**

The Security Trustee or a Receiver may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this mortgage expressly states otherwise.

**22.12 Partial exercising of rights**

If the Security Trustee or a Receiver does not exercise a right or remedy fully or at a given time, the Security Trustee or the Receiver may still exercise it later.

**22.13 No liability for loss**

Neither the Security Trustee nor a Receiver is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

**22.14 Conflict of interest**

The Security Trustee's and any Receiver's rights and remedies under this mortgage may be exercised even if this involves a conflict of duty or the Security Trustee or Receiver has a personal interest in their exercise.

**22.15 Security Trustee or Receiver in possession**

- (a) If the Security Trustee exercises any right under this mortgage or at law to enter or take possession of the Secured Property, it:
  - (1) has complete and unfettered discretion as to how the Secured Property is managed; and
  - (2) is liable to account only for rents and profits actually received by it.
- (b) The same applies to any Receiver when acting as agent of the Security Trustee.

**22.16 Remedies cumulative**

The rights and remedies of the Security Trustee or a Receiver under this mortgage are in addition to other rights and remedies given by law independently of this mortgage.

**22.17 Other Security Interests or judgments**

- (a) This mortgage does not merge with or adversely affect, and is not adversely affected by, any of the following:
  - (1) any Security Interest or other right or remedy to which the Security Trustee is entitled; or
  - (2) a judgment which the Security Trustee obtains against the Mortgagor in connection with the Secured Money.
- (b) The Security Trustee may still exercise its rights under this mortgage as well as under the judgment, other Security Interest or the right or remedy.

**22.18 Continuing security**

This mortgage is a continuing security despite any intervening payment, settlement or other thing until the Security Trustee releases all of the Secured Property from this mortgage.

**22.19 Indemnities**

The indemnities in this mortgage are continuing obligations, independent of the Mortgagor's other obligations under this mortgage and continue after this mortgage ends. It is not necessary for the Security Trustee to incur expense or make payment before enforcing a right of indemnity under this mortgage.

**22.20 Rights and obligations are unaffected**

Rights given to the Security Trustee or any Receiver under this mortgage and the Mortgagor's liabilities under it are not affected by anything which might otherwise affect them at law.

**22.21 Inconsistent law**

To the extent permitted by law, this mortgage prevails to the extent it is inconsistent with any law.

**22.22 Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Mortgagor in connection with this mortgage with the result that the Security Trustee's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**22.23 Time of the essence**

Time is of the essence in this mortgage in respect of an obligation of the Mortgagor to pay money.



**22.24 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (2) a Power created or arising upon default under this deed or upon the occurrence of an Event of Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

**22.25 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

**22.26 Receipts**

The receipt of a Receiver, the Security Trustee or an Officer of the Security Trustee releases the person paying money to the Receiver or the Security Trustee in connection with this mortgage from:

- (a) liability to enquire whether the Secured Money has become payable;
- (b) liability for the money paid or expressed to be received; and
- (c) being concerned to see to its application or being answerable or accountable for its loss or misapplication.

**22.27 Assignment**

- (a) Subject to any Transaction Document, the Security Trustee may assign its rights under this deed and each Collateral Security without the consent of the Mortgagor.
- (b) The Mortgagor may not assign any of its rights under this deed or any Collateral Security without the prior written consent of the Security Trustee.

**22.28 Counterparts**

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

**22.29 Attorneys**

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Tenements

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<b>Tenement</b>	<b>District</b>
Mining lease 90190	Mount Isa
Mining lease 90191	Mount Isa

Executed as a deed

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**Mortgagor**

Signed sealed and delivered by  
**Legend International Holdings, Inc**  
by

*sign here* ▶ /s/ J I Gutnick

*print name* J I Gutnick

*sign here* ▶ /s/ P J Lee

*print name* P J Lee

---

**Security Trustee**

Signed sealed and delivered for and on behalf of  
**Acorn Capital Limited**  
by

*sign here* ▶ /s/ M Sheehan  
Company Secretary/Director

*print name* M Sheehan

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

**Annexure 'A'**  
**Mining Mortgage**

This is the annexure of \_\_\_ pages marked 'A' referred to in the Form No. MRA-25 executed by Paradise Phosphate Pty Ltd ACN 154 180 882 (**Mortgagor**) and Acorn Capital Limited ACN 082 694 531 as mortgagee (**Security Trustee**) in its capacity as security trustee of the Security Trust.

# Mining Mortgage

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Paradise Phosphate Pty Ltd  
(as **Mortgagor**)

Acorn Capital Limited  
(as **Security Trustee**)

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## Mining Mortgage

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Date ► **7 February 2012**

Between the parties

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Mortgagor	<b>Paradise Phosphate Pty Ltd</b> ACN 154 180 882 of Level 8, 580 St Kilda Road, Melbourne VIC 3004 <b>(Mortgagor)</b>
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Security Trustee	<b>Acorn Capital Limited</b> ACN 082 694 531 of Level 12, 90 Collins Street, Melbourne Vic 3000 <b>(Security Trustee)</b>
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Background	<ol style="list-style-type: none"><li>1 The Mortgagor is, or will be, the legal and beneficial owner of the Secured Property.</li><li>2 The Mortgagor has agreed to mortgage the Secured Property to secure the payment of the Secured Money.</li></ol>
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This deed witnesses	that in consideration of, among other things, the mutual promises contained in this deed, the parties agree as set out in the Operative part of this deed.
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## 1 Definitions

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### 1.1 Definitions

These meanings apply unless the contrary intention appears:

<b>Term</b>	<b>Meaning</b>
<b>Attorney</b>	each attorney appointed by the Mortgagor under clause 19.
<b>Collateral Security</b>	any present or future Security Interest or other document or agreement created or entered into by a Transaction Party or any other person as security for, or to credit enhance, the payment of the Secured Money.
<b>Contaminant</b>	anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that presents or could present a risk of harm to human health or the Environment.
<b>Controller</b>	has the meaning it has in the Corporations Act.
<b>Convertible Note Agreement</b>	the convertible note agreement dated on or around the date of this deed between, among others, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2 and the Mortgagor.
<b>Costs</b>	includes costs, mortgages and expenses, including those incurred in connection with advisers.
<b>Environment</b>	components of the earth, including: <ol style="list-style-type: none"><li>1 land, air and water;</li><li>2 any layer of the atmosphere;</li><li>3 any organic or inorganic matter and any living organism; and</li><li>4 human made or modified structures and areas,</li></ol> and includes interacting natural ecosystems that include components referred to in paragraphs 1 to 3 inclusive.
<b>Environmental Law</b>	any legislation regulating Pollutants in connection with the protection of the environment or health and safety.

<b>Term</b>	<b>Meaning</b>
<b>Finance Party</b>	<ol style="list-style-type: none"> <li>1 the Noteholders;</li> <li>2 the Finance Party; and</li> <li>3 the Security Trustee.</li> </ol>
<b>Licence</b>	any licence, permit or authorisation (including to sell liquor, to discharge hazardous waste, to draw water, or to develop and use property) which allows activity to be carried out, on or in connection with property.
<b>Mineral Resources Act</b>	the <i>Mineral Resources Act 1989</i> (Qld).
<b>Minerals</b>	has the meaning given to that term in the Mineral Resources Act and including such minerals whether or not processed or refined and whether or not contained in ore or concentrate or in some other form of compound.
<b>Minister</b>	the Minister for the Crown responsible for the Secured Property.
<b>Mortgagor</b>	the person or persons named in this mortgage as Mortgagor. If there are more than one, the Mortgagor means each of them individually and every two or more of them jointly.
<b>Officer</b>	<ol style="list-style-type: none"> <li>1 in relation to the Mortgagor, a director or a secretary, or a person notified to be an authorised officer of the Mortgagor;</li> <li>2 in relation to the Security Trustee, any person whose title includes the word 'Director', 'Managing Director', 'Manager' or 'Vice President', and any other person appointed by the Security Trustee to act as its authorised officer for the purposes of this deed; and</li> <li>3 in relation to a Receiver or an Attorney which is a corporation, any officer, as that expression is defined in section 9 of the Corporations Act, of that Receiver or Attorney.</li> </ol>
• <b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
• <b>PPS Law</b>	<ol style="list-style-type: none"> <li>1 the PPSA;</li> <li>2 any regulations made at any time under the PPSA;</li> <li>3 any provision of the PPSA or regulations referred to in paragraph 2 above;</li> <li>4 any amendment to any of the above, made at any time; or</li> <li>5 any amendment made at any time to the Corporations Act or any other legislation in connection with the implementation or as a</li> </ol>

Term	Meaning
	consequence of the PPSA.
<b>Pollutant</b>	a pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, industrial or other waste.
<b>Potential Event of Default</b>	an event which, with the giving of notice, lapse of time or fulfilment of any condition, would be likely to become an Event of Default.
<b>Receiver</b>	includes a receiver or receiver and manager.
<b>Resumption</b>	a resumption, appropriation, confiscation, or compulsory acquisition of, or freezing, restraining or forfeiture order in relation to, the Secured Property under a statute or otherwise, including a restriction or order under which compensation is payable in connection with the Secured Property.
<b>Secured Money</b>	<p>all debts and monetary liabilities of:</p> <ol style="list-style-type: none"> <li>1 the Mortgagor to a Finance Party on any account and in any capacity; and</li> <li>2 each Transaction Party (other than the Mortgagor) to a Finance Party on any account and in any capacity,</li> </ol> <p>irrespective of whether the debts or liabilities:</p> <ol style="list-style-type: none"> <li>3 are present or future;</li> <li>4 are actual, prospective, contingent or otherwise;</li> <li>5 are at any time ascertained or unascertained;</li> <li>6 are owed or incurred by or on account of the Mortgagor or another Transaction Party alone, or severally or jointly with any other person;</li> <li>7 are owed to or incurred for the account of a Finance Party alone, or severally or jointly with any other person;</li> <li>8 are owed to any other person as agent (whether disclosed or not) for or on behalf of a Finance Party;</li> <li>9 are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;</li> <li>10 are owed to or incurred for the account of a Finance Party directly or as a result of: <ul style="list-style-type: none"> <li>• the assignment and transfer to a Finance Party of any debt or liability of the Mortgagor or another Transaction Party; or</li> <li>• any other dealing with any such debt or liability;</li> </ul> </li> <li>11 are owed to or incurred for the account of a Finance Party before the date of this deed or before the date of any assignment of this</li> </ol>

Term	Meaning
	<p>deed to a Finance Party by any other person or otherwise; or</p> <p>12 comprise any combination of the above.</p>
<b>Secured Property</b>	<p>all the Mortgagor's interests in each Tenement and all the Mortgagor's rights relating to those interests:</p> <ol style="list-style-type: none"> <li>1 of whatever kind and wherever situated; and</li> <li>2 whether present or future.</li> </ol>
<b>Security Trust</b>	<p>the "Paradise Phosphate Security Trust" as constituted under the Security Trust Deed.</p>
<b>Security Trust Deed</b>	<p>the security trust deed dated on or about the date of this deed between the Mortgagor and others and the Security Trustee, a security trustee constituting the Security Trust.</p>
<b>Tenement</b>	<ol style="list-style-type: none"> <li>1 the mining tenements described in Schedule 1;</li> <li>2 renewals, extensions, substitutions, amalgamations, subdivisions and variations of that tenement; and</li> <li>3 all applications for that tenement, or any renewal, extension, substitution, amalgamation, subdivision or variation of that tenement.</li> </ol>
<b>Transaction Documents</b>	<ol style="list-style-type: none"> <li>1 this deed;</li> <li>2 each Collateral Security;</li> <li>3 the Security Trust Deed;</li> <li>4 the Convertible Note Agreement; and</li> <li>5 any other Transaction Document as defined in the Convertible Note Agreement; or</li> </ol> <p>or any document or agreement entered into or given under any of the above.</p>
<b>Transaction Party</b>	<ol style="list-style-type: none"> <li>1 the Mortgagor;</li> <li>2 the Company; or</li> <li>3 any other Transaction Party as defined in a Transaction Document.</li> </ol>
<b>Works</b>	<p>building work, excavation or earthworks on the Secured Property, work demolishing, removing or altering any part of the Secured Property, or any building or development work required by an authority in connection with the Secured Property.</p>

## 1.2 Interpretation

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation.
- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) A reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits.
- (m) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (n) A reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind.
- (o) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.
- (p) A reference to a body, other than a party to this deed (including, an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (q) Where this agreement confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.
- (r) An Event of Default is 'continuing' or 'subsisting' if it has not been:

- (1) remedied to the satisfaction of the Security Trustee before a Power relating to that Event of Default is exercised; or
- (2) waived in writing by the Security Trustee.

### **1.3 Incorporated definitions**

- (a) A word or phrase (other than one defined in clause 1.1) defined in the Convertible Note Agreement or in the Security Trust Deed has the same meaning in this deed.
- (b) If a word or phrase is defined in both the Convertible Note Agreement and the Security Trust Deed the definition in the Convertible Note Agreement prevails to the extent of any inconsistency.

### **1.4 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### **1.5 Personal Property Securities (PPS) Law**

If:

- (a) a PPS Law applies, or will at a future date apply to any of the Transaction Documents or any of the transactions contemplated by them, or the Security Trustee determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
- (b) in the reasonable opinion of the Security Trustee, the PPS Law:
  - (1) adversely affects or would or may adversely affect the Security Trustee's security position or the rights or obligations of the Security Trustee under or in connection with the Transaction Documents; or
  - (2) enables or would enable the Security Trustee's security position to be improved without adversely affecting the Mortgagor in a material respect,the Security Trustee may from time to time give notice to the Mortgagor requiring the Mortgagor to do anything, including:
  - (c) promptly providing all necessary information and taking all necessary action (including entering into any agreement, obtaining any consent or giving any notice) to enable any PPSA Security Interest held or intended to be held by the Security Trustee under the Transaction Documents at any time to be perfected by control (within the meaning of Part 2.3 of the PPSA) to the extent possible under the PPSA and to enable the Security Trustee to register fully valid and effective Financing Statements or Financing Change Statements with respect to any PPSA Security Interest;
  - (d) amending any Transaction Document or executing any new Transaction Document, that in the Security Trustee's reasonable opinion is necessary to ensure that, to the maximum possible extent, the Security Trustee's security position, and rights and obligations, are not adversely affected as contemplated by clause 1.5(b)(1) (or that any such adverse effect is overcome to the maximum extent possible), or that the Security Trustee's security position is improved as contemplated in clause 1.5(b)(2). The Mortgagor must comply with the requirements of that notice within the time stipulated in the notice.

### **1.6 Security Trust Deed**

This deed is a 'Security' and a 'Transaction Document' for the purposes of the Security Trust Deed.

### **1.7 Capacity of Security Trustee**

The Security Trustee enters into this deed as security trustee under the Security Trust Deed. Clause 1.4 of the Security Trust Deed is incorporated in this deed.

## **2 What the Mortgagor undertakes in this mortgage**

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### **2.1 Effect of mortgage**

By signing this mortgage, the Mortgagor undertakes certain obligations. The Mortgagor also gives the Security Trustee rights concerning the Mortgagor and the Secured Property - for example, if the Mortgagor does not comply with its obligations, the Security Trustee may take possession of the Secured Property, sell or otherwise deal with it, and sue the Mortgagor for any money it owes the Security Trustee.

### **2.2 Joint and individual liability**

The Mortgagor is liable for all the obligations under this mortgage both individually and jointly with any one or more other persons named in this mortgage as Mortgagor.

### **2.3 When the Mortgagor must pay**

The Mortgagor agrees to pay the Secured Money in accordance with the terms of any agreement in writing to do so. However, if either:

- (a) there is no such agreement; or
- (b) an Event of Default is continuing,

the Security Trustee may declare at any time by notice to the Mortgagor that the Secured Money is either payable on demand or immediately due for payment.

### **2.4 Survival of obligations**

The Mortgagor's obligations under this mortgage continue even if the Security Trustee releases the Secured Property from this mortgage.

## **3 Mortgage**

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### **3.1 Mortgage of Tenements**

The Mortgagor, as beneficial owner, mortgages the whole of its interest in the Tenements (including all buildings, improvements, machinery and appliances in or upon the land comprised in each such mining tenement) to the Security Trustee for the purpose of securing to the Security Trustee payment of the Secured Money.

### **3.2 Mandatory action**

To the extent that any law, including but not limited to the Mineral Resources Act, requires that something must be done (such as obtaining consent) before the Mortgagor may validly charge any of the Secured Property, the mortgage under clause 3.1 only takes effect in relation to that Secured Property when the thing required is done. The Mortgagor agrees to do anything necessary to ensure that it is done.



### **3.3 Consideration**

The Mortgagor acknowledges giving this mortgage and incurring obligations and giving rights under this mortgage for valuable consideration.

## **4 Dealings – such as selling or mortgaging**

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### **4.1 Restricted dealings with any of the Secured Property**

Without the consent of the Security Trustee, the Mortgagor may not, and may not agree, attempt or take any step to, do any of the following:

- (a) create or allow to exist another Security Interest over the Secured Property, or
- (b) assign or otherwise deal with this mortgage or any interest in it, or allow any interest in it to arise or be varied.

### **4.2 Where the law allows for creation of Security Interest without consent**

If a law entitles the Mortgagor to create another Security Interest over the Secured Property without the consent of the Security Trustee, this clause 4 does not operate to require the Mortgagor to obtain the Security Trustee's consent before creating that other Security Interest. However:

- (a) if the Mortgagor intends to create another Security Interest, it agrees to notify the Security Trustee at least seven days before it proposes to do so; and
- (b) if the Security Trustee requests an agreement under clause 5.1 and the Mortgagor has not complied with that request by the time the Security Interest is created, financial accommodation need not be made available under any Transaction Document.

## **5 Other Security Interests**

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### **5.1 Priority agreement**

If the Security Trustee asks, the Mortgagor agrees to obtain an agreement acceptable to the Security Trustee regulating priority between this mortgage and any other Security Interest over the Secured Property.

### **5.2 Amount secured by other Security Interest**

The Mortgagor agrees to ensure that the amount secured under any other Security Interest over the Secured Property is not increased without the Security Trustee's consent.

### **5.3 Obligations under other Security Interest**

The Mortgagor agrees to comply with all obligations under any other Security Interest over the Secured Property.

#### 5.4 Security Trustee may rely on third party certificates

The Security Trustee may rely on a certificate from any other person with a Security Interest over the Secured Property as to the amount that is owed to that other person.

## 6 Representations and warranties

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### 6.1 Representations and warranties

The Mortgagor represents and warrants that:

- (a) **(representations true)** each of its representations and warranties in each Transaction Document are, or will be true, and correct in all respects when made or regarded as having been made;
- (b) **(owner of the Secured Property)** it is the legal and beneficial owner of, and has good title to, the Secured Property free from any Security Interest other than a Permitted Security Interest;
- (c) **(Resumption, Contaminant, claim)** there is no:
  - (1) Resumption or proposed Resumption;
  - (2) Contaminant on, in, under or migrating to or from the Secured Property; or
  - (3) native title, or native title application, determination or claim, affecting the Secured Property.

### 6.2 Repetition of representations and warranties

The representations and warranties given under this deed:

- (a) survive the execution of this deed; and
- (b) are repeated on the last day of each calendar month with respect to the facts and circumstances then subsisting.

### 6.3 Reliance

The Mortgagor acknowledges that the Security Trustee and each Creditor has entered into the Transaction Documents to which it is a party in reliance on the representations and warranties in this clause 6.

### 6.4 No Reliance by Mortgagor

The Mortgagor acknowledges that it has not entered into this deed or any Transaction Document in reliance on any representation, warranty, promise or statement made by the Security Trustee or any person on behalf of the Security Trustee.

## 7 Maintaining the Secured Property

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### 7.1 General undertakings

The Mortgagor agrees to:

- (a) **(financial obligations)** pay or cause to be paid its financial obligations, including without limitation, all rates, rents and other outgoings payable by it, as and when the same respectively become due and payable;
- (b) **(rates and Taxes)** pay on time all amounts for which the Mortgagor is liable as owner of the Secured Property, including rates and Taxes;
- (c) **(protection from theft, loss, damages)** protect the Secured Property from theft, loss or damage;
- (d) **(notify interest in land)** notify the Security Trustee promptly of the particulars of any mining tenements or other real property acquired by the Mortgagor;
- (e) **(good condition)** keep the Secured Property in good working order and condition and correct any defect to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect;
- (f) **(loss)** protect the Secured Property from theft, loss or damage;
- (g) **(value)** not do anything, or permit anything to be done, or fail to do anything, that materially lowers or might materially lower the value of the Secured Property;
- (h) **(serious damage)** notify the Security Trustee if all or a substantial part of the Secured Property is defective or seriously damaged;
- (i) **(orders or notices)** give the Security Trustee a copy of any material order or notice from an authority concerning the use or condition of the Secured Property as soon as the Mortgagor becomes aware of it;
- (j) **(laws)** comply with all laws and requirements of Government Agencies and the Mortgagor's other obligations in connection with the Secured Property to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect;
- (k) **(compliance by occupiers)** ensure that each person who uses or occupies the Secured Property complies with all laws and requirements of Government Agencies and any other obligations in connection with the Secured Property to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect; and
- (l) **(Works)** obtain the Security Trustee's consent before the Mortgagor conducts major Works relating to land or any fixture, structure or improvement on land or fixed to it forming part of the Secured Property or enter into a contract to carry them out.

## 7.2 Environmental undertakings

The Mortgagor agrees:

- (a) to notify the Security Trustee if there is a Contaminant on, in, under or migrating to or from the Secured Property;
- (b) not to have a Contaminant on, in or under the Secured Property, release a Contaminant from the Secured Property or allow a Contaminant to escape or migrate from it;
- (c) to immediately remove any Contaminant from the Secured Property and make good any damage caused by the Contaminant or its removal;
- (d) if a Contaminant is released, escapes or migrates from the Secured Property, to minimise its impact on the Environment and make good any damage it causes; and
- (e) not to deal with the Secured Property or any Contaminant in such a way as to increase the risk of harm from any Contaminant.

### 7.3 Undertakings in respect of Tenements

Without limiting clauses 7.1, 7.2 or 7.4, the Mortgagor agrees to:

- (a) **(work and expenditure)** pay all moneys necessary to satisfy work and expenditure obligations relevant to the Tenements in accordance with the Mineral Resources Act;
- (b) **(royalties)** pay all royalties payable in relation to any Minerals won or derived from the Tenements in accordance with the Mineral Resources Act;
- (c) **(Mining Tenements)** ensure that it:
  - (1) holds and maintains its interest in the Tenements free of Security Interests other than Permitted Security Interests and the Tenements are not cancelled, suspended, reduced, surrendered, defaulted against or transferred except with the prior written consent of the Security Trustee;
  - (2) duly and punctually complies with and observes and performs all conditions and requirements of the Tenements and does whatever may be reasonably required to keep the Tenements in full force and effect; and
  - (3) has rights of access to and entry upon all relevant freehold, leasehold and other land and rights to carry out all activities required to enable the Tenements to be developed;
- (d) **(no forfeiture)** not do or permit to be done any act, matter or thing which may prejudice the Tenements or render the Tenements liable to be forfeited;
- (e) **(Mineral Resources Act)** duly and punctually observe and comply with the provisions of the Mineral Resources Act and any other statute, regulation or law of any jurisdiction affecting the holder, occupier or Security Trustee of the mining tenements comprising the Secured Property;
- (f) **(Environmental Laws)** give prompt written notice to the Security Trustee of every request, notification or demand received in connection with breaches or potential breaches of Environmental Laws, the Tenements or any mining operations carried out on any of them;
- (g) **(native title)** promptly notify the Security Trustee in writing if any claim for native title or traditional usage rights over any part of the land comprised in the Tenements is made;
- (h) **(stoppages)** advise the Security Trustee within one Business Day of any unscheduled stoppage or disruption to production on the Tenements for a period of greater than 3 consecutive days;
- (i) **(access)** to take all reasonable steps to ensure that any representative designated by the Security Trustee is allowed at all reasonable times, on reasonable notice and with reasonable frequency to have access to the Tenements and any other Secured Property, and to inspect or observe all or any facilities or operations of the Mortgagor or any other Secured Property; and
- (j) **(care and maintenance)** to ensure that the Tenements are not abandoned or placed on a 'care and maintenance' basis without the prior consent of the Security Trustee.

### 7.4 Negative Undertakings

The Mortgagor may not:

- (a) do or omit to do anything or knowingly permit or cause anything to be done or omitted which could mean in the reasonable opinion of the Security Trustee that

the Secured Property or this deed is or is likely to become materially lessened in value or prejudicially effected;

- (b) without the Security Trustee's consent:
  - (1) cause or permit any Tenement comprising the Secured Property to be varied, repudiated, rescinded or terminated;
  - (2) abandon, settle, compromise or discontinue or become nonsuited in respect of proceedings against any person in connection with the Secured Property including, without limitation, a Governmental Agency; or
  - (3) without the Security Trustee's consent, change the use of the Secured Property or discontinue any business or change the general character of any business carried on by the Mortgagor on the Secured Property which change or discontinuance may result in a Material Adverse Effect; or
- (c) without the Security Trustee's consent, take any steps under any law which could adversely affect the rights of the Security Trustee in relation to the Secured Property.

## 8 Licences

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### 8.1 Obligations if licenceholder

If a Licence is required for any activity carried out on or in connection with the Secured Property and the Mortgagor is the holder of the Licence, then the Mortgagor agrees:

- (a) when carrying out that activity, to do so in a proper, orderly and efficient manner;
- (b) to comply with all laws and requirements of Government Agencies in connection with the Licence to the extent that failure to do so would have, or is likely to have, a Material Adverse Effect;
- (c) to obtain, comply with and do everything necessary to maintain the Licence (including renew it on time and oppose any application to restrict or cancel the Licence);
- (d) not, without the Security Trustee's consent, to:
  - (1) create or allow to exist another Security Interest over the Licence other than a Permitted Security Interest;
  - (2) dispose of the Licence;
  - (3) remove or apply to remove the Licence from the Secured Property;
  - (4) surrender or attempt to surrender the Licence;
  - (5) amend, or allow any amendment of, the Licence;
  - (6) do anything which could cause the Licence to be forfeited or cancelled; or
  - (7) deal in any way with the Licence or any interest in it, or allow any interest in it to arise or be varied; and
- (e) to give the Security Trustee a copy of each material notice, order, summons or conviction in connection with the Licence.

## **8.2 Obligations if Licence held by third party**

If the Mortgagor is not the holder of a Licence which is required for an activity carried out on or in connection with the Secured Property, the Mortgagor agrees to ensure that:

- (a) the holder complies with the obligations set out in clause 8.1 if it were the Mortgagor; and
- (b) the holder gives the Security Trustee an authority to apply for information from Government Authorities and a power of attorney relating to the Licence, each in a form satisfactory to the Security Trustee.

## **8.3 Transfer of Licence after default**

If an Event of Default is continuing and the Security Trustee asks, the Mortgagor agrees to use its best endeavours to ensure that any Licence which is required for an activity carried out on or in connection with the Secured Property is transferred to the Security Trustee or the Security Trustee's nominee.

# **9 Payments**

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## **9.1 Manner of payment**

The Mortgagor agrees to make payments under this mortgage:

- (a) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (b) if the payment relates to the Secured Money, in the currency in which the payment is due, and otherwise in Australian dollars in immediately available funds.

## **9.2 Currency of payment**

The Mortgagor waives any right it has in any jurisdiction to pay an amount other than in the currency in which it is due. However, if the Security Trustee receives an amount in a currency other than that in which it is due:

- (a) it may convert the amount received into the due currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate. It may deduct its usual Costs in connection with the conversion; and
- (b) the Mortgagor satisfies its obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the Costs of the conversion.

# **10 Interest on overdue amounts**

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## **10.1 Payment of interest**

The Mortgagor must pay interest on:

- (a) any of the Secured Moneys due and payable by it, but unpaid; and
- (b) any interest payable but unpaid under this clause 10.

## 10.2 Accrual of interest

The interest payable under clause 10.1:

- (a) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the Secured Moneys becomes merged; and
- (b) may be capitalised by the Security Trustee, Receiver or Attorney at monthly intervals.

## 10.3 Rate of interest

The rate of interest payable under this clause 10 is the highest of:

- (a) any rate specified in any Transaction Document;
- (b) the rate fixed or payable under a judgment or other thing referred to in clause 10.2(a); and
- (c) 5%.

# 11 Costs and indemnities

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## 11.1 What the Mortgagor agrees to pay

- (a) The Mortgagor agrees to pay or reimburse the Security Trustee for:
  - (1) the Security Trustee's reasonable Costs in connection with:
    - (A) the negotiation, preparation, execution and registration of, and payment of Taxes on, this mortgage; and
    - (B) the general on-going administration of this mortgage (including giving and considering consents, waivers, variations, discharges and releases and producing title documents);
  - (2) the Security Trustee's and any Attorney's or Receiver's Costs in otherwise acting in connection with this mortgage, such as enforcing or preserving rights (or considering doing so), or doing anything in connection with any enquiry by an authority involving the Mortgagor or any of its Related Entities; and
  - (3) Taxes and fees (including registration fees) and fines and penalties in respect of any fees paid, or that the Security Trustee reasonably believes are payable, in connection with this mortgage or a payment or receipt or any other transaction contemplated by this mortgage. However, the Mortgagor need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Security Trustee in sufficient cleared funds for the Security Trustee to be able to pay the Taxes or fees by the due date.
- (b) The Security Trustee agrees to pay amounts due under this clause on demand from the Security Trustee.

## 11.2 Indemnity

- (a) The Mortgagor indemnifies the Security Trustee against any liability or loss arising from, and any Costs incurred in connection with:

- (1) an Event of Default;
  - (2) any person exercising, or attempting to exercise, a right or remedy in connection with this mortgage after an Event of Default;
  - (3) the Secured Property or this mortgage; or
  - (4) any indemnity the Security Trustee gives a Controller or administrator of the Mortgagor.
- (b) The Mortgagor agrees to pay amounts due under this indemnity on demand from the Security Trustee.

### **11.3 Items included in loss, liability and Costs**

The Mortgagor agrees that the Costs referred to in clause 11.1(a)(1) and 11.1(a)(2) include those paid, or that the Security Trustee reasonably believes are payable, to persons engaged by the Security Trustee in connection with this mortgage (such as consultants).

### **11.4 Payment of third party losses**

The Mortgagor agrees to pay the Security Trustee on demand an amount equal to any liability or loss and any Costs of the kind referred to in clause 11.2 suffered or incurred by:

- (a) any Receiver or Attorney; or
- (b) any of the Security Trustee's employees, officers, agents, or contractors; or
- (c) any lessee, purchaser or occupier of the Secured Property.

### **11.5 Currency conversion on judgment debt**

- (a) If a judgment, order or proof of debt for an amount in connection with this mortgage is expressed in a currency other than the currency in which the amount is due under this mortgage, then the Mortgagor indemnifies the Security Trustee against:
  - (1) any difference arising from converting the other currency if the rate of exchange used by the Security Trustee under clause 9.2 for converting currency when it receives a payment in the other currency is less favourable to the Security Trustee than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
  - (2) the Costs of conversion.
- (b) The Mortgagor agrees to pay amounts under this indemnity on demand from the Security Trustee.

### **11.6 Payment for Mortgagor's obligations**

Except as expressly provided in the Transaction Documents, the Mortgagor agrees to pay for anything that it agrees to do under this mortgage (including paying its own Costs).



## 12 Application of payments

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### 12.1 Application of money

The Security Trustee must apply money it receives under this mortgage towards paying the Secured Money unless the Security Trustee is obliged to pay the money to anyone with a prior claim. However, if money received represents proceeds of an insurance claim, the Security Trustee may use it to reinstate the Secured Property or carry out work on it.

### 12.2 Order of payment

The Security Trustee may use money received under this mortgage towards paying any part of the Secured Money the Security Trustee chooses, including by paying a later instalment before an earlier instalment. This applies even if that part only falls due after the Security Trustee gives a notice of demand.

### 12.3 Remaining money

The Security Trustee agrees to pay any money remaining after the Secured Money is paid either to the Mortgagor (which the Security Trustee may do by paying it into an account in the Mortgagor's name) or to another person entitled to it (such as another person with a Security Interest over the Secured Property). In doing so, it does not incur any liability to the Mortgagor. The Security Trustee is not required to pay the Mortgagor interest on any money remaining after the Secured Money is paid.

### 12.4 Credit from date of receipt

The Mortgagor is only credited with money from the date the Security Trustee actually receives it (including, where the Security Trustee has appointed a Receiver, the date the Receiver pays money to the Security Trustee).

## 13 Administrative matters

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### 13.1 Deposit of documents

The Mortgagor agrees to deposit with the Security Trustee:

- (a) all documents of title relating to the Secured Property; and
- (b) any other documents the Security Trustee requests relating to the Secured Property.

### 13.2 Registration of mortgage

The Security Trustee may register this mortgage at the Mortgagor's expense.

### 13.3 Further steps

The Mortgagor agrees to do anything the Security Trustee asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to:

- (a) provide more effective security over the Secured Property for payment of the Secured Money;

- (b) enable the Security Trustee to register this mortgage with the priority required by the Security Trustee;
- (c) enable the Security Trustee to exercise the Security Trustee's rights in connection with the Secured Property;
- (d) bind the Mortgagor and any other person intended to be bound under this mortgage;
- (e) enable the Security Trustee to register the power of attorney in clause 19 or a similar power; or
- (f) show whether the Mortgagor is complying with this mortgage.

### **13.4 Authority to fill in blanks**

The Mortgagor agrees that the Security Trustee may fill in any blanks in this mortgage or a document connected with it (such as Corporations Act forms or transfers for the Secured Property).

### **13.5 Supply of information**

If the Security Trustee asks, the Mortgagor agrees to supply the Security Trustee with any information about or documents affecting:

- (a) the Secured Property;
- (b) this mortgage; or
- (c) the Mortgagor's financial affairs or business or the financial affairs or business of the Mortgagor's Subsidiaries.

## **14 Rights the Security Trustee may exercise at any time**

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### **14.1 Authority to deal**

The Security Trustee may assign or otherwise deal with its rights under this mortgage in any way it considers appropriate. If the Security Trustee does this, the Mortgagor may not claim against any assignee (or any other person who has an interest in this mortgage) any right of set-off or other rights the Mortgagor has against the Security Trustee.

### **14.2 Security Trustee may enter Secured Property**

- (a) If the Security Trustee reasonably believes that an Event of Default is, or may be, continuing, the Security Trustee may enter land and buildings owned or occupied by the Mortgagor, any place where the Secured Property is located, the Mortgagor's places of business or its registered office:
  - (1) to inspect the Secured Property;
  - (2) to find out whether the Mortgagor is complying with this mortgage;
  - (3) to carry out the Security Trustee's rights under this mortgage;
  - (4) to inspect and copy records relating to the Mortgagor or the Secured Property; or
  - (5) to investigate the Mortgagor's financial affairs or business.
- (b) The Mortgagor agrees to help the Security Trustee enter, such as by obtaining any necessary consent.

### **14.3 Reasonable notice of entry**

Unless there is an emergency, the Security Trustee agrees to give the Mortgagor reasonable notice before entering under clause 14.2.

### **14.4 Right to rectify**

The Security Trustee may do anything which the Mortgagor should have done under this mortgage but which the Mortgagor either has not done, or in the Security Trustee's reasonable opinion, has not done properly. If the Security Trustee does so, the Mortgagor agrees to pay the Security Trustee's Costs on demand.

### **14.5 Security Trustee not mortgagee in possession**

The Security Trustee does not become a mortgagee in possession because it enters the Secured Property under clause 14.2 or exercises its rights under clause 14.4.

### **14.6 Payment of income to Security Trustee**

If an Event of Default is continuing and the Security Trustee asks, the Mortgagor agrees to ensure that rent and other income from the Secured Property are paid to the Security Trustee. If, despite this, they are paid to the Mortgagor, the Mortgagor agrees to pay them to the Security Trustee. In each case, the Security Trustee agrees to use the money it receives as set out in clause 12.

## **15 Default**

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### **15.1 Ensure no default**

The Mortgagor agrees to ensure that no Event of Default occurs.

### **15.2 Investigation of default**

If the Security Trustee reasonably believes that an Event of Default is, or may be, continuing, the Security Trustee may appoint a person to investigate this. The Mortgagor agrees to co-operate with the person and comply with every reasonable request they make. If there is or was an Event of Default, the Mortgagor agrees to pay the Security Trustee all Costs in connection with the investigation.

### **15.3 Security Trustee's powers on default**

If an Event of Default is continuing, the Security Trustee may do one or more of the following in addition to anything else the law allows the Security Trustee to do as mortgagee:

- (a) sue the Mortgagor for the Secured Money;
- (b) appoint one or more Receivers;
- (c) do anything that a Receiver could do under clause 17.5.

### **15.4 Order of enforcement**

- (a) The Security Trustee may enforce this mortgage before it enforces other rights or remedies:

- (1) against any other person; or
  - (2) under another document, such as another Security Interest.
- (b) If the Security Trustee has more than one Security Interest, it may enforce them in any order it chooses.

## 16 Exclusion of time periods

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### 16.1 No notice required unless mandatory

Neither the Security Trustee nor any Receiver need give the Mortgagor any notice or demand or allow time to elapse before exercising a right under this mortgage or conferred by law (including a right to sell) unless the notice, demand or lapse of time is required by law and cannot be excluded.

### 16.2 Mandatory notice period

If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this mortgage or conferred by law may be exercised, then:

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the Security Trustee; and
- (b) when the law provides that a period of notice or lapse of time may be stipulated or fixed by this mortgage, one day is stipulated and fixed as that period of notice or lapse of time including, if applicable, as the period of notice or lapse of time during which:
  - (1) an Event of Default must continue before a notice is given or requirement otherwise made for payment of the Secured Money or the observance of other obligations under this mortgage; and
  - (2) a notice or request for payment of the Secured Money or the observance of other obligations under this mortgage must remain not complied with before the Security Trustee or a Receiver may exercise rights.

## 17 Receivers

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### 17.1 Other rights to appoint

In addition to its powers under clause 15.3, the Security Trustee may appoint a Receiver of the Secured Property:

- (a) if an Event of Default is continuing; or
- (b) if the directors of the Mortgagor request it to do so.

### 17.2 Terms of appointment of Receiver

In exercising its power to appoint a Receiver, the Security Trustee may:

- (a) appoint a Receiver to all or any part of the Secured Property or its income; and
- (b) set a Receiver's remuneration at any figure the Security Trustee determines appropriate, remove a Receiver and appoint a new or additional Receiver.

### **17.3 More than one Receiver**

If the Security Trustee appoints more than one Receiver, the Security Trustee may specify whether they may act individually or jointly.

### **17.4 Receiver is Mortgagor's agent**

Any Receiver appointed under this mortgage is the Mortgagor's agent unless the Security Trustee notifies the Mortgagor that the Receiver is to act as the Security Trustee's agent. The Mortgagor is solely responsible for anything done, or not done, by a Receiver and for the Receiver's remuneration and Costs.

### **17.5 Receiver's powers**

Unless the terms of appointment restrict a Receiver's powers, the Receiver may do one or more of the following in the manner and on terms which the Receiver thinks fit (and the Security Trustee may vary these powers at any time by notice given to the Mortgagor and the Receiver):

- (a) improve the Secured Property;
- (b) sell, transfer or otherwise dispose of the Secured Property or any interest in it;
- (c) lease or licence the Secured Property or any interest in it, or deal with any existing lease or licence (including allowing a surrender or variation);
- (d) take or give up possession of the Secured Property as often as it chooses;
- (e) sever, remove and sell fixtures attached to the Secured Property; and
- (f) do anything else the law allows an owner or a Receiver of the Secured Property to do.

## **18 Disposal of the Secured Property is final**

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The Mortgagor agrees that if the Security Trustee or a Receiver sells or otherwise disposes of the Secured Property:

- (a) the Mortgagor will not challenge the acquirer's right to acquire the Secured Property (including on the ground that the Security Trustee or the Receiver was not entitled to dispose of the Secured Property or that the Mortgagor did not receive notice of the intended disposal) and the Mortgagor will not seek to reclaim that property; and
- (b) the person who acquires the Secured Property need not check whether the Security Trustee or the Receiver has the right to dispose of the Secured Property or whether the Security Trustee or the Receiver exercises that right properly.

## **19 Power of attorney**

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### **19.1 Appointment**

The Mortgagor irrevocably appoints the Security Trustee, each Officer of the Security Trustee, and each Receiver individually as the Mortgagor's attorney and agrees to ratify anything an Attorney does under clause 19.2.

## 19.2 Powers

If an Event of Default is continuing, an Attorney may:

- (a) do anything which the Mortgagor can lawfully authorise an attorney to do in connection with this mortgage, the Secured Property or a Licence for any activity carried out on or in connection with the Secured Property, or which the Attorney believes is expedient to give effect to any of the Security Trustee's or a Receiver's rights (these things may be done in the Mortgagor's name or the Attorney's name, and they include signing and delivering documents, transferring, selling or leasing the Secured Property, transferring, selling or surrendering any lease, lodging or withdrawing caveats, starting, conducting and defending legal proceedings, and dealing with a Licence for any activity carried out on or in connection with the Secured Property);
- (b) delegate their powers (including this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

## 19.3 Third party dealing with Attorney

Any person dealing with the Attorney is not required to enquire whether an Event of Default has occurred or is subsisting.

## 20 Approval of Minister

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If the Secured Property includes an interest in a mining tenement and the Mining Resources Act requires the Minister to grant prior approval in writing to a dealing in that interest, then to the extent that the mortgage created by this mortgage applies to that mining tenement, the mortgage is conditional upon and is of no force or effect until the granting of that approval in writing.

## 21 Third party provisions

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### 21.1 Independent obligations

This deed is enforceable against the Mortgagor:

- (a) without first having recourse to any Collateral Security;
- (b) whether or not the Security Trustee or any other person has:
  - (1) made demand on any Transaction Party other than the Mortgagor;
  - (2) given notice to any Transaction Party (other than the Mortgagor) or any other person in respect of any thing; or
  - (3) taken any other steps against any Transaction Party (other than the Mortgagor) or any other person;
- (c) whether or not any Secured Money is then due and payable; and
- (d) despite the occurrence of any event described in clause 21.2(b).

## 21.2 Unconditional nature of obligations

- (a) The Mortgage and the obligations of the Mortgagor under the Transaction Documents are absolute, binding and unconditional in all circumstances.
- (b) The Mortgage and the obligations of the Mortgagor under the Transaction Documents are not released or discharged or otherwise affected by anything which but for this provision might have that effect, including:
  - (1) the grant to any Transaction Party or any other person of any time, waiver, covenant not to sue or other indulgence;
  - (2) the release (including a release as part of any novation) or discharge of any Transaction Party or any other person;
  - (3) the cessation of the obligation, in whole or in part, of any Transaction Party or any other person under any Transaction Document or any other document or agreement
  - (4) the liquidation of any Transaction Party or any other person;
  - (5) any arrangement, composition or compromise entered into by the Security Trustee, a Creditor, or any Transaction Party or any other person;
  - (6) any Transaction Document or any other document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
  - (7) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compounding, composition or compromise, in whole or in part of any Transaction Document or any other document or agreement;
  - (8) any Collateral Security being given to the Security Trustee, a Creditor or any other person by any Transaction Party or any other person;
  - (9) any alteration, amendment, variation, supplement, renewal or replacement of any Transaction Document or any other document or agreement;
  - (10) any moratorium or other suspension of any Power;
  - (11) the Security Trustee, Receiver or Attorney of a Creditor exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any Power;
  - (12) the Security Trustee or a Creditor obtaining a judgment against any Transaction Party or any other person for the payment of any of the Secured Moneys;
  - (13) any transaction, agreement or arrangement that may take place with the Security Trustee, a Creditor, any Transaction Party or any other person;
  - (14) any payment to the Security Trustee, Receiver or Attorney or a Creditor, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
  - (15) any failure to give effective notice to any Transaction Party or any other person of any default under any Transaction Document or any other document or agreement;
  - (16) any legal limitation, disability or incapacity of any Transaction Party or of any other person;
  - (17) any breach of any Transaction Document or any other document or agreement;

- (18) the acceptance of the repudiation of, or termination, of any Transaction Document or any other document or agreement;
  - (19) any Secured Moneys being irrecoverable for any reason;
  - (20) any disclaimer by any Transaction Party or any other person of any Transaction Document or any other document or agreement;
  - (21) any assignment, novation, assumption or transfer of, or any other dealing with, any Powers or any other rights or obligations under any Transaction Document or any other document or agreement;
  - (22) the opening of a new account of any Transaction Party with the Security Trustee or a Creditor or any transaction on or related to the new account;
  - (23) any prejudice (including, material prejudice) to any person as a result of any thing done, or omitted by the Security Trustee, a Creditor, any Transaction Party or any other person;
  - (24) any prejudice (including, material prejudice) to any person as a result of the Security Trustee, Receiver, Attorney or a Creditor or any other person selling or realising any property the subject of a Collateral Security at less than the best price;
  - (25) any prejudice (including, material prejudice) to any person as a result of any failure or neglect by the Security Trustee, Receiver, Attorney or a Creditor or any other person to recover the Secured Moneys from any Transaction Party or by the realisation of any property the subject of a Collateral Security;
  - (26) any prejudice (including, material prejudice) to any person as a result of any other thing;
  - (27) the receipt by the Security Trustee or a Creditor of any dividend, distribution or other payment in respect of any liquidation;
  - (28) the failure of any other Transaction Party or any other person to execute any Transaction Document or any other document; or
  - (29) any other act, omission, matter or thing whether negligent or not.
- (c) Clauses 21.2(a) and (b) apply irrespective of:
- (1) the consent or knowledge or lack of consent or knowledge, of the Security Trustee, any Beneficiary, any Transaction Party or any other person of any event described in clause 21.2(b).
  - (2) any rule of law or equity to the contrary.

### **21.3 No competition**

- (a) Until the Secured Moneys have been fully paid to the Mortgagee has been finally discharged, the Mortgagor is not entitled to:
- (1) be subrogated to the Security Trustee or any Creditor;
  - (2) claim or receive the benefit of any Security Interest (including any Transaction Document) or other document or agreement of which the Security Trustee or any Creditor has the benefit;
  - (3) claim or receive the benefit of any moneys held by the Security Trustee or any Creditor;
  - (4) claim or receive the benefit of any Power;
  - (5) either directly or indirectly prove in, claim or receive the benefit of any distribution, dividend or payment arising out of or related to the



liquidation of any Transaction Party, except in accordance with clause 21.2(b).

- (6) make a claim or exercise or enforce any right, power or remedy (including under a Security Interest or by way of contribution) against any Transaction Party liable to pay the Secured Moneys;
  - (7) accept, procure the grant of, or allow to exist any Security Interest in favour of the Mortgagor from any Transaction Party liable to pay the Secured Moneys;
  - (8) exercise or attempt to exercise any right of set-off against, nor realise any Security Interest taken from, any Transaction Party liable to pay the Secured Moneys; or
  - (9) raise any defence or counterclaim in reduction or discharge of its obligations under the Transaction Documents.
- (b) If required by the Security Trustee, the Mortgagor must prove in any liquidation of a Transaction Party liable to pay the Secured Moneys for all moneys owed to the Mortgagor.
- (c) All moneys recovered by the Mortgagor from any liquidation or any Security Interest from a Transaction Party liable to pay the Secured Moneys must be received and held in trust by the Mortgagor for the Security Trustee to the extent of the unsatisfied liability of the Mortgagor under the Transaction Documents.
- (d) The Mortgagor must not do or seek, attempt or purport to do anything referred to in clause 21.2(a).

## 22 General

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### 22.1 Reinstatement of rights

- (a) Under law relating to Insolvency, a person may claim that a transaction (including a payment) in connection with the Secured Money is void or voidable. If a claim is made and upheld, conceded or compromised, then:
- (1) the Security Trustee is immediately entitled as against the Mortgagor to the rights in respect of the Secured Money to which it was entitled immediately before the transaction; and
  - (2) on request from the Security Trustee, the Mortgagor agrees to do anything (including signing any document) to restore to the Security Trustee any Security Interest (including this mortgage) it held from the Mortgagor immediately before the transaction.
- (b) The Mortgagor's obligations under this clause are continuing obligations, independent of the Mortgagor's other obligations under this mortgage and continue after this mortgage ends.

### 22.2 Suspense account

- (a) The Security Trustee may apply to the credit of a suspense account any:
- (1) amounts received under this deed;
  - (2) dividends, distributions or other amounts received in respect of the Secured Moneys in any liquidation; and

- (3) other amounts received from any Transaction Party or any other person in respect of the Secured Moneys.
- (b) The Security Trustee may retain the amounts in the suspense account for as long as it determines and is not obliged to apply them in or towards satisfaction of the Secured Moneys.

### **22.3 Mortgagor to bear cost**

Any thing which must be done by the Mortgagor under this deed, whether or not at the request of the Security Trustee, must be done at the cost of the Mortgagor.

### **22.4 Notices**

Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be given in accordance with the notice requirements of the Convertible Note Agreement.

### **22.5 Notices under the PPS Law**

The Mortgagor waives and will cause each Transaction Party to waive to the extent permitted by the PPS Law its right to receive any notice of a Verification Statement or any other notice the Security Trustee is required to give under the PPS Law.

### **22.6 Governing law and jurisdiction**

- (a) This deed is governed by the laws of Queensland.
- (b) The Mortgagor irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- (c) The Mortgagor irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) The Mortgagor irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.
- (e)

### **22.7 Prompt performance**

Subject to clause 22.23:

- (a) if this mortgage specifies when the Mortgagor agrees to perform an obligation, the Mortgagor agrees to perform it by the time specified; and
- (b) the Mortgagor agrees to perform all other obligations promptly.

### **22.8 Consents**

The Mortgagor agrees to comply with all conditions in any consent the Security Trustee gives in connection with this mortgage.

### **22.9 Certificates**

The Security Trustee may give the Mortgagor a certificate about an amount payable or other matter in connection with this mortgage. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect

**22.10 Set-off**

- (a) If an Event of Default is continuing, the Security Trustee may set off any amount owing by the Security Trustee to the Mortgagor (whether or not due for payment) against any amount due for payment by the Mortgagor to the Security Trustee under this mortgage.
- (b) The Security Trustee may do anything necessary to effect any set-off under this clause (including varying the date for payment of any amount owing by the Security Trustee to the Mortgagor and making currency exchanges). This clause applies despite any other agreement between the Mortgagor and the Security Trustee.

**22.11 Discretion in exercising rights**

The Security Trustee or a Receiver may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this mortgage expressly states otherwise.

**22.12 Partial exercising of rights**

If the Security Trustee or a Receiver does not exercise a right or remedy fully or at a given time, the Security Trustee or the Receiver may still exercise it later.

**22.13 No liability for loss**

Neither the Security Trustee nor a Receiver is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

**22.14 Conflict of interest**

The Security Trustee's and any Receiver's rights and remedies under this mortgage may be exercised even if this involves a conflict of duty or the Security Trustee or Receiver has a personal interest in their exercise.

**22.15 Security Trustee or Receiver in possession**

- (a) If the Security Trustee exercises any right under this mortgage or at law to enter or take possession of the Secured Property, it:
  - (1) has complete and unfettered discretion as to how the Secured Property is managed; and
  - (2) is liable to account only for rents and profits actually received by it.
- (b) The same applies to any Receiver when acting as agent of the Security Trustee.

**22.16 Remedies cumulative**

The rights and remedies of the Security Trustee or a Receiver under this mortgage are in addition to other rights and remedies given by law independently of this mortgage.

**22.17 Other Security Interests or judgments**

- (a) This mortgage does not merge with or adversely affect, and is not adversely affected by, any of the following:
  - (1) any Security Interest or other right or remedy to which the Security Trustee is entitled; or

- (2) a judgment which the Security Trustee obtains against the Mortgagor in connection with the Secured Money.
- (b) The Security Trustee may still exercise its rights under this mortgage as well as under the judgment, other Security Interest or the right or remedy.

### **22.18 Continuing security**

This mortgage is a continuing security despite any intervening payment, settlement or other thing until the Security Trustee releases all of the Secured Property from this mortgage.

### **22.19 Indemnities**

The indemnities in this mortgage are continuing obligations, independent of the Mortgagor's other obligations under this mortgage and continue after this mortgage ends. It is not necessary for the Security Trustee to incur expense or make payment before enforcing a right of indemnity under this mortgage.

### **22.20 Rights and obligations are unaffected**

Rights given to the Security Trustee or any Receiver under this mortgage and the Mortgagor's liabilities under it are not affected by anything which might otherwise affect them at law.

### **22.21 Inconsistent law**

To the extent permitted by law, this mortgage prevails to the extent it is inconsistent with any law.

### **22.22 Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Mortgagor in connection with this mortgage with the result that the Security Trustee's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **22.23 Time of the essence**

Time is of the essence in this mortgage in respect of an obligation of the Mortgagor to pay money.

### **22.24 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (2) a Power created or arising upon default under this deed or upon the occurrence of an Event of Default,does not result in a waiver of that right or Power.

- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

**22.25 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

**22.26 Receipts**

The receipt of a Receiver, the Security Trustee or an Officer of the Security Trustee releases the person paying money to the Receiver or the Security Trustee in connection with this mortgage from:

- (a) liability to enquire whether the Secured Money has become payable;
- (b) liability for the money paid or expressed to be received; and
- (c) being concerned to see to its application or being answerable or accountable for its loss or misapplication.

**22.27 Assignment**

- (a) Subject to any Transaction Document, the Security Trustee may assign its rights under this deed and each Collateral Security without the consent of the Mortgagor.
- (b) The Mortgagor may not assign any of its rights under this deed or any Collateral Security without the prior written consent of the Security Trustee.

**22.28 Counterparts**

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

**22.29 Attorneys**

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Tenements

---

<b>Tenement</b>	<b>District</b>
Mining lease 90190	Mount Isa
Mining lease 90191	Mount Isa

Executed as a deed

---

**Mortgagor**

Signed sealed and delivered by  
**Paradise Phosphate Pty Ltd**  
by

*sign here* ▶ /s/ J I Gutnick

*print name* J I Gutnick

*sign here* ▶ /s/ P J Lee

*print name* P J Lee

---

**Security Trustee**

Signed sealed and delivered for and on behalf of  
**Acorn Capital Limited**  
by

*sign here* ▶ /s/ M Sheehan  
Company Secretary/Director

*print name* M Sheehan

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

Deed

## Share Mortgage

---

Legend International Holdings, Inc.  
(as **Mortgagor**)

Acorn Capital Limited  
(as **Security Trustee**)

**Freehills**

Central Plaza | 345 Queen Street Qld 4000 Australia  
GPO Box 3124 Brisbane Qld 4001 Australia

Sydney Melbourne Perth Brisbane Singapore

Telephone +61 7 3258 6666 Facsimile +61 7 3258 6444  
[www.freehills.com](http://www.freehills.com) DX 255 Brisbane

Associated offices in Jakarta Beijing Shanghai Hanoi Ho Chi Minh City



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## Share Mortgage

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Date ► **7 February 2012**

Between the parties

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Mortgagor	<b>Legend International Holdings, Inc.</b> ARBN 120 855 352 of Level 8, 580 St Kilda Road, Melbourne VIC 3004 <b>(Mortgagor)</b>
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Security Trustee	<b>Acorn Capital Limited</b> ACN 082 694 531 of Level 12, 90 Collins Street, Melbourne Vic 3000 <b>(Security Trustee)</b>
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Recitals	<ol style="list-style-type: none"><li>1 The Mortgagor is or will be the legal and beneficial owner of the Mortgaged Property</li><li>2 The Mortgagor has agreed to mortgage the Mortgaged Property to secure the payment of the Secured Moneys.</li></ol>
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This deed witnesses as follows:

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# 1 Definitions, interpretation and deed components

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## 1.1 Definitions

The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Additional Rights</b>	<p>all present and future rights and property interests attaching to or arising out of or otherwise in respect of the holding of an interest in the Shares including:</p> <ol style="list-style-type: none"><li>1 any Distributions paid or payable, any bonus shares or other Marketable Securities issued, and any rights to take up Marketable Securities, in respect of the Shares;</li><li>2 any proceeds of, or from the disposal of or other dealing with, any Shares;</li><li>3 any rights or Marketable Security resulting from the conversion, consolidation, subdivision, redemption, cancellation, reclassification or forfeiture of any Share;</li><li>4 any in specie distribution in respect of any Shares; and</li><li>5 rights consequent upon a reduction of capital, buy-back, liquidation or scheme or arrangement,</li></ol> <p>and any present or future rights and property interests attaching to or arising out of or otherwise in respect of any interest in any of the property specified in items 1 to 5 inclusive above.</p>
<b>ASX Settlement Operating Rules</b>	<p>the ASX Settlement Operating Rules issued by the ASX Settlement Pty Limited (ACN 008 504 532) relating to the settlement facility provided by it under an Australian CS facility licence granted under the Corporations Act.</p>
<b>Attorney</b>	<p>an attorney appointed under this deed.</p>
<b>Certificated Security</b>	<p>a Marketable Security title to which is evidenced by a Title Document.</p>
<b>Collateral Security</b>	<p>any present or future Security Interest, guarantee or other document or agreement created or entered into by the Mortgagor, a Transaction Party or any other person as security for, or to credit enhance, the payment of any of the Secured Moneys.</p>
<b>Company</b>	<p>Paradise Phosphate Pty Limited ACN 154 180 882</p>

<b>Term</b>	<b>Meaning</b>
<b>Convertible Note Agreement</b>	the convertible note agreement dated on or around the date of this deed between, among others, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2 and the Mortgagor.
<b>Designated Account</b>	the bank account opened by the Mortgagor in accordance with clause 5.4.
<b>Designated Bank</b>	the bank with which the Designated Account is maintained.
<b>Distribution</b>	any money owing now or in the future in respect of the Mortgaged Property and includes a cash dividend or other monetary distribution whether of an income or capital nature.
<b>Exceptional Distribution</b>	a Distribution of the following kind: <ol style="list-style-type: none"><li>1 a reduction of capital;</li><li>2 a buy-back of shares under a buy-back scheme or otherwise; or</li><li>3 any Distribution under a scheme of arrangement.</li></ol>
<b>Finance Party</b>	<ol style="list-style-type: none"><li>1 the Noteholder;</li><li>2 the Nominee; and</li><li>3 the Security Trustee.</li></ol>
<b>Financing Change Statement</b>	a financing change statement within the meaning of the PPSA.
<b>Financing Statement</b>	a financing statement within the meaning of the PPSA.
<b>Marketable Securities</b>	<ol style="list-style-type: none"><li>1 marketable securities as defined in section 9 of the Corporations Act;</li><li>2 any option or right in respect of an unissued share;</li><li>3 any convertible note; and</li><li>4 any instrument or security which is a combination of any of the above.</li></ol>
<b>Mortgage</b>	the security created by this deed.
<b>Mortgaged Property</b>	all of the Mortgagor's present and future interest in: <ol style="list-style-type: none"><li>1 the Shares;</li></ol>

<b>Term</b>	<b>Meaning</b>
	<ol style="list-style-type: none"><li>2 the Additional Rights; and</li><li>3 the Designated Account and any chose in action in respect of the Designated Account.</li></ol>
<b>Officer</b>	<ol style="list-style-type: none"><li>1 in relation to the Mortgagor, a director or a secretary, or a person notified to be an authorised officer of the Mortgagor;</li><li>2 in relation to the Security Trustee, any person whose title includes the word 'Director', 'Managing Director', 'Manager' or 'Vice President', and any other person appointed by the Security Trustee to act as its authorised officer for the purposes of this deed; and</li><li>3 in relation to a Receiver or an Attorney which is a corporation, any officer, as that expression is defined in section 9 of the Corporations Act, of that Receiver or Attorney.</li></ol>
<b>Power</b>	any right, power, authority, discretion or remedy conferred on the Security Trustee, a Receiver or an Attorney by any Transaction Document or any applicable law.
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPSA Security Interest</b>	a security interest within the meaning of the PPSA.
<b>Receiver</b>	a receiver or receiver and manager appointed under this deed.
<b>Secured Moneys</b>	<p>all debts and monetary liabilities of:</p> <ol style="list-style-type: none"><li>1 the Mortgagor to a Finance Party on any account and in any capacity; and</li><li>2 each Transaction Party (other than the Mortgagor) to a Finance Party on any account and in any capacity,</li></ol> <p>irrespective of whether the debts or liabilities:</p> <ol style="list-style-type: none"><li>3 are present or future;</li><li>4 are actual, prospective, contingent or otherwise;</li><li>5 are at any time ascertained or unascertained;</li><li>6 are owed or incurred by or on account of the Mortgagor or another Transaction Party alone, or severally or jointly with any other person;</li><li>7 are owed to or incurred for the account of a Finance Party alone, or severally or jointly with any other person;</li><li>8 are owed to any other person as agent (whether disclosed or not) for or on behalf of a Finance Party;</li><li>9 are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground),</li></ol>

<b>Term</b>	<b>Meaning</b>
	losses, costs or expenses, or on any other account;
	10 are owed to or incurred for the account of a Finance Party directly or as a result of: <ul style="list-style-type: none"><li>• the assignment and transfer to a Finance Party of any debt or liability of the Mortgagor or another Transaction Party; or</li><li>• any other dealing with any such debt or liability;</li></ul>
	11 are owed to or incurred for the account of a Finance Party before the date of this deed or before the date of any assignment of this deed to a Finance Party by any other person or otherwise; or
	12 comprise any combination of the above.
<b>Security Trust</b>	the “Paradise Phosphate Security Trust” as constituted under the Security Trust Deed.
<b>Security Trust Deed</b>	the security trust deed dated on or about the date of this deed between the Mortgagor and others and the Security Trustee, a security trustee constituting the Security Trust.
<b>Shares</b>	any shares in the Company.
<b>Title Document</b>	any original, duplicate or counterpart certificate or document of title including any contract note, entitlement notice, marked transfer or share certificate.
<b>Transaction Document</b>	<ol style="list-style-type: none"><li>1 this deed;</li><li>2 each Collateral Security;</li><li>3 the Security Trust Deed;</li><li>4 the Convertible Note Agreement; and</li><li>5 any other Transaction Document as defined in the Convertible Note Agreement; or</li></ol> or any document or agreement entered into or given under any of the above.
<b>Transaction Party</b>	<ol style="list-style-type: none"><li>1 the Mortgagor;</li><li>2 the Company; or</li><li>3 any other Transaction Party as defined in a Transaction Document.</li></ol>
<b>Uncertificated Security</b>	a Marketable Security title to which is not evidenced by a Title Document.



<b>Term</b>	<b>Meaning</b>
<b>Verification Statement</b>	a verification statement within the meaning of the PPSA.

## **1.2 Interpretation**

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation.
- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) A reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits.
- (m) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (n) A reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind.
- (o) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.
- (p) A reference to a body, other than a party to this deed (including, an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or

(2) whose powers or functions are transferred to another body,  
is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

(q) Where this agreement confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.

(r) An Event of Default is 'continuing' or 'subsisting' if it has not been:

(1) remedied to the satisfaction of the Security Trustee before a Power relating to that Event of Default is exercised; or

(2) waived in writing by the Security Trustee.

### **1.3 Incorporated definitions**

(a) A word or phrase (other than one defined in clause 1.1) defined in the Convertible Note Agreement or in the Security Trust Deed has the same meaning in this deed.

(b) If a word or phrase is defined in both the Convertible Note Agreement and the Security Trust Deed the definition in the Convertible Note Agreement prevails to the extent of any inconsistency.

### **1.4 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### **1.5 Personal Property Securities (PPS) Law**

If:

(a) a PPS Law applies, or will at a future date apply to any of the Transaction Documents or any of the transactions contemplated by them, or the Security Trustee determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and

(b) in the opinion of the Security Trustee, the PPS Law:

(1) adversely affects or would or may adversely affect the Security Trustee's security position or the rights or obligations of the Security Trustee under or in connection with the Transaction Documents; or

(2) enables or would enable the Security Trustee's security position to be improved without adversely affecting the Mortgagor in a material respect,

the Security Trustee may from time to time give notice to the Mortgagor requiring the Mortgagor to do anything, including:

(c) promptly providing all necessary information and taking all necessary action (including entering into any agreement, obtaining any consent or giving any notice) to enable any PPSA Security Interest held or intended to be held by the Security Trustee under the Transaction Documents at any time to be perfected by control (within the meaning of Part 2.3 of the PPSA) to the extent possible under the PPSA and to enable the Security Trustee to register fully valid and effective Financing Statements or Financing Change Statements with respect to any PPSA Security Interest;

(d) amending any Transaction Document or executing any new Transaction Document,

that in the Security Trustee's opinion is necessary to ensure that, to the maximum possible extent, the Security Trustee's security position, and rights and obligations, are not adversely affected as contemplated by clause 1.5(b)(1) (or that any such adverse

effect is overcome to the maximum extent possible), or that the Security Trustee's security position is improved as contemplated in clause 1.5(b)(2). The Mortgagor must comply with the requirements of that notice within the time stipulated in the notice.

### **1.6 Security Trust Deed**

This deed is a 'Security' and a 'Transaction Document' for the purposes of the Security Trust Deed.

### **1.7 Capacity of Security Trustee**

The Security Trustee enters into this deed as security trustee under the Security Trust Deed. Clause 1.4 of the Security Trust Deed is incorporated in this deed.

### **1.8 Deed components**

This deed includes any schedule.

## **2 Mortgage**

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### **2.1 Mortgage**

The Mortgagor as legal and beneficial owner mortgages the Mortgaged Property to the Security Trustee as security for the due and punctual payment of the Secured Moneys.

### **2.2 Priority**

The parties intend that the Mortgage take priority over all other Security Interests and other interests in the Mortgaged Property other than any Permitted Security Interest mandatorily preferred by law.

## **3 Discharge of the Mortgage**

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### **3.1 Discharge**

Subject to clause 3.2, at the written request of the Mortgagor, the Security Trustee must discharge the Mortgage if:

- (a) the Secured Moneys have been paid in full; and
- (b) the Mortgagor and each other Transaction Party has fully observed and performed its respective obligations under this deed and each other Transaction Document.

### **3.2 Final discharge**

- (a) The Security Trustee is not obliged to discharge the Mortgage under clause 3.1 if, at the time the requirements of clause 3.1 are satisfied, the Security Trustee is of the opinion that the Mortgagor or any other Transaction Party owes further Secured Moneys contingently or otherwise to a Finance Party.
- (b) Clause 3.2(a) overrides any other clause to the contrary in this deed.

## 4 Representations and warranties

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### 4.1 Representations and warranties

The Mortgagor represents and warrants to and for the benefit of the Security Trustee that:

- (a) **representations true:** each of its representations and warranties in each Transaction Document are, or will be true, and correct in all respects when made or regarded as having been made;
- (b) **legal and beneficial owner:**
  - (1) it is the legal and beneficial owner of the Mortgaged Property; and
  - (2) on it acquiring any property forming part of the Mortgaged Property, it will be the legal and beneficial owner of that property,
- (c) **no Security Interests:**
  - (1) there is no Security Interest over any of the Mortgaged Property other than a Security Interest created by a Transaction Document and a Permitted Security Interest; and
  - (2) no person other than the Security Trustee holds or is entitled to hold an interest in the Mortgaged Property other than under a Permitted Security Interest;
- (d) **securities fully paid:** all Marketable Securities forming part of the Mortgaged Property are, or upon acquisition will be, fully paid;
- (e) **no further securities:** the equity capital in the Company is:
  - (1) in the case of the Company fully represented by 2 ordinary shares; or
  - (2) in each other case, as notified to the Security Trustee in writing before the Mortgage is given,

and there is no agreement, arrangement or understanding under which further Marketable Securities with rights of conversion to shares in the Company may be issued to any person.

### 4.2 Survival of representations and warranties

The representations and warranties given under this deed:

- (a) survive the execution of this deed; and
- (b) are repeated on the last day of each calendar month with respect to the facts and circumstances then subsisting.

### 4.3 Reliance

The Mortgagor acknowledges that it has not entered into this deed or any other Transaction Document in reliance on any representation, warranty, promise or statement made by or on behalf of the Security Trustee or of any person on behalf of the Security Trustee.

### 4.4 No Reliance by Mortgagor

The Mortgagor acknowledges that it has not entered into this deed or any Transaction Document in reliance on any representation, warranty, promise or statement made by the Security Trustee or any person on behalf of the Security Trustee.

## 5 Undertakings of the Mortgagor

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### 5.1 Dividends and voting

- (a) Until an Event of Default occurs:
- (1) the Mortgagor may receive all Distributions, other than Exceptional Distributions, in respect of the Mortgaged Property; and
  - (2) the Mortgagor may exercise all voting powers in respect of the Mortgaged Property,
- without the need for any consent or direction from the Security Trustee.
- (b) The Mortgagor must not, exercise any voting powers in respect of the Mortgaged Property under clause 5.1(a)(2) in any way which might adversely affect the value of the Mortgaged Property.
- (c) If an Event of Default occurs, the rights of the Mortgagor under clause 5.1(a) immediately cease and the Security Trustee, Receiver or Attorney is entitled to receive all Distributions and exercise all voting powers in respect of the Mortgaged Property to the exclusion of the Mortgagor.

### 5.2 Proxies and authorised representatives

- (a) The Mortgagor must not:
- (1) appoint any proxy in respect of the Mortgaged Property without the prior written consent of the Security Trustee; or
  - (2) appoint any authorised representative under section 250D of the Corporations Act or any attorney in respect of the Mortgaged Property without the prior written consent of the Security Trustee;
- (b) The Mortgagor must ensure that any proxy, authorised representative or attorney:
- (1) complies with any conditions specified by the Security Trustee in respect of the appointment of the proxy, authorised representative or attorney; and
  - (2) complies with the Transaction Documents.

### 5.3 Exceptional Distributions

The Mortgagor must promptly after receipt pay all Exceptional Distributions to the Security Trustee.

### 5.4 Designated Account

- (a) The Security Trustee may require the Mortgagor to open and maintain a Designated Account at a bank and branch approved by the Security Trustee on terms that:
- (1) nominated Officers of the Security Trustee must be signatories to the Designated Account; and
  - (2) no withdrawals can be made from the Designated Account without the signature of one of those Officers.
- (b) If an Event of Default occurs, the Mortgagor must deposit, or cause to be deposited, all Distributions in the Designated Account.
- (c) Immediately after opening the Designated Account, the Mortgagor must:
- (1) give notice to the Designated Bank of the mortgage of the Designated Account;

- (2) obtain an acknowledgment from the Designated Bank of that mortgage and the notice.
- (d) The Mortgagor must obtain an agreement from the Designated Bank that:
  - (1) it will not repay any money in the Designated Account to the Mortgagor or any other person without the prior written consent of the Security Trustee;
  - (2) it waives all rights of set-off and combination in respect of the Designated Account;
  - (3) it must not exercise a Security Interest in respect of the Designated Account; and
  - (4) the agreement of the Designated Bank may not be varied or terminated without the prior written consent of the Security Trustee.

### **5.5 Other Additional Rights**

- (a) The Mortgagor must acquire, at its own cost, any Additional Rights (other than Distributions) it is entitled to acquire.
- (b) The Mortgagor must immediately notify the Security Trustee as soon as the Mortgagor becomes aware of any entitlement to any Additional Rights.

### **5.6 Performance under the Transaction Documents**

- (a) The Mortgagor must fully and punctually perform its obligations under the Transaction Documents.
- (b) Without limiting clause 5.6(a), the Mortgagor must pay the Secured Moneys payable by the Mortgagor to a Finance Party in accordance with this deed, each other Transaction Document and each other obligation under which the Secured Moneys are payable by the Mortgagor.
- (c) The Mortgagor must ensure that no Event of Default occurs. Without affecting the liability of the Mortgagor or the Powers in any other respect (including where a breach of this clause 5.6(c) is also a breach of another provision of a Transaction Document), the Mortgagor is not liable in damages for breach of this clause 5.6(c) but the Security Trustee may exercise its Powers consequent upon or following that breach.

### **5.7 Negative pledge**

The Mortgagor must not:

- (a) sell, assign, transfer or otherwise dispose of or part with possession of;
- (b) create or allow to exist or agree to any Security Interest over; or
- (c) attempt to do anything listed in clause 5.7(a) and 5.7(b) in respect of, any of the Mortgaged Property except to the extent expressly permitted by any Transaction Document.

### **5.8 Further security**

The Mortgagor must:

- (a) do anything which the Security Trustee reasonably requests, which:
  - (1) more satisfactorily mortgages or secures the priority of the Mortgage, or secures to the Security Trustee the Mortgaged Property in a manner consistent with any provision of any Transaction Document; or

- (2) aids in the exercise of any Power, including the execution of any document, the delivery of Title Documents or the execution and delivery of blank transfers;
- (b) when the Security Trustee requests, execute a legal mortgage in favour of the Security Trustee over any of the Mortgaged Property; and
- (c) use its best endeavours to register any mortgage executed under clause 5.8(b).

### **5.9 Title Documents for Certificated Securities**

- (a) The Mortgagor must deposit with the Security Trustee, or as the Security Trustee directs:
  - (1) all the Title Documents in respect of any of the Mortgaged Property which is a Certificated Security immediately on the Mortgagor's execution of this deed and immediately on acquisition of any asset which forms part of the Mortgaged Property and which is a Certificated Security; and
  - (2) transfers in a form and of substance acceptable to the Security Trustee, of such of the Mortgaged Property which constitutes Certificated Securities executed by the Mortgagor with the name of the transferee, the consideration and the date of transfer and execution left blank.
- (b) Subject to clause 5.9(c), the Security Trustee may retain the Title Documents and transfers until this Mortgage is discharged under clause 3.
- (c) If the Mortgage is enforced by the Security Trustee, the Security Trustee, Receiver or Attorney is entitled:
  - (1) to deal with the Title Documents and to complete any transfers as if it was the absolute and unencumbered owner of the Mortgaged Property to which the Title Documents relate; and
  - (2) in exercising a power of sale, to deliver any Title Document or transfers to a purchaser of the Mortgaged Property to which it relates.
- (d) While Title Documents for Mortgaged Property are, or in accordance with this deed, should be lodged with the Security Trustee, the Mortgagor must not elect to convert evidence of the Mortgaged Property from certificates to an uncertificated mode for the purposes of any automated transfer system operated by ASX Limited or for any other purpose.
- (e) If the Mortgagor makes any election referred to in clause 5.9(d), the Security Trustee may treat it as having no effect.

### **5.10 Irrevocable direction for Certificated Securities**

The Mortgagor must execute and deliver to the Security Trustee on the date of this deed (or before such later date as the Security Trustee may agree in writing) the document in the form and substance of Schedule 1 in respect of the Mortgaged Property which is constituted by Certificated Securities.

### **5.11 Uncertificated Securities**

- (a) Words and expressions which are defined in the ASX Settlement Operating Rules have the same meaning when used in this clause 5.11.
- (b) The Mortgagor must deposit with the Security Trustee, or as the Security Trustee directs, and immediately on execution of this deed or on acquisition, transfers of the Mortgaged Property constituted by Uncertificated Securities which:
  - (1) are executed by the Mortgagor, or the Controlling Participant;

- (2) leave the name of the transferee, the consideration and the date of transfer and execution blank;
  - (3) include the HIN (Holder Identification Number);
  - (4) include the PID (participant identifier) of the Sponsoring Participant.
- (c) If the Uncertificated Securities are held by the Nominee or any other person as a Direct Holding, cause the Nominee or that person to enter into a deed with the Mortgagor and the Security Trustee on terms satisfactory to the Security Trustee under which, among other things, the Nominee or that person agree not to deal with these Uncertificated Securities except as directed by the Security Trustee in writing.
- (d) If the Uncertificated Securities are not held in a Direct Holding cause the Sponsoring Participant of the Mortgagor to enter into a Sponsorship Agreement with the Mortgagor and the Security Trustee on terms satisfactory to the Security Trustee and that complies with the ASX Settlement Operating Rules under which, among other things, the Sponsoring Participant agrees not to deal with those Uncertificated Securities except as directed by the Security Trustee in writing.

### **5.12 Term of undertakings**

Each of the Mortgagor's undertakings in this clause 5 continues in full force and effect from the date of this deed until the Mortgage is discharged under clause 3.

## **6 Enforcement**

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### **6.1 When enforceable**

If an Event of Default occurs:

- (a) the Mortgage and each Collateral Security are immediately enforceable without the need for any demand or notice to be given to the Mortgagor or any other person;
- (b) the Secured Moneys are immediately due and payable without the need for any demand or notice to be given to the Mortgagor or any other person other than a notice expressly required by a Transaction Document; and
- (c) the right of the Mortgagor to deal, for any purpose, with any of the Mortgaged Property, other than by or through a Receiver appointed under this deed, immediately ceases without the need for any demand or notice to be given to the Mortgagor or any other person.

### **6.2 Assistance in realisation**

After the Mortgage has become enforceable, the Mortgagor must take all action required by the Security Trustee, Receiver or Attorney to assist any of them to realise the Mortgaged Property and exercise any Power including:

- (a) executing all transfers, conveyances, assignments and assurances of any of the Mortgaged Property;
- (b) doing anything necessary or desirable under the law in force in any place where the Mortgaged Property is situated; and
- (c) giving all notices, orders, directions and consents which the Security Trustee, Receiver or Attorney thinks expedient.



### 6.3 Postponing or delaying realisation or enforcement

The Security Trustee, a Receiver or Attorney may postpone or delay the exercise of any Power for such period as the Security Trustee, Receiver or Attorney may in its absolute discretion decide.

## 7 Receiver

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### 7.1 Appointment of Receiver

If an Event of Default occurs, the Security Trustee may:

- (a) appoint any person or any 2 or more persons jointly, or severally, or jointly and severally to be a receiver or a receiver and manager of the Mortgaged Property;
- (b) remove any Receiver and on the removal, retirement or death of any Receiver, appoint another Receiver; and
- (c) fix the remuneration and direct payment of that remuneration and any costs, charges and expenses of the Receiver out of the proceeds of any realisation of the Mortgaged Property.

### 7.2 Agency of Receiver

- (a) Subject to clause 7.5, each Receiver is the agent of the Mortgagor.
- (b) The Mortgagor is responsible for the acts, defaults and remuneration of the Receiver.

### 7.3 Powers of Receiver

Subject to any express exclusion by the terms of the Receiver's appointment, the Receiver has, in addition to any powers conferred on the Receiver by applicable law, and whether or not in possession of the Mortgaged Property or any part of it, the following powers:

- (a) **manage, possession or control:** to manage, take possession of Title Documents or assume control of any of the Mortgaged Property;
- (b) **sale:** to sell or concur in selling any of the Mortgaged Property to any person:
  - (1) by auction, private treaty or tender;
  - (2) on such terms and special conditions as the Security Trustee or the Receiver thinks fit;
  - (3) for cash or for a deferred payment of the purchase price, in whole or in part, with or without interest or security;
  - (4) in conjunction with the sale of any property by any other person; and
  - (5) in one lot or in separate parcels,

and to complete a share transfer in favour of the Security Trustee, or any other person designated by the Security Trustee;

- (c) **grant options to purchase:** to grant to any person an option to purchase any of the Mortgaged Property;
- (d) **acquire property:** to acquire any interest in any property, in the name or on behalf of the Mortgagor, which on acquisition forms part of the Mortgaged Property;
- (e) **borrowings and security:**

- (1) to raise or borrow any money, in its name or the name, or on behalf of the Mortgagor, from the Security Trustee or any person approved by the Security Trustee in writing; and
- (2) to secure money raised or borrowed under clause 7.3(e)(1) by a Security Interest over any of the Mortgaged Property, ranking in priority to, equal with, or after, the Mortgage or any Collateral Security;
- (f) **income and bank accounts:** to do anything to manage or obtain income from any of the Mortgaged Property including operating any bank account which forms part of the Mortgaged Property or opening and operating a new bank account;
- (g) **compromise:** to make or accept any compromise or arrangement;
- (h) **surrender Mortgaged Property:** to surrender or transfer any of the Mortgaged Property to any person;
- (i) **exchange Mortgaged Property:** to exchange with any person any of the Mortgaged Property for any other property whether of equal value or not;
- (j) **employ or discharge:** to employ or discharge any person as an employee, contractor, agent or professional advisor for any of the purposes of this deed;
- (k) **delegate:** to delegate to any person any Power of the Receiver;
- (l) **perform or enforce documents:** to observe, perform, enforce, exercise or refrain from exercising any right, power, authority, discretion or remedy of the Mortgagor under, or otherwise obtain the benefit of:
  - (1) any document, agreement or right which attaches to or forms part of the Mortgaged Property; and
  - (2) any document or agreement entered into in exercise of any Power by the Receiver;
- (m) **receipts:** to give receipts for all moneys and other assets which may come into the hands of the Receiver;
- (n) **take proceedings:** to commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of the Mortgagor, any proceedings including proceedings in relation to any insurance in respect of any of the Mortgaged Property;
- (o) **insolvency proceedings:** to make any debtor bankrupt, wind-up any company, corporation or other entity and do all things in relation to any bankruptcy or winding-up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
- (p) **execute documents:** to enter into and execute any document or agreement in the name of the Receiver or the name or on behalf of the Mortgagor for any of the purposes of this deed;
- (q) **rights:** to exercise any right, power, authority, discretion or remedy in respect of the Mortgaged Property including:
  - (1) any voting right or power;
  - (2) the acceptance of any rights issue or other Additional Right;
  - (3) proving in any liquidation, scheme of arrangement or other composition for or arrangement with a member or any secured or unsecured creditor and whether or not under an order of the court;
  - (4) consenting on behalf of the Mortgagor in respect of the proof referred to in clause 7.3(q)(3); and
  - (5) receiving all Distributions;

- (r) **ability of Mortgagor:** to do anything the Mortgagor could do in relation to the Mortgaged Property; and
- (s) **incidental power:** to do anything necessary or incidental to the exercise of any Power of the Receiver.

#### **7.4 Nature of Receiver's Powers**

The Powers of the Receiver must be construed independently and no one Power limits the generality of any other Power. Any dealing under any Power of the Receiver will be on the terms and conditions the Receiver thinks fit.

#### **7.5 Status of Receiver after commencement of winding up**

- (a) The power to appoint a Receiver under clause 7.1 may be exercised even if, at the time an Event of Default occurs or at the time when a Receiver is appointed, an order has been made or a resolution has been passed for the winding-up of the Mortgagor.
- (b) If for any reason, including operation of law, a Receiver:
  - (1) appointed in the circumstances described in clause 7.5(a); or
  - (2) appointed at any other time,

ceases to be the agent of the Mortgagor upon or by virtue of, or as a result of, an order being made or a resolution being passed for the winding-up of the Mortgagor, then the Receiver immediately becomes the agent of the Security Trustee.

#### **7.6 Powers exercisable by the Security Trustee**

- (a) Whether or not a Receiver is appointed under clause 7.1, the Security Trustee may, on or after the occurrence of an Event of Default and without giving notice to any person, exercise any Power of the Receiver in addition to any Power of the Security Trustee.
- (b) The exercise of any Power by the Security Trustee, Receiver or Attorney does not cause or deem the Security Trustee, Receiver or Attorney:
  - (1) to be a mortgagee in possession;
  - (2) to account as mortgagee in possession; or
  - (3) to be answerable for any act or omission for which a mortgagee in possession is liable.

#### **7.7 Set-off**

If any Event of Default is subsisting, the Security Trustee may apply any credit balance in any currency in any of the Mortgagor's accounts with the Security Trustee in and towards satisfaction of any of the Secured Moneys.

#### **7.8 Notice of exercise of rights**

The Security Trustee, Receiver or Attorney is not required:

- (a) to give notice of the Mortgage or any Collateral Security to any debtor or creditor of the Mortgagor or to any other person;
- (b) to enforce payment of any money payable to the Mortgagor including any of the debts or monetary liabilities charged by this deed or by any Collateral Security; or
- (c) to obtain the consent of the Mortgagor to any exercise of a Power.

## 7.9 Termination of receivership and possession

The Security Trustee may, at any time, terminate the appointment of a Receiver and may, at any time, give up, or re-take, possession of the Mortgaged Property.

## 8 Application and receipts of money

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### 8.1 Order of application

- (a) At any time after the Mortgage is enforceable, all money received by the Security Trustee, Receiver, Attorney or any other person acting on their behalf under this deed or any Collateral Security may be appropriated and applied towards any amount and in any order that the Security Trustee, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by law.
- (b) Failing a determination under clause 8.1(a), the money must be applied in the following manner and order:
- (1) first, in payment of all amounts which, to the extent required by law, have priority over the payments specified in the balance of this clause 8.1(b);
  - (2) second, in payment of all costs, charges and expenses (including any GST) of the Security Trustee, Receiver or Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any Power;
  - (3) third, in payment of any other outgoings the Security Trustee, Receiver or Attorney thinks fit to pay;
  - (4) fourth, in payment to the Receiver of his remuneration;
  - (5) fifth, in payment and discharge, in order of their priority, of any Security Interests of which the Security Trustee, Receiver or Attorney is aware and which have priority to the Mortgage;
  - (6) sixth, in payment to the Security Trustee towards satisfaction of the Secured Moneys and applied against interest, principal or any other amount the Security Trustee, Receiver or Attorney thinks fit;
  - (7) seventh, in payment only to the extent required by law, in order of their priority, of other Security Interests in respect of the Mortgaged Property of which the Security Trustee, Receiver or Attorney is aware and which are due and payable in accordance with their terms;
  - (8) eighth, in payment of the surplus, if any, without interest to the Mortgagor, and the Security Trustee, Receiver or Attorney may pay the surplus to the credit of an account in the name of the Mortgagor in the books of any bank carrying on business within Australia and having done so is under no further liability in respect of that surplus.

### 8.2 Money actually received

In applying any money towards satisfaction of the Secured Moneys the Mortgagor is to be credited only with so much of the money which is available for that purpose (after deducting any GST imposed) and which is actually received by the Security Trustee, Receiver or Attorney. The credit dates from the time of receipt.

**8.3 Amounts contingently due**

- (a) If at the time of a distribution of any money under clause 8.1 any part of the Secured Moneys is contingently owing to a Finance Party, the Security Trustee, Receiver or Attorney may retain an amount equal to the amount contingently owing or any part of it.
- (b) If the Security Trustee, Receiver or Attorney retains any amount under clause 8.3(a), it must place that amount on short-term interest bearing deposit until the amount contingently owing becomes actually due and payable or otherwise ceases to be contingently owing at which time the Security Trustee, Receiver or Attorney must:
- (1) pay to the Security Trustee the amount which has become actually due to it; and
  - (2) apply the balance of the amount retained, together with any interest on the amount contingently owing, in accordance with clause 8.1.

**8.4 Notice of a Security Interest**

- (a) If the Security Trustee receives actual or constructive notice of a Security Interest over the Mortgaged Property or of the Perfection of a Security Interest, the Security Trustee:
- (1) may open a new account in the name of the Mortgagor in its books; or
  - (2) is regarded as having opened a new account in the name of the Mortgagor in its books,
- on the date it received or was regarded as having received notice of the Security Interest or Perfection.
- (b) From the date on which that new account is opened or regarded as opened:
- (1) all payments made by the Mortgagor to the Security Trustee; and
  - (2) all financial accommodation and advances by the Security Trustee to the Mortgagor,
- are or are regarded as credited and debited, as the case may be, to the new account unless otherwise specified by the Security Trustee.
- (c) The payments by the Mortgagor under clause 8.4(b) must be applied in the manner determined by the Security Trustee or, failing a determination:
- (1) first, in reduction of the debit balance, if any, in the new account; and
  - (2) second, if there is no debit balance in the new account, in reduction of the Secured Moneys which have not been debited or regarded as debited to the new account.

**8.5 Security Trustee's statement of indebtedness**

A certificate signed by any Officer of the Security Trustee stating:

- (a) the amount of the Secured Moneys due and payable; or
  - (b) the amount of the Secured Moneys, whether currently due and payable or not,
- is sufficient evidence of that amount as at the date stated on the certificate, or failing that as at the date of the certificate, unless the contrary is proved.

## **8.6 Security Trustee's receipts**

- (a) The receipt of any Officer of the Security Trustee for any money payable to or received by the Security Trustee under this deed exonerates the payer from all liability to enquire whether any of the Secured Moneys have become payable.
- (b) Every receipt of an Officer of the Security Trustee effectually discharges the payer from:
  - (1) any future liability to pay the amount specified in the receipt; and
  - (2) being concerned to see to the application of, or being answerable or accountable for any loss or misapplication of, the amount specified in the receipt.

## **8.7 Conversion of currencies on application**

In making an application under clause 8.1, the Security Trustee, Receiver or Attorney may itself, or through its bankers, purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the times it thinks fit.

## **8.8 Amounts payable on demand**

If an amount payable under a Transaction Document is not expressed to be payable on a specified date, that amount is payable by the Mortgagor on demand by the Security Trustee.

# **9 Power of Attorney**

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## **9.1 Appointment of Attorney**

In consideration of the Security Trustee entering into the Transaction Documents and for other consideration received, the Mortgagor irrevocably appoints the Security Trustee and each Receiver severally its Attorney for the purposes set out in clause 9.2.

## **9.2 Purposes of appointment**

The Attorney may, in its name or in the name of the Mortgagor, Security Trustee or Receiver, do any of the following:

- (a) do any thing which ought to be done by the Mortgagor under this deed;
- (b) do any thing which ought to be done by the Mortgagor in respect of the Mortgaged Property under this deed or a Transaction Document;
- (c) exercise any right, power, authority, discretion or remedy of the Mortgagor under:
  - (1) this deed;
  - (2) any other Transaction Document; or
  - (3) any agreement forming part of the Mortgaged Property;
- (d) do any thing which in the opinion of the Security Trustee, Receiver or Attorney is necessary or expedient for securing or perfecting the Mortgage and any Collateral Security;
- (e) execute in favour of the Security Trustee any legal mortgage, transfer, assignment and any other assurance of any of the Mortgaged Property;

- (f) execute deeds of assignment, composition or release;
- (g) do all things necessary to enable a transfer to be registered in favour of the Security Trustee, its nominee or any other person as the Security Trustee directs and deliver any Title Documents as the Security Trustee directs;
- (h) sell or otherwise part with the possession of any of the Mortgaged Property; and
- (i) generally, do any other thing, whether or not of the same kind as those set out in clause 9.2(a) to (h), which in the opinion of the Security Trustee, Receiver or Attorney is necessary or expedient:
  - (1) to more satisfactorily secure to the Security Trustee the payment of the Secured Moneys; or
  - (2) in relation to any of the Mortgaged Property.

### **9.3 Exercise after Event of Default**

An Attorney must not exercise any Power under clause 9.2 until an Event of Default occurs but a breach of this clause 9.3 does not affect the validity of the Attorney's act.

### **9.4 Delegation and substitution**

The Attorney may appoint a substitute attorney.

## **10 Protection**

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### **10.1 Protection of third parties**

- (a) No person dealing with the Security Trustee, Receiver or Attorney is bound to enquire whether:
  - (1) the Mortgage has become enforceable;
  - (2) the Receiver or Attorney is duly appointed; or
  - (3) any Power has been properly or regularly exercised.
- (b) No person dealing with the Security Trustee, Receiver or Attorney is affected by express notice that the exercise of any Power was unnecessary or improper.
- (c) The irregular or improper exercise of any Power is, as regards the protection of any person, regarded as authorised by the Mortgagor and this deed, and is valid.

### **10.2 Protection of the Security Trustee, Receiver and Attorney**

- (a) The Security Trustee, Receiver or Attorney is not liable for any loss or damage, including consequential loss or damage, arising directly or indirectly from:
  - (1) any omission or delay in the exercise or non-exercise of any Power; or
  - (2) the neglect, default or dishonesty of any manager, Officer, employee, agent, accountant, auctioneer or solicitor of the Mortgagor, the Security Trustee, the Receiver or Attorney.
- (b) Clause 10.2(a) does not apply:
  - (1) in respect of the Security Trustee, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Security Trustee; and

- (2) in respect of a Receiver or Attorney, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Receiver or Attorney.

## 11 Saving provisions

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### 11.1 Statutory powers

- (a) The powers of the Security Trustee under this deed or any Collateral Security are in addition to any powers the Security Trustee has under applicable law.
- (b) To the extent not prohibited by law, before enforcing this deed or any Collateral Security, or exercising any Power, the Security Trustee is not required to give any notice or allow the expiration of any time to any person.
- (c) If a law which requires a period of notice to be given cannot be excluded, but that law allows the period to be specified or changed, then that period of time is one day.

### 11.2 Continuing security

The Mortgage is a continuing security despite:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,
- and remains in full force and effect until the Security Trustee has given a discharge of the Mortgage in respect of all the Mortgaged Property under clause 3.

### 11.3 No merger of security

- (a) Nothing in this deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
- (1) any Security Interest or indemnity in favour of the Security Trustee contained in any Transaction Document; or
- (2) any Power.
- (b) No other Security Interest or Transaction Document which a Finance Party has the benefit of in any way prejudicially affects any Power.

### 11.4 Exclusion of moratorium

To the extent not excluded by law, a provision of any legislation which directly or indirectly:

- (a) lessens or otherwise varies or affects in favour of the Mortgagor any obligations under this deed or any Transaction Document; or
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by the Security Trustee, Receiver or Attorney of any Power,
- is negated and excluded from this deed and any Transaction Document and all relief and protection conferred on the Mortgagor by or under that legislation is also negated and excluded.



**11.5 Conflict**

Where any right, power, authority, discretion or remedy of the Security Trustee, Receiver or an Attorney under this deed or any Transaction Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

**11.6 Consent of Security Trustee**

- (a) Whenever the doing of any thing by the Mortgagor is dependent upon the consent of the Security Trustee, the Security Trustee may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Transaction Document.
- (b) Any conditions imposed on the Mortgagor under clause 11.6(a) must be complied with by the Mortgagor.

**11.7 Completion of blank securities**

At any time after the Mortgage has become enforceable, the Security Trustee, Receiver, Attorney or any Officer of the Security Trustee may complete, in favour of the Security Trustee, any appointee of the Security Trustee or any purchaser, any instrument executed in blank by or on behalf of the Mortgagor and deposited with the Security Trustee as security under this deed or any Collateral Security.

**11.8 Principal obligations**

The Mortgage and each Collateral Security is:

- (a) a principal obligation and is not ancillary or collateral to any other Security Interest (other than another Collateral Security) or other obligation; and
- (b) independent of, and unaffected by, any other Security Interest or other obligation which the Security Trustee may hold at any time in respect of the Secured Moneys.

**11.9 No obligation to marshal**

Before the Security Trustee enforces the Mortgage, it is not required, to marshal or to enforce or apply under, or appropriate, recover or exercise:

- (a) any Security Interest or Collateral Security held, at any time, by the Security Trustee; or
- (b) any moneys or assets which the Security Trustee, at any time, holds or is entitled to receive.

**11.10 Non-avoidance**

If any payment by the Mortgagor to a Finance Party is at any time avoided for any reason including any legal limitation, disability or incapacity of or affecting the Mortgagor or any other thing, and whether or not:

- (a) any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of a Finance Party, the Mortgagor:
- (c) as an additional, separate and independent obligation, indemnifies the Security Trustee against that avoided payment; and

- (d) acknowledges that any liability of the Mortgagor under the Transaction Documents and any Power is the same as if that payment had not been made.

### **11.11 Increase in financial accommodation**

The a Finance Party may at any time increase the financial accommodation provided under any Transaction Document or otherwise provide further financial accommodation.

### **11.12 Suspense account**

- (a) The Security Trustee may apply to the credit of a suspense account:
- (1) any amounts received under this deed;
  - (2) any dividends, distributions or other amounts received in respect of the Secured Moneys in any liquidation;
  - (3) any other amounts received from any Transaction Party or any other person in respect of the Secured Moneys.
- (b) The Security Trustee may retain the amounts in the suspense account for as long as it determines and is not obliged to apply them in or towards satisfaction of the Secured Moneys.

## **12 Third party provisions**

---

### **12.1 Independent obligations**

This deed is enforceable against the Mortgagor:

- (a) without first having recourse to any Collateral Security;
- (b) whether or not the Security Trustee or any other person has:
- (1) made demand on any Transaction Party other than the Mortgagor;
  - (2) given notice to any Transaction Party (other than the Mortgagor) or any other person in respect of any thing; or
  - (3) taken any other steps against any Transaction Party (other than the Mortgagor) or any other person;
- (c) whether or not any Secured Moneys is then due and payable; and
- (d) despite the occurrence of any event described in clause 12.2.

### **12.2 Unconditional nature of obligations**

- (a) The Mortgage and the obligations of the Mortgagor under the Transaction Documents are absolute, binding and unconditional in all circumstances.
- (b) The Mortgage and the obligations of the Mortgagor under the Transaction Documents are not released or discharged or otherwise affected by anything which but for this provision might have that effect, including:
- (1) the grant to any Transaction Party or any other person of any time, waiver, covenant not to sue or other indulgence;
  - (2) the release (including a release as part of any novation) or discharge of any Transaction Party or any other person;

- (3) the cessation of the obligations, in whole or in part, of any Transaction Party or any other person under any Transaction Document or any other document or agreement;
- (4) the liquidation of any Transaction Party or any other person;
- (5) any arrangement, composition or compromise entered into by a Finance Party, any Transaction Party or any other person;
- (6) any Transaction Document or any other document or agreement being in whole or in part illegal, void, voidable avoided, unenforceable or otherwise of limited force or effect;
- (7) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compounding, composition or compromise, in whole or in part of any Transaction Document or any other document or agreement;
- (8) any Collateral Security being given to a Finance Party or any other person by any Transaction Party or any other person;
- (9) any alteration, amendment, variation, supplement, renewal or replacement of any Transaction Document or any other document or agreement or any increase in the limit or maximum principal amount available under the Transaction Documents;
- (10) any moratorium or other suspension of any Power;
- (11) a Finance Party, Receiver or Attorney exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce any Power;
- (12) a Finance Party obtaining a judgment against any Transaction Party or any other person for the payment of any of the Secured Moneys;
- (13) any transaction, agreement or arrangement that may take place with a Finance Party, any Transaction Party or any other person;
- (14) any payment to a Finance Party, Receiver or Attorney, including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (15) any failure to give effective notice to any Transaction Party or any other person of any default under any Transaction Document or any other document or agreement;
- (16) any legal limitation, disability or incapacity of any Transaction Party or of any other person;
- (17) any breach of any Transaction Document or any other document or agreement;
- (18) the acceptance of the repudiation of, or termination of, any Transaction Document or any other document or agreement;
- (19) any Secured Moneys being irrecoverable for any reason;
- (20) any disclaimer by any Transaction Party or any other person of any Transaction Document or any other document or agreement;
- (21) any assignment, novation, assumption or transfer of, or other dealing with, any Powers or any other rights or obligations under any Transaction Document or any other document or agreement;
- (22) the opening of a new account of any Transaction Party with a Finance Party or any transaction on or relating to the new account;

- (23) any prejudice (including material prejudice) to any person as a result of any thing done, or omitted by a Finance Party, any Transaction Party or any other person;
  - (24) any prejudice (including material prejudice) to any person as a result of a Finance Party, Receiver, Attorney or any other person selling or realising any property the subject of a Collateral Security at less than the best price;
  - (25) any prejudice (including material prejudice) to any person as a result of any failure or neglect by a Finance Party, Receiver, Attorney or any other person to recover the Secured Moneys from any Transaction Party or by the realisation of any property the subject of a Collateral Security; or
  - (26) any prejudice (including material prejudice) to any person as a result of any other thing;
  - (27) the receipt by a Finance Party of any dividend, distribution or other payment in respect of any liquidation;
  - (28) the capacity in which a Transaction Party executed a Transaction Document not being the capacity disclosed to the Security Trustee before the execution of the Transaction Document;
  - (29) the failure of any other Transaction Party or any other person to execute any Transaction Document or any other document; or
  - (30) any other act, omission, matter or thing whether negligent or not.
- (c) Clauses 12.2(a) and (b) apply irrespective of:
- (1) the consent or knowledge or lack of consent or knowledge, of a Finance Party, any Transaction Party or any other person of any event described in clause 12.2(b) (and the Mortgagor irrevocably waives any duty on the part of a Finance Party to disclose such information); or
  - (2) any rule of law or equity to the contrary.

### **12.3 No competition**

- (a) Until the Secured Moneys have been fully paid and the Mortgage has been finally discharged under clause 3, the Mortgagor is not entitled to:
- (1) be subrogated to a Finance Party;
  - (2) claim or receive the benefit of any Security Interest, Guarantee (including any Transaction Document) or other document or agreement of which a Finance Party has the benefit or of any moneys held by a Finance Party or of any Power;
  - (3) either directly or indirectly prove in, claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the liquidation of any Transaction Party except in accordance with clause 12.3(b);
  - (4) make a claim or exercise or enforce any right, power or remedy (including under a Security Interest or Guarantee or by way of contribution) against any Transaction Party liable to pay the Secured Moneys or against any asset of any such Transaction Party, whether such right, power or remedy arises under or in connection with this deed, any other Transaction Document or otherwise;
  - (5) accept, procure the grant of, or allow to exist any Security Interest in favour of the Mortgagor from any Transaction Party liable to pay the Secured Moneys;
  - (6) exercise or attempt to exercise any right of set-off against, nor realise any Security Interest taken from, any Transaction Party liable to pay the Secured Moneys; or

- (7) raise any defence or counterclaim in reduction or discharge of its obligations under the Transaction Documents.
- (b) If required by the Security Trustee, the Mortgagor must prove in any liquidation of a Transaction Party liable to pay the Secured Moneys for all moneys owed to the Mortgagor.
- (c) The Mortgagor must not do or seek, attempt or purport to do anything referred to in clause 12.3(a).

## 13 General

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### 13.1 Performance by Security Trustee of the Mortgagor's obligations

If the Mortgagor defaults in fully and punctually performing any obligation contained or implied in any Transaction Document, the Security Trustee may, without prejudice to any Power, do all things necessary or desirable, in the opinion of the Security Trustee, to make good or attempt to make good that default to the satisfaction of the Security Trustee.

### 13.2 Mortgagor to bear cost

Any thing which must be done by the Mortgagor under this deed, whether or not at the request of the Security Trustee, must be done at the cost of the Mortgagor.

### 13.3 Notices

Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be given in accordance with the notice requirements of the Convertible Note Agreement.

### 13.4 Notices under the PPS Law

The Mortgagor waives and will cause each Transaction Party to waive to the extent permitted by the PPS Law its right to receive any notice of a Verification Statement or any other notice the Security Trustee is required to give under the PPS Law.

### 13.5 Governing law and jurisdiction

- (a) This deed is governed by the laws of Victoria.
- (b) The Mortgagor irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.
- (c) The Mortgagor irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) The Mortgagor irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.
- (e) The Mortgagor appoints Paradise Phosphate Pty Ltd of Level 8, 580 St Kilda Road, Melbourne VIC 3004 in relation to proceedings in Australia as its agent to receive service of any legal process on its behalf without excluding any other means of service permitted by the law of the relevant jurisdiction.

**13.6 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, any Transaction Document or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, any Transaction Document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

**13.7 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (2) a Power created or arising upon default under this deed or upon the occurrence of an Event of Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

**13.8 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

**13.9 Cumulative rights**

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Security Trustee, Receiver or Attorney.

**13.10 Assignment**

- (a) Subject to any Transaction Document, the Security Trustee may assign its rights under this deed and each Collateral Security without the consent of the Mortgagor.
- (b) The Mortgagor may not assign any of its rights under this deed or any Collateral Security without the prior written consent of the Security Trustee.

**13.11 Counterparts**

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this deed by signing any counterpart.

**13.12 Attorneys**

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

Irrevocable direction from Mortgagor

---

**Clause 5.10 (Irrevocable direction)**

[Letterhead of Mortgagor]

[Insert date]

The Share Registrar

[Insert name and address of company in which the shares are held] **(Company)**

Dear Sir

We refer to the [insert description of shares - number; type] shares (**Shares**) which we acquired in the Company on [insert date].

Under section 1071H of the Corporations Act you are irrevocably directed to deliver to [insert name of Mortgagee] (at [insert address of Mortgagee], Attention: [insert details of to whose attention the share scrip should be delivered]) all certificates and other documents of title in relation to the Shares, and any shares, debentures or interests issued or made available in relation to the Shares.

Yours faithfully  
for and on behalf of  
[insert name of Mortgagor]

---

Attorney/Director

print name \_\_\_\_\_



Executed as a deed

---

**Mortgagor**

Signed sealed and delivered by  
**Legend International Holdings, Inc**  
by

*sign here* ▶ /s/ J I Gutnick

*print name* J I Gutnick

*sign here* ▶ /s/ P J Lee

*print name* P J Lee

---

**Security Trustee**

Signed sealed and delivered for and on behalf of  
**Acorn Capital Limited**  
by

*sign here* ▶ /s/ M Sheehan  
Company Secretary/Director

*print name* M Sheehan

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

**Deed**

# **General Security Agreement**

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Paradise Phosphate Pty Limited  
(as **Grantor**)

Acorn Capital Limited  
(as **Security Trustee**)

**Freehills**

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GPO Box 3124 Brisbane Qld 4001 Australia

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Associated offices in Jakarta Beijing Shanghai Hanoi Ho Chi Minh City

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## General Security Agreement

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Date ▶ **7 February 2012**

Between the parties

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Grantor	<b>Paradise Phosphate Pty Ltd</b> ACN 154 180 882 of Level 8, 580 St Kilda Road, Melbourne VIC 3004 <b>(Grantor)</b>
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Security Trustee	<b>Acorn Capital Limited</b> ACN 082 694 531 of Level 12, 90 Collins Street, Melbourne Vic 3000 <b>(Security Trustee)</b>
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Recitals	<ol style="list-style-type: none"><li>1 The Grantor is, or will be, the legal and beneficial owner of the Secured Property.</li><li>2 The Grantor has agreed to create the Security to secure the payment of the Secured Moneys.</li></ol>
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This deed witnesses	that, for valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:
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# 1 Definitions, interpretation and deed components

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## 1.1 Definitions

The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Accession</b>	has the meaning set out in the PPSA.
<b>Account</b>	has the meaning set out in the PPSA.
<b>After-Acquired Property</b>	has the meaning set out in the PPSA.
<b>Assigned Property</b>	all of the Grantor's present and future Accounts and any other present or future right to payment.
<b>Attorney</b>	an attorney appointed under this any Transaction Document.
<b>Charged Property</b>	all of the Grantor's present and future real and personal property, including: <ol style="list-style-type: none"><li>1 the Mining Rights, any environmental authorities in connection with any Mining Rights and the Mining Information;</li><li>2 goodwill;</li><li>3 uncalled and called but unpaid capital; and</li><li>4 all of the Grantor's rights in the PPSA Retention of Title Property, excluding the Assigned Property to the extent assigned and transferred under clause 2.1(b).</li></ol>
<b>Collateral Security</b>	any present or future Security Interest, Guarantee or other document or agreement created or entered into by the Grantor, a Transaction Party or any other person as security for, or to credit enhance, the payment of any of the Secured Moneys.
<b>Commingled</b>	has the meaning set out in the PPSA.
<b>Contested Tax</b>	a Tax payable by the Grantor where the Grantor is contesting its liability to pay that Tax in good faith and has reasonable grounds to do so.

<b>Term</b>	<b>Meaning</b>
<b>Control</b>	control as defined in section 50AA of the Corporations Act.
<b>Controlled Account</b>	a bank account opened by the Grantor in accordance with clause 2.6.
<b>Control Event</b>	<ol style="list-style-type: none"><li>1 in respect of all of the Secured Property:<ul style="list-style-type: none"><li>• a Receiver or any other receiver or receiver and manager is appointed in respect of any of the Secured Property;</li><li>• the Security or any other Security Interests over any of the Secured Property is enforced in any other way; or</li><li>• an order is made or a resolution is passed for the liquidation of the Grantor;</li></ul></li><li>2 in respect of a particular asset of the Secured Property:<ul style="list-style-type: none"><li>• the Grantor breaches clause 5.3 in respect of the asset;</li><li>• any step is taken to issue, levy or enforce any distress, attachment, execution or other process against or on that asset;</li><li>• any Security Interest over that asset is, or becomes capable of being, enforced or any other event occurs under a Security Interest over that asset which results in the Grantor ceasing to be entitled to deal with that asset under the terms of any Security Interest;</li><li>• a notice which affects that asset is issued, signed or given under Subdivision 260-A of Schedule 1 of the <i>Taxation Administration Act 1953</i> (Cth) by, or on behalf of, the Commissioner of Taxation or the Deputy Commissioner of Taxation, or under any similar legislation;</li><li>• any thing occurs which may result in any amounts, including Tax or moneys owing to employees, ranking ahead of the Security with respect to that asset;</li><li>• which is the proceeds of any Assigned Property, the Security Trustee gives a notice to the Grantor stating that a Control Event has occurred in relation to those proceeds; or</li><li>• the Security Trustee gives a notice in respect of that asset to the Grantor upon or any time after the occurrence of an Event of Default stating that a Control Event has occurred in relation to that asset.</li></ul></li></ol>
<b>Controller</b>	a controller as defined in section 9 of the Corporations Act.
<b>Convertible Note Agreement</b>	the convertible note agreement dated on or around the date of this deed between Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1, Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2, Legend and the Grantor.
<b>debt</b>	includes debts owing by a bank or other financial institution, including in relation to a current trading account.



<b>Term</b>	<b>Meaning</b>
<b>Default</b>	<ol style="list-style-type: none"><li>1 an Event of Default; or</li><li>2 a Potential Event of Default.</li></ol>
<b>Designated Bank</b>	the bank with which a Controlled Account is maintained.
<b>Distribution</b>	any dividend, distribution or other amount declared or paid by the Grantor on any Marketable Security issued by it.
<b>Dollars, A\$ and \$</b>	the lawful currency of the Commonwealth of Australia.
<b>Excluded Tax</b>	a Tax imposed by any jurisdiction on the net income of the Security Trustee.
<b>Finance Party</b>	<ol style="list-style-type: none"><li>1 the Noteholders;</li><li>2 the Nominee; and</li><li>3 the Security Trustee.</li></ol>
<b>Guarantee</b>	<p>any guarantee, suretyship, letter of credit, letter of comfort or any other obligation:</p> <ol style="list-style-type: none"><li>1 to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;</li><li>2 to indemnify any person against the consequences of default in the payment of; or</li><li>3 to be responsible for,</li></ol> <p>any debt or monetary liability or obligation (whether or not it involves the payment of money) of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.</p>
<b>Investment Instrument</b>	has the meaning set out in the PPSA.
<b>Loss</b>	any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment.
<b>Mining Information</b>	all information in the possession or under the control of the Grantor regarding the Mining Rights, including original source, geological, drill cores, studies and development data and analysis, samples and physical or electronic records, plans, maps, reports, records, approvals and documents.

<b>Term</b>	<b>Meaning</b>
<b>Mining Rights</b>	has the meaning set out in the Convertible Note Agreement.
<b>Negotiable Instrument</b>	has the meaning set out in the PPSA.
<b>Officer</b>	<ol style="list-style-type: none"><li>1 in relation to the Grantor, a director or a secretary, or a person notified to be an authorised officer of the Grantor;</li><li>2 in relation to the Security Trustee, any person whose title includes the word 'Director', 'Managing Director', 'Manager' or 'Vice President', and any other person appointed by the Security Trustee to act as its authorised officer for the purposes of this deed; and</li><li>3 in relation to a Receiver or an Attorney which is a corporation, any officer, as that expression is defined in section 9 of the Corporations Act, of that Receiver or Attorney.</li></ol>
<b>Payment Currency</b>	the currency in which any payment is actually made.
<b>Permitted Caveats</b>	each caveat in favour of Real Grumpy Pty Ltd or Ernst Alfred Kohler in respect of the royalty agreement in connection with the Mining Rights existing as at the date of this deed.
<b>Potential Event of Default</b>	any thing which would become an Event of Default on the giving of notice (whether or not notice is actually given), the expiry of time, the satisfaction or non-satisfaction of any condition, or any combination of the above.
<b>Power</b>	any right, power, authority, discretion or remedy conferred on the Security Trustee, a Receiver or an Attorney by any Transaction Document or any applicable law.
<b>PPSA Regulations</b>	the regulations made under the PPSA.
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPSA Retention of Title Property</b>	all present and future PPSA retention of title property of the Grantor as defined in section 51F of the Corporations Act.
<b>PPSA Secured Party</b>	a secured party as defined in the PPSA.
<b>PPSA Security Interest</b>	a security interest as defined in the PPSA.

<b>Term</b>	<b>Meaning</b>
<b>Receiver</b>	a receiver or receiver and manager appointed under this deed.
<b>Relevant Currency</b>	the currency in which a payment is required to be made under the Transaction Documents and, if not expressly stated to be another currency, is Dollars.
<b>Secured Moneys</b>	<p>all debts and monetary liabilities of:</p> <ol style="list-style-type: none"><li>1 the Grantor to a Finance Party on any account and in any capacity; and</li><li>2 each Transaction Party (other than the Grantor) to a Finance Party on any account and in any capacity,</li></ol> <p>irrespective of whether the debts or liabilities:</p> <ol style="list-style-type: none"><li>3 are present or future;</li><li>4 are actual, prospective, contingent or otherwise;</li><li>5 are at any time ascertained or unascertained;</li><li>6 are owed or incurred by or on account of the Grantor or another Transaction Party alone, or severally or jointly with any other person;</li><li>7 are owed to or incurred for the account of a Finance Party alone, or severally or jointly with any other person;</li><li>8 are owed to any other person as agent (whether disclosed or not) for or on behalf of a Finance Party;</li><li>9 are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;</li><li>10 are owed to or incurred for the account of a Finance Party directly or as a result of:<ul style="list-style-type: none"><li>• the assignment or transfer to a Finance Party of any debt or liability of the Grantor or another Transaction Party; or</li><li>• any other dealing with any such debt or liability;</li></ul></li><li>11 are owed to or incurred for the account of a Finance Party before the date of this deed, or before the date of any assignment of this deed to a Finance Party by any other person or otherwise; or</li><li>12 comprise any combination of the above.</li></ol>
<b>Secured Property</b>	the Charged Property and the Assigned Property.
<b>Security</b>	the security created or expressed to be created by this deed.
<b>Security Trust</b>	the "Paradise Phosphate Security Trust" as constituted under the Security Trust Deed.

<b>Term</b>	<b>Meaning</b>
<b>Security Trust Deed</b>	the security trust deed dated on or about the date of this deed between the Grantor and others and the Security Trustee as security trustee constituting the Security Trust.
<b>Tax Invoice</b>	includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.
<b>Title Document</b>	any original, duplicate or counterpart certificate or document of title including any real property certificate of title, a certificate of units in a unit trust, share certificate or certificate evidencing an Investment Instrument or Negotiable Instrument.
<b>Transaction Document</b>	<ol style="list-style-type: none"><li>1 this deed;</li><li>2 each Collateral Security;</li><li>3 the Security Trust Deed;</li><li>4 the Convertible Note Agreement; and</li><li>5 any other Transaction Document as defined in the Convertible Note Agreement,</li></ol> or any document or agreement entered into or given under any of the above.
<b>Transaction Party</b>	<ol style="list-style-type: none"><li>1 the Grantor;</li><li>2 Legend or</li><li>3 any other Transaction Party as defined in a Transaction Document.</li></ol>

## 1.2 Interpretation

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation.

- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A promise on the part of 2 or more persons binds them jointly and severally.
- (l) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) A reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits.
- (n) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (o) A reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind.
- (p) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.
- (q) A reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (r) References to time are to Melbourne time.
- (s) Where this deed confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.
- (t) An Event of Default is 'continuing' or 'subsisting' if it has not been:
  - (1) remedied to the satisfaction of the Security Trustee before a Power relating to that Event of Default is exercised; or
  - (2) waived in writing by the Security Trustee.

### **1.3 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

**1.4 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

**1.5 Convertible Note Agreement incorporated definitions**

A word or phrase (other than one defined in clauses 1.1) defined in the Convertible Note Agreement has the same meaning in this deed.

**1.6 Security Trust Deed**

This deed is a 'Security' and a 'Transaction Document' for the purposes of the Security Trust Deed.

**1.7 Capacity of Security Trustee**

The Security Trustee enters into this deed as security trustee under the Security Trust Deed. Clause 1.4 of the Security Trust Deed is incorporated in this deed as if set out in full.

**2 Security**

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**2.1 Security**

As security for the due and punctual payment of the Secured Moneys, the Grantor:

- (a) charges all the Charged Property to the Security Trustee;
- (b) assigns and transfers all the Assigned Property to the Security Trustee; and
- (c) charges all the PPSA Retention of Title Property to the Security Trustee.

**2.2 Description of Secured Property**

The Security Trustee takes a PPSA Security Interest in all of the Grantor's present and after-acquired property within the meaning of section 20(2)(b)(ii) of the PPSA.

**2.3 Priority**

- (a) The parties intend that the Security take priority over all other Security Interests and other interests in the Secured Property at any time other than any Permitted Security Interest mandatorily preferred by law.
- (b) Nothing in this deed will be construed as an agreement by the Security Trustee to subordinate the Security to any other Security Interest or interest affecting the Secured Property at any time.

**2.4 Nature of charge**

- (a) The charge under clauses 2.1(a) and 2.1(c) is a fixed charge.
- (b) To the extent that the charge fails to take effect as a fixed charge in relation to any asset forming part of the Charged Property or the PPSA Retention of Title Property then it takes effect as a floating charge in relation to the asset which

automatically and immediately crystallises and becomes fixed if a Control Event occurs in relation to that asset.

## **2.5 Collection of proceeds of Assigned Property**

The Grantor may collect as agent for the Security Trustee for this purpose the proceeds of any Assigned Property subject to using those proceeds as permitted under the Transaction Documents.

## **2.6 Controlled Account**

- (a) The Security Trustee may require the Grantor to open and maintain a bank account at a bank and branch approved by the Security Trustee on terms that:
- (1) nominated Officers of the Security Trustee must be signatories to the Controlled Account;
  - (2) no withdrawals can be made from the Controlled Account without the signature of one of those Officers;
  - (3) funds may be disposed of from the Controlled Account at the direction of the Security Trustee without further consent by the Grantor; and
  - (4) depositing an amount in the Controlled Account will not result in any person coming under a present liability (within the meaning of section 341(3)(d) of the PPSA) to pay:
    - the Grantor; or
    - a Related Body Corporate of the Grantor.
- (b) If the Security Trustee is not the Designated Bank, the Grantor must cause the Designated Bank to enter into an agreement between the Designated Bank, the Grantor and the Security Trustee in form and substance satisfactory to the Security Trustee in which the Designated Bank agrees that:
- (1) it will comply with and give effect to the terms set out in clause 2.6(a);
  - (2) it has no Security Interest or other interest in the Controlled Account and it waives all rights of set-off and combination in respect of the Controlled Account;
  - (3) if despite clause 2.6(b)(2) it has any Security Interest or other interest in the Controlled Account, that Security Interest or other interest is subordinated in right and priority of payment to the Security Trustee's Security Interest or other interest and will not be exercised without the Security Trustee's consent; and
  - (4) it agrees that the laws specified in clause 15.5(b) will govern the Security Trustee's PPSA Security Interest in the Controlled Account.

## **2.7 Proceeds**

- (a) If a Control Event occurs in respect of the relevant proceeds, the Grantor must immediately and until notified otherwise by the Security Trustee deposit in the Controlled Account any proceeds the Grantor receives in respect of any Account, insurance policy in relation to the Secured Property or any other Assigned Property.
- (b) Clause 2.7(a) does not apply to proceeds received from any workers' compensation or public liability policy or reinstatement policy to the extent that the proceeds are paid to a person:

- (1) entitled to be compensated under the workers' compensation or public liability policy; or
- (2) under a contract for the reinstatement of the Secured Property.
- (c) The Grantor must give all notices and directions and execute all necessary documents as requested by the Security Trustee to ensure clause 2.7(a) is complied with.
- (d) A Power created under this clause 2.7 is not waived by any failure or delay in exercise, or by the partial exercise, of that Power.

## **2.8 Inventory**

- (a) The Grantor specifically appropriates to the Security and to the Security Trustee's benefit all inventory which forms part of the Secured Property at any time other than any asset acquired by the Grantor for disposal in the ordinary course of the ordinary business of the Grantor.
- (b) The Grantor must not remove or deal with any Secured Property appropriated to the Security under clause 2.8(a) without previously obtaining the specific and express authority of the Security Trustee to do so.

## **2.9 Authorisation**

- (a) The Grantor must ensure that it obtains all Authorisations necessary to permit the grant of the Security in respect of any asset before it acquires any rights in that asset.
- (b) Without limiting clauses 2.9(a) and 15.6, if the grant of the Security in respect of an asset would invalidate, avoid or render ineffective the Security, whether in respect of that asset only or otherwise then that asset is excluded from the Security, but only for so long as that effect prevails.
- (c) If the Security could be granted in respect of an asset referred to in clause 2.9(b) without clause 2.9(b) applying if an Authorisation was obtained or other action taken, the Grantor must promptly obtain that Authorisation or take that action.

# **3 Discharge of the Security**

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## **3.1 Discharge**

Subject to clause 3.2, at the written request of the Grantor, the Security Trustee must discharge the Security and reassign and retransfer to the Grantor its right and interest in the Assigned Property if:

- (a) the Secured Moneys have been paid in full; and
- (b) the Grantor and each other Transaction Party has fully observed and performed its respective obligations under this deed and each other Transaction Document.

## **3.2 Final discharge**

- (a) The Security Trustee is not obliged to discharge the Security under clause 3.1 if, at the time the requirements of clause 3.1 are satisfied, the Security Trustee



is of the opinion that the Grantor or any other Transaction Party owes further Secured Moneys contingently or otherwise to the Security Trustee; or

- (b) Clause 3.2(a) overrides any other clause to the contrary in this deed.

## 4 Representations and warranties

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### 4.1 Representations and warranties

The Grantor represents and warrants to and for the benefit of the Security Trustee that:

- (a) **representations true:** each of its representations and warranties contained in the Transaction Documents is correct and not misleading when made or repeated;
- (b) **legal and beneficial owner:** it is the legal and beneficial owner of the Secured Property;
- (c) **no other interests:**
- (1) no person other than the Security Trustee holds or has the benefit of a Security Interest or other interest in the Secured Property other than under a Permitted Security Interest;
  - (2) there is no agreement, filing or registration that would enable another person to obtain a priority over the Security which is inconsistent with the priority contemplated by this deed;
- (d) **Security:**
- (1) this deed creates the Security Interest purported to be created by it over the assets purported to be encumbered by it; and
  - (2) the Security has been, or in the case of After-Acquired Property, on its acquisition will be perfected; and
  - (3) the Security has the priority contemplated by this deed;
- (e) **not a trustee:** it does not enter into any Transaction Document as trustee of any trust or settlement;
- (f) **serial numbers:** no item of Secured Property or PPSA Retention of Title Property:
- (1) is required under the PPSA Regulations to be described by serial number in a registration under the PPSA; and
  - (2) with a value greater than \$100,000 is permitted under the PPSA Regulations to be described by serial number in a registration under the PPSA;
- (g) **location of assets:** it has no Secured Property with a value greater than \$100,000 located outside Australia; and
- (h) **Authorisations:** it has obtained all Authorisations necessary to permit the grant of the Security in respect of any asset in which it presently has rights.

### 4.2 Survival of representations and warranties

The representations and warranties given under this deed:

- (a) survive the execution of this deed; and

- (b) are repeated on the last day of each calendar month with respect to the facts and circumstances then subsisting.

#### **4.3 Reliance by Security Trustee**

The Grantor acknowledges that the Security Trustee has entered into each Transaction Document in reliance on the representations and warranties given by the Grantor under this deed.

#### **4.4 No Reliance by Grantor**

The Grantor acknowledges that it has not entered into this deed or any Transaction Document in reliance on any representation, warranty, promise or statement made by the Security Trustee or any person on behalf of the Security Trustee.

## **5 Undertakings of the Grantor**

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### **5.1 Performance under the Transaction Documents**

- (a) The Grantor must fully and punctually perform its obligations under each Transaction Document.
- (b) Without limiting the generality of clause 5.1(a), the Grantor must pay the Secured Moneys to the Security Trustee in accordance with this deed, each other Transaction Document and each other obligation under which the Secured Moneys are payable.
- (c) The Grantor must ensure that no Event of Default occurs. Without affecting the liability of the Grantor or the Powers in any other respect (including where a breach of this clause 5.1(c) is also a breach of another provision of a Transaction Document), the Grantor is not liable in damages for breach of this clause 5.1(c) but the Security Trustee may exercise its Powers consequent upon or following that breach.

### **5.2 Notices to the Security Trustee**

The Grantor must notify the Security Trustee as soon as the Grantor becomes aware of any of the following:

- (a) the acquisition by it or any of its Subsidiaries of, or the entry by it or any of its Subsidiaries into, an agreement to acquire:
  - (1) any interest in real property;
  - (2) any Marketable Securities or other property in relation to which the Security may be perfected by control;
  - (3) any motor vehicles or other property with a value greater than \$100,000 which the PPS Regulations provide may or must be described by serial number in a registration under the PPSA;
  - (4) any property with a value greater than \$100,000 which is situated outside Australia; and
- (b) any data contained in a registration under the PPSA with respect to the Security being or becoming incorrect.

**5.3 Negative pledge and disposal of assets**

- (a) The Grantor must not create or allow to exist or agree to any Security Interest over any of its assets other than a Permitted Security Interest.
- (b) The Grantor must not acquire an asset which is, or upon its acquisition will be, subject to a Security Interest which is not a Permitted Security Interest.
- (c) The Grantor must not sell, assign, transfer or otherwise dispose of or part with possession of any of its assets except:
  - (1) an asset acquired by the Grantor for disposal in the ordinary course of the ordinary business of the Grantor; and
  - (2) the expenditure of cash,in both cases, only in the ordinary course of ordinary business of the Grantor.
- (d) The Grantor must not allow any other person to have a right or power to receive or claim any rents, profits, receivables, money or moneys worth (whether capital or income) in respect of its assets other than under a Transaction Document.
- (e) The Grantor must not permit any of the Secured Property to become:
  - (1) Commingled with any asset that is not Secured Property except in the ordinary course of the Grantor's ordinary business; or
  - (2) an Accession to or to be affixed to any asset that is not Secured Property.
- (f) The Grantor must not enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts in circumstances where the arrangement is in connection with:
  - (1) the raising of Financial Indebtedness; or
  - (2) the acquisition of an asset,except for a netting or set-off arrangement in the ordinary course of its ordinary banking arrangements for the purpose of netting debit and credit balances.
- (g) The Grantor must not enter into any arrangement which, if complied with, would prevent the Grantor from complying with its obligations under the Transaction Documents.
- (h) If, by mandatory operation of law, this clause 5.3 may not prevent the Grantor creating a Security Interest:
  - (1) this clause 5.3 does not prevent the Grantor creating that Security Interest;
  - (2) before that Security Interest is created the Grantor must ensure that the Security Trustee receives the benefit of a deed of priority or subordination granting first ranking priority to the Security in a form and of substance required by the Security Trustee; and
  - (3) until that deed of priority is executed and delivered to the Security Trustee, the Security Trustee is not required to provide any further moneys or do any other thing which would increase the amount of the Secured Moneys.

## 5.4 Maintenance of the Secured Property

The Grantor must:

- (a) maintain and protect its Secured Property;
- (b) keep its Secured Property in a good state of repair and in good working order allowing for fair wear and tear;
- (c) remedy every defect in its title to any part of its Secured Property;
- (d) take or defend all legal proceedings to protect or recover any of its Secured Property;
- (e) keep its Secured Property valid and subsisting and free from liability to forfeiture, cancellation, avoidance or loss; and
- (f) take all commercially reasonable steps to identify, protect and perfect with the highest priority reasonably available any PPSA Security Interest in respect of which the Grantor is or is to become the PPSA Secured Party.

## 5.5 Further assurances

The Grantor must:

- (a) do anything which the Security Trustee reasonably requests to:
  - (1) ensure, or enable the Security Trustee to ensure, that this deed, the Security, and the Powers are fully effective, enforceable and perfected with the contemplated priority;
  - (2) more satisfactorily assure or secure to the Security Trustee the Secured Property in a manner consistent with the Transaction Documents; or
  - (3) aid the exercise of any Power,including executing any document, delivering Title Documents, executing and delivering blank transfers or giving notice of the Security to any third party.
- (b) without limiting clause 5.5(a), when the Security Trustee requests, execute:
  - (1) a legal or statutory mortgage in favour of the Security Trustee over any real property; or
  - (2) any other form of security which the Security Trustee considers appropriate for the property to be subject to that security,each in form and substance required by the Security Trustee.
- (c) without limiting clause 5.5(a), use best endeavours to cause a third party to provide any Authorisation or take any other action (including executing any document) required to give effect to clause 5.5(a).

## 5.6 Title Documents

- (a) The Grantor must deposit with the Security Trustee, or as the Security Trustee directs all the Title Documents in respect of any of the Secured Property together with executed blank transfers in respect of the Secured Property to which the Title Documents relate immediately on:
  - (1) its execution of this deed; and
  - (2) acquisition of any asset which forms part of the Secured Property.

- (b) Subject to clause 5.6(c), the Security Trustee may retain the Title Documents deposited with the Security Trustee until the Security in respect of all the Secured Property is discharged under clause 3.
- (c) If the Security is enforced by the Security Trustee, the Security Trustee, Receiver or Attorney is entitled:
  - (1) to deal with the Title Documents as if it was the absolute and unencumbered owner of the Secured Property to which the Title Documents relate; and
  - (2) in exercising a power of sale, to deliver any Title Document to a purchaser of the Secured Property to which the Title Document relates.

## **5.7 Perfection, registration and protection of Security**

- (a) The Grantor must ensure that:
  - (1) the Security is perfected in relation to all the Secured Property and PPSA Retention of Title Property in all jurisdictions; and
  - (2) this deed and the Security are registered and filed in all registers in all jurisdictions

in which it must be perfected, registered and filed, to ensure its enforceability, validity, perfection and priority against all persons and to be effective as a security.
- (b) Whenever the Security Trustee requires that the Security be perfected in a particular way in relation to any part of the Secured Property or PPSA Retention of Title Property, the Grantor must ensure that the Security is perfected in that way.
- (c) The Grantor will not be in breach of its obligation under this clause 5.7 and its representation and warranty under clause 4.1(d)(2) will not be incorrect or misleading if the Security Trustee fails to take any action which can only be taken by the Security Trustee to enable the Security to be perfected as required under this clause 5.7, after written request from the Grantor to take that action.
- (d) Whenever any part of the Secured Property or PPSA Retention of Title Property is transferred to or retained in a place where this deed or the Security, because of an increase in the Secured Moneys or otherwise, bears insufficient stamp duty or is not registered or recorded, or for any other reason is of limited or of no force or effect, unenforceable, inadmissible in evidence or of reduced priority, the Grantor must within 14 days after that transfer or retention ensure that:
  - (1) this deed is stamped to the satisfaction of the Security Trustee;
  - (2) this deed is in full force and effect, enforceable, perfected, admissible in evidence and not of reduced priority; and
  - (3) this deed and the Security are registered in that place, or that part of the Secured Property or PPSA Retention of Title Property is removed from that place.

## **5.8 No caveats**

The Grantor must ensure that any caveat lodged in respect of the Secured Property, other than the Permitted Caveats and a caveat lodged by the Security Trustee, is removed as soon as reasonably practicable.

## 5.9 Inspection

The Grantor must permit any representatives designated by the Security Trustee to visit and inspect the financial records and the property of the Grantor, at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives of the Grantor to discuss the affairs, finances, accounts and condition of the Grantor with the officers, employees and advisors of the Security Trustee (including independent accountants).

## 5.10 Term of undertakings

Each of the Grantor's undertakings in this clause 5 continue in full force and effect from the date of this deed until the Security in respect of all the Secured Property is discharged under clause 3.

# 6 Enforcement

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## 6.1 When enforceable

- (a) If an Event of Default occurs:
  - (1) the Security and each Collateral Security are immediately enforceable without the need for any demand or notice to be given to the Grantor or any other person; and
  - (2) the Secured Moneys are immediately due and payable by the Grantor without the need for any demand or notice to be given to the Grantor or any other person other than a notice expressly required by a Transaction Document.
- (b) The Security Trustee agrees that it will not exercise any Power to enforce the Security under Chapter 4 of the PPSA until an Event of Default occurs.

## 6.2 No dealing with assets

Any right of the Grantor to deal, for any purpose, with any asset which forms part of the Secured Property (including under clause 2.5), other than by or through a Receiver appointed under this deed, immediately ceases if:

- (a) the Security Trustee declares that the Secured Moneys are immediately due and payable; or
- (b) the Security Trustee takes any step to enforce the Security; or
- (c) a Control Event occurs in relation to the asset.

## 6.3 Assistance in realisation

After the Security has become enforceable, the Grantor must take all action required by the Security Trustee, Receiver or Attorney to assist any of them to realise the Secured Property and exercise any Power including:

- (a) executing all transfers, conveyances, assignments and assurances of any of the Secured Property;
- (b) doing anything necessary or desirable under the law in force in any place where the Secured Property is situated;

- (c) giving all notices, orders, directions and consents which the Security Trustee, Receiver or Attorney thinks expedient; and
- (d) doing anything necessary:
  - (1) for a call to be made on the uncalled capital of the Grantor; or
  - (2) to collect all called but unpaid capital of the Grantor.

#### **6.4 Postponing or delaying realisation or enforcement**

The Security Trustee, a Receiver or Attorney may postpone or delay the exercise of any Power for such period as the Security Trustee, Receiver or Attorney may in its absolute discretion decide.

#### **6.5 PPSA Retention of Title Property**

- (a) In exercising any Power under or in relation to the Security, a Security Trustee, Receiver or Attorney may not deal with any PPSA Retention of Title Property except to the same extent as the Grantor would be entitled to deal with that property.
- (b) Clause 6.5(a) does not apply:
  - (1) to any Secured Property; or
  - (2) to the extent it would otherwise prevent the transfer of the property because a transfer by the Grantor would be prohibited or declared to be a default under a security agreement.

## **7 Receiver**

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### **7.1 Appointment of Receiver**

If an Event of Default occurs, the Security Trustee may at any time after its occurrence:

- (a) appoint any person or any 2 or more persons jointly, or severally, or jointly and severally to be a receiver or a receiver and manager of the Secured Property and the PPSA Retention of Title Property;
- (b) remove any Receiver and on the removal, retirement or death of any Receiver, appoint another Receiver; and
- (c) fix the remuneration and direct payment of that remuneration and any costs, charges and expenses of the Receiver out of the proceeds of any realisation of the Secured Property.

### **7.2 Agency of Receiver**

- (a) Subject to clause 7.5, each Receiver is the agent of the Grantor.
- (b) The Grantor is responsible for the acts, defaults and remuneration of the Receiver.

### **7.3 Powers of Receiver**

Subject to any express exclusion by the terms of the Receiver's appointment, the Receiver has, in addition to any powers conferred on the Receiver by applicable law, and

whether or not in possession of the Secured Property and the PPSA Retention of Title Property or any part of it, the following powers:

- (a) **manage, possession or control:** to manage, enter into possession or assume control of any of the Secured Property;
- (b) **lease or licence:** to accept the surrender of, determine, grant or renew any lease or licence in respect of the use or occupation of any of the Secured Property:
  - (1) on any terms or special conditions that the Security Trustee or Receiver thinks fit; and
  - (2) in conjunction with the sale, lease or licence of any other property by any person;
- (c) **sale:** to sell or concur in selling any of the Secured Property to any person:
  - (1) by auction, private treaty or tender;
  - (2) on such terms and special conditions as the Security Trustee or the Receiver thinks fit;
  - (3) for cash or for a deferred payment of the purchase price, in whole or in part, with or without interest or security;
  - (4) in conjunction with the sale of any property by any other person; and
  - (5) in one lot or in separate parcels;
- (d) **grant options to purchase:** to grant to any person an option to purchase any of the Secured Property;
- (e) **acquire property:** to acquire any interest in any property, in the name or on behalf of the Grantor, which on acquisition forms part of the Secured Property;
- (f) **carry on business:** to carry on or concur in carrying on any business of the Grantor in respect of the Secured Property;
- (g) **borrowings and security:**
  - (1) to raise or borrow any money, in its name or the name or on behalf of the Grantor, from the Security Trustee or any person approved by the Security Trustee in writing; and
  - (2) to secure money raised or borrowed under clause 7.3(g)(1) by a Security Interest over any of the Secured Property, ranking in priority to, equal with, or after, the Security or any Collateral Security;
- (h) **maintain or improve Secured Property:** to do anything to maintain, protect or improve any of the Secured Property including completing, repairing, erecting a new improvement on, demolishing or altering any of the Secured Property;
- (i) **income and bank accounts:** to do anything to manage or obtain income or revenue from any of the Secured Property including operating any bank account which forms part of the Secured Property or opening and operating a new bank account;
- (j) **access to Secured Property:** to have access to any of the Secured Property, the premises at which the business of the Grantor is conducted and any of the administrative services of the business of the Grantor;
- (k) **insure Secured Property:** to insure any of the Secured Property;
- (l) **sever fixtures:** to sever fixtures in respect of any of the Secured Property;
- (m) **compromise:** to make or accept any compromise or arrangement;



- (n) **surrender Secured Property:** to surrender or transfer any of the Secured Property to any person;
- (o) **exchange Secured Property:** to exchange with any person any of the Secured Property for any other property whether of equal value or not;
- (p) **employ or discharge:** to employ or discharge any person as an employee, contractor, agent, professional advisor or auctioneer for any of the purposes of this deed;
- (q) **delegate:** to delegate to any person any Power of the Receiver;
- (r) **perform or enforce documents:** to observe, perform, enforce, exercise or refrain from exercising any right, power, authority, discretion or remedy of the Grantor under, or otherwise obtain the benefit of:
  - (1) any document, agreement or right which attaches to or forms part of the Secured Property; and
  - (2) any document or agreement entered into in exercise of any Power by the Receiver;
- (s) **receipts:** to give effectual receipts for all moneys and other assets which may come into the hands of the Receiver;
- (t) **take proceedings:** to commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of the Grantor, any proceedings including proceedings in relation to any insurance in respect of any of the Secured Property;
- (u) **insolvency proceedings:** to make any debtor bankrupt, wind-up any company, corporation or other entity and do all things in relation to any bankruptcy or winding-up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
- (v) **execute documents:** to enter into and execute any document or agreement in the name of the Receiver or the name or on behalf of the Grantor including bills of exchange, cheques or promissory notes for any of the purposes of this deed;
- (w) **make calls:** to make calls on any member of the Grantor in respect of uncalled capital of the Grantor;
- (x) **vote:** to exercise any voting rights or powers in respect of any part of the Secured Property;
- (y) **collect called capital:** to collect or enforce payment of any called but unpaid capital of the Grantor whether or not the calls were made by the Receiver;
- (z) **ability of Grantor:** to do anything the Grantor could do in relation to the Secured Property;
- (aa) **PPSA Retention of Title Property:** subject to clause 6.5, to exercise in relation to the PPSA Retention of Title Property any Power conferred on the Receiver in relation to the Secured Property; and
- (bb) **incidental power:** to do anything necessary or incidental to the exercise of any Power of the Receiver.

#### 7.4 Nature of Receiver's Powers

The Powers of the Receiver must be construed independently and no one Power limits the generality of any other Power. Any dealing under any Power of the Receiver will be on the terms and conditions the Receiver thinks fit.

## **7.5 Status of Receiver after commencement of winding-up**

- (a) The power to appoint a Receiver under clause 7.1 may be exercised even if, at the time an Event of Default occurs or if at the time a Receiver is appointed, an order has been made or a resolution has been passed for the winding-up of the Grantor.
- (b) If for any reason, including operation of law, a Receiver:
  - (1) appointed in the circumstances described in clause 7.5(a); or
  - (2) appointed at any other time,ceases to be the agent of the Grantor as a result of, an order being made or a resolution being passed for the winding-up of the Grantor, then the Receiver immediately becomes the agent of the Security Trustee.

## **7.6 Powers exercisable by the Security Trustee**

- (a) Whether or not a Receiver is appointed under clause 7.1, the Security Trustee may, on or after the occurrence of an Event of Default and without giving notice to any person, exercise any Power that could be conferred on a Receiver in addition to any Power of the Security Trustee.
- (b) The exercise of any Power by the Security Trustee, Receiver or Attorney does not cause or deem the Security Trustee, Receiver or Attorney:
  - (1) to be a mortgagee in possession;
  - (2) to account as mortgagee in possession; or
  - (3) to be answerable for any act or omission for which a mortgagee in possession is liable.

## **7.7 Set-off**

If any Event of Default is subsisting, the Security Trustee may apply any credit balance in any currency in any of the Grantor's accounts with the Security Trustee in and towards satisfaction of any of the Secured Moneys.

## **7.8 Notice of exercise of rights**

The Security Trustee, Receiver or Attorney is not required:

- (a) to give notice of the Security or any Collateral Security to any debtor or creditor of the Grantor or to any other person;
- (b) to enforce payment of any money payable to the Grantor including any of the debts or monetary liabilities secured by this deed or by any Collateral Security; or
- (c) to obtain the consent of the Grantor to any exercise of a Power.

## **7.9 Termination of receivership and possession**

The Security Trustee may, at any time, terminate the appointment of a Receiver and may, at any time, give up, or re-take, possession of the Secured Property.

## 8 Application and receipts of money

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### 8.1 Order of application

- (a) At any time after the Security is enforceable, all money received by the Security Trustee, Receiver, Attorney or any other person acting on their behalf under this deed or any Collateral Security may be appropriated and applied towards any amount and in any order that the Security Trustee, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by law.
- (b) Failing a determination under clause 8.1(a), the money must be applied in the following manner and order:
- (1) *first*, in payment of all costs, charges and expenses (including any GST) of the Security Trustee, Receiver or Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any Power;
  - (2) *second*, in payment of any other outgoings the Security Trustee, Receiver or Attorney thinks fit to pay;
  - (3) *third*, in payment to the Receiver of his remuneration;
  - (4) *fourth*, in payment and discharge, in order of their priority, of any Security Interests of which the Security Trustee, Receiver or Attorney is aware and which have priority to the Security;
  - (5) *fifth*, in payment to the Security Trustee towards satisfaction of the Secured Moneys and applied against interest, principal or any other amount the Security Trustee, Receiver or Attorney thinks fit;
  - (6) *sixth*, in payment only to the extent required by law, in order of their priority, of other Security Interests in respect of the Secured Property of which the Security Trustee, Receiver or Attorney is aware and which are due and payable in accordance with their terms; and
  - (7) *seventh*, in payment of the surplus, if any, without interest to the Grantor. The Security Trustee, Receiver or Attorney may pay the surplus to the credit of an account in the name of the Grantor in the books of any bank carrying on business within Australia and having done so is under no further liability in respect of that surplus.
- (c) Any amount required by law to be paid in priority to any amount specified in clause 8.1(b) must be paid before any money is applied in payment of the amount specified in clause 8.1(b).

### 8.2 Money actually received

In applying any money towards satisfaction of the Secured Moneys, the Grantor is to be credited only with so much of the money which is available for that purpose (after deducting any GST imposed) and which is actually received by the Security Trustee, Receiver or Attorney. The credit dates from the time of receipt.

### 8.3 Amounts contingently due

- (a) If at the time of a distribution of any money under clause 8.1 any part of the Secured Moneys is contingently owing to the Security Trustee, the Security Trustee, Receiver or Attorney may retain an amount equal to the amount contingently owing or any part of it.

- (b) If the Security Trustee, Receiver or Attorney retains any amount under clause 8.3(a) it must place that amount on short-term interest bearing deposit until the amount contingently owing becomes actually due and payable or otherwise ceases to be contingently owing at which time the Security Trustee, Receiver or Attorney must:
- (1) pay to the Security Trustee the amount which has become actually due to it; and
  - (2) apply the balance of the amount retained, together with any interest on the amount contingently owing, in accordance with clause 8.1.

#### **8.4 Notice of a Security Interest**

- (a) If the Security Trustee receives actual or constructive notice of a Security Interest over the Secured Property or of the perfection of a Security Interest, the Security Trustee:
- (1) may open a new account in the name of the Grantor in its books; or
  - (2) is regarded as having opened a new account in the name of the Grantor in its books,
- on the date it received or was regarded as having received notice of the Security Interest or perfection.
- (b) From the date on which that new account is opened or regarded as opened:
- (1) all payments made by the Grantor to the Security Trustee; and
  - (2) all financial accommodation and advances by the Security Trustee to the Grantor,
- are or are regarded as credited and debited, as the case may be, to the new account unless otherwise specified by the Security Trustee.
- (c) The payments by the Grantor under clause 8.4(b) must be applied in the manner determined by the Security Trustee or, failing a determination:
- (1) first, in reduction of the debit balance, if any, in the new account; and
  - (2) second, if there is no debit balance in the new account, in reduction of the Secured Moneys which have not been debited or regarded as debited to the new account.

#### **8.5 Security Trustee's statement of indebtedness**

A certificate signed by any Officer of the Security Trustee stating:

- (a) the amount of the Secured Moneys due and payable; or
  - (b) the amount of the Secured Moneys, whether currently due and payable or not,
- is sufficient evidence of that amount as at the date stated on the certificate, or failing that as at the date of the certificate, unless the contrary is proved.

#### **8.6 Security Trustee's receipts**

- (a) The receipt of any Officer of the Security Trustee for any money payable to or received by the Security Trustee under this deed exonerates the payer from all liability to enquire whether any of the Secured Moneys have become payable.

- (b) Every receipt of an Officer of the Security Trustee effectually discharges the payer from:
  - (1) any future liability to pay the amount specified in the receipt; and
  - (2) being concerned to see to the application of, or being answerable or accountable for any loss or misapplication of, the amount specified in the receipt.

### **8.7 Conversion of currencies on application**

In making an application under clause 8.1, the Security Trustee, Receiver or Attorney may itself, or through its bankers, purchase one currency with another, whether or not through an intermediate currency, whether spot or forward, in the manner and amounts and at the time it thinks fit.

### **8.8 Payments in gross**

Any payment which the Grantor is required to make under a Transaction Document must be without:

- (a) any set-off, counter-claim or condition; or
- (b) any deduction or withholding for any Tax or any other reason unless the Grantor is required to make a deduction or withholding by applicable law.

### **8.9 Additional payments**

If:

- (a) the Grantor is required to make a deduction or withholding in respect of Tax (other than an Excluded Tax) from any payment to be made to the Security Trustee under any Transaction Document; or
- (b) the Security Trustee is required to pay any Tax (other than an Excluded Tax) in respect of any payment it receives from the Grantor under any Transaction Document,

then the Grantor:

- (c) indemnifies the Security Trustee against that Tax; and
- (d) must pay to the Security Trustee an additional amount which the Security Trustee determines is necessary to ensure that the Security Trustee receives when due a net amount (after payment of any Tax in respect of that additional amount) that is equal to the full amount it would have received if a deduction, withholding or payment of Tax had not been made.

### **8.10 Taxation deduction procedures**

If clause 8.9(a) applies:

- (a) the Grantor must pay the amount deducted or withheld to the appropriate Government Agency as required by law; and
- (b) the Grantor must:
  - (1) use reasonable endeavours to obtain a payment receipt from the Government Agency (and any other documentation ordinarily provided by the Government Agency in connection with the payment); and
  - (2) within 2 Business Days after receipt of the documents referred to in clause 8.10(b)(1), deliver copies of them to the Security Trustee.

**8.11 Tax Credit**

If the Grantor makes an additional payment under clause 8.9 for the benefit of the Security Trustee, and the Security Trustee determines that:

- (a) a credit against, relief or remission for, or repayment of any Tax (**Tax Credit**) is attributable to that additional payment; and
- (b) the Security Trustee has obtained, utilised and retained that Tax Credit,

then the Security Trustee must pay an amount to the Grantor which the Security Trustee determines will leave it (after that payment) in the same after Tax position as it would have been in had the additional payment not been made by the Grantor.

**8.12 Tax affairs**

Nothing in clause 8.11:

- (a) interferes with the right of the Security Trustee to arrange its tax affairs in any manner it thinks fit;
- (b) obliges the Security Trustee to investigate the availability of, or claim, any Tax Credit; or
- (c) obliges the Security Trustee to disclose any information relating to its tax affairs or any tax computations.

**8.13 Amounts payable on demand**

If an amount payable under a Transaction Document is not expressed to be payable on a specified date, that amount is payable by the Grantor on demand by the Security Trustee.

**8.14 Currency of payments**

The Grantor must make each payment under this deed in the Relevant Currency.

**9 Power of attorney**

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**9.1 Appointment of Attorney**

For consideration received, the Grantor irrevocably appoints the Security Trustee and each Receiver severally its attorney for the purposes set out in clause 9.2.

**9.2 Purposes of appointment**

The Attorney may, in its name or in the name of the Grantor, Security Trustee or Receiver, do any of the following:

- (a) do any thing which ought to be done by the Grantor under this deed or any other Transaction Document;
- (b) exercise any right, power, authority, discretion or remedy of the Grantor under:
  - (1) this deed;
  - (2) any other Transaction Document; or
  - (3) any agreement forming part of the Secured Property;

- (c) do any thing which in the opinion of the Security Trustee, Receiver or Attorney is necessary or desirable for securing or perfecting the Security and any Collateral Security;
- (d) execute in favour of the Security Trustee any legal mortgage, transfer, assignment and any other assurance of any of the Secured Property;
- (e) execute deeds of assignment, composition or release;
- (f) sell or otherwise part with the possession of any of the Secured Property; and
- (g) generally, do any other thing, whether or not of the same kind as those set out in clause 9.2(a) to (f), which in the opinion of the Security Trustee, Receiver or Attorney is necessary or desirable:
  - (1) to more satisfactorily secure to the Security Trustee the payment of the Secured Moneys; or
  - (2) in relation to any of the Secured Property.

### **9.3 Exercise after Event of Default**

An Attorney must not exercise any Power under clause 9.2 until an Event of Default occurs but a breach of this clause 9.3 does not affect the validity of the Attorney's act.

### **9.4 Delegation and substitution**

The Attorney may appoint a substitute attorney to perform any of its Powers.

## **10 Protection**

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### **10.1 Protection of third parties**

- (a) No person dealing with the Security Trustee, Receiver or Attorney is bound to enquire whether:
  - (1) the Security has become enforceable;
  - (2) the Receiver or Attorney is duly appointed; or
  - (3) any Power has been properly or regularly exercised.
- (b) No person dealing with the Security Trustee, Receiver or Attorney is affected by express notice that the exercise of any Power was unnecessary or improper.
- (c) The irregular or improper exercise of any Power is, as regards the protection of any person, regarded as authorised by the Grantor and this deed, and is valid.

### **10.2 Protection of the Security Trustee, Receiver and Attorney**

- (a) The Security Trustee, Receiver or Attorney is not liable for any loss or damage including consequential loss or damage, arising directly or indirectly from:
  - (1) any omission or delay in the exercise or non-exercise of any Power; or
  - (2) the neglect, default or dishonesty of any manager, Officer, employee, agent, accountant, auctioneer or solicitor of the Grantor, the Security Trustee, Receiver or Attorney.
- (b) Clause 10.2(a) does not apply:

- (1) in respect of the Security Trustee, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Security Trustee; and
- (2) in respect of a Receiver or Attorney, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Receiver or Attorney.

## 11 Indemnities

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### 11.1 General indemnity

- (a) The Grantor indemnifies the Security Trustee against any Loss which the Security Trustee, Receiver (whether acting as agent of the Grantor or of the Security Trustee) or Attorney pays, suffers, incurs or is liable for, in respect of any of the following:
  - (1) the occurrence of any Default;
  - (2) the Security Trustee exercising its Powers consequent upon or arising out of the occurrence of any Default;
  - (3) the non exercise, attempted exercise, exercise or delay in the exercise of any Power;
  - (4) any act or omission of the Grantor or any of its employees or agents;
  - (5) the occupation, use or ownership of any of the Secured Property by the Grantor or any of its employees or agents;
  - (6) any workers' compensation claim by any employee of the Grantor;
  - (7) any insurance policy in respect of the Secured Property;
  - (8) any compulsory acquisition or statutory or judicial divestiture of any of the Secured Property;
  - (9) the Security Trustee acting in connection with a Transaction Document in good faith on fax instructions purporting to originate from the offices of the Grantor or to be given by the Grantor; and
  - (10) any other thing in respect of the Security or the Secured Property or the PPSA Retention of Title Property.
- (b) The indemnity contained in clause 11.1(a) includes:
  - (1) the amount determined by the Security Trustee as being incurred by reason of the liquidation or re-employment of deposits or other funds acquired or contracted for by the Security Trustee to fund or maintain the Secured Moneys; and
  - (2) loss of margin.

### 11.2 Foreign currency indemnity

If, at any time:

- (a) the Security Trustee, Receiver or Attorney receives or recovers any amount payable by the Grantor for any reason including:
  - (1) under any judgment or order of any Government Agency;
  - (2) for any breach of any Transaction Document;



- (3) on the liquidation or bankruptcy of the Grantor or any proof or claim in that liquidation or bankruptcy; or
  - (4) any other thing into which the obligations of the Grantor may have become merged; and
- (b) the Payment Currency is not the Relevant Currency,
- the Grantor indemnifies the Security Trustee against any shortfall between the amount payable in the Relevant Currency and the amount actually or notionally received or recovered by the Security Trustee, Receiver or Attorney after the Payment Currency is converted or translated into the Relevant Currency under clause 8.7.

### **11.3 Continuing indemnities and evidence of loss**

- (a) Each indemnity of the Grantor contained in a Transaction Document is a continuing obligation of the Grantor, despite:
  - (1) any settlement of account; or
  - (2) the occurrence of any other thing,and remains in full force and effect until:
  - (3) the Secured Moneys have been fully and finally paid; and
  - (4) the Security in respect of all the Secured Property has been finally discharged under clause 3.
- (b) Each indemnity of the Grantor in a Transaction Document is an additional, separate and independent obligation of the Grantor and no one indemnity limits the general nature of any other indemnity.
- (c) Each indemnity of the Grantor in a Transaction Document survives the termination of any Transaction Document.
- (d) A certificate given by an Officer of the Security Trustee detailing the amount of any Loss covered by any indemnity in a Transaction Document is sufficient evidence unless the contrary is proved.

## **12 Tax, costs and expenses**

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### **12.1 Tax**

- (a) The Grantor must pay any Tax, other than an Excluded Tax in respect of the Security, which is payable in respect of a Transaction Document (including in respect of the execution, delivery, performance, release, discharge, amendment, or enforcement of any Transaction Document).
- (b) The Grantor must pay any fine, penalty or other cost in respect of a failure to pay any Tax described in clause 12.1(a) except to the extent that the fine, penalty or other cost is caused by the Security Trustee's failure to lodge money received from the Grantor within 2 Business Days before the due date for lodgement.
- (c) The Grantor indemnifies the Security Trustee against any amount payable under clause 12.1(a) or clause 12.1(b) or both.

### **12.2 Costs and expenses**

The Grantor must pay to the Security Trustee:

- (a) all reasonable costs and expenses of the Security Trustee in relation to the negotiation, preparation, execution, delivery, stamping, registration, perfection, completion, variation and discharge of any Transaction Document or any Security Interest provided for by a Transaction Document;
  - (b) all costs and expenses of the Security Trustee in relation to the enforcement, protection or waiver of any rights under any Transaction Document;
  - (c) all reasonable costs and expenses of the Security Trustee in relation to the consent or approval of the Security Trustee given under any Transaction Document; and
  - (d) all reasonable costs and expenses of the Security Trustee in relation to any enquiry by a Government Agency involving the Grantor,
- including:
- (e) any administration costs of the Security Trustee in relation to the matters described in clauses 12.2(b), (c) and (d); and
  - (f) any legal costs and expenses and any professional consultant's fees on a full indemnity basis.

### **12.3 GST**

- (a) If GST is or will be imposed on a supply made under or in connection with a Transaction Document by the Security Trustee, the Security Trustee may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
  - (1) increase the consideration otherwise provided for that supply under the Transaction Document by the amount of that GST; or
  - (2) otherwise recover from the recipient of the supply the amount of that GST.
- (b) The Security Trustee must issue a Tax Invoice to the recipient of the supply no later than 5 Business Days after payment to the Security Trustee of the GST inclusive consideration for that supply.

## **13 Interest on overdue amounts**

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### **13.1 Payment of interest**

The Grantor must pay interest on:

- (a) any of the Secured Moneys due and payable by it, but unpaid; and
- (b) any interest payable but unpaid under this clause 13.

### **13.2 Accrual of interest**

The interest payable under clause 13.1:

- (a) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the Secured Moneys becomes merged; and
- (b) may be capitalised by the Security Trustee, Receiver or Attorney at monthly intervals.

### 13.3 Rate of interest

The rate of interest payable under this clause 13 is the highest of:

- (a) any rate specified in any Transaction Document;
- (b) the rate fixed or payable under a judgment or other thing referred to in clause 13.2(a); and
- (c) 5%.

## 14 Savings provisions

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### 14.1 Statutory powers

- (a) Subject to clause 14.1(b), the powers of the Security Trustee under this deed or any Collateral Security are in addition to any powers the Security Trustee has under applicable law.
- (b) Where the Security Trustee or a Controller exercises a Power conferred both under Chapter 4 of the PPSA and otherwise than under Chapter 4, the Security Trustee or Controller only exercises the Power under Chapter 4 if the Security Trustee or Controller states so in writing at the time of exercising the Power.
- (c) To the extent not prohibited by law, before enforcing this deed or any Collateral Security, or exercising any Power, the Security Trustee is not required to give any notice or allow the expiration of any time to any person.
- (d) If a law which requires a period of notice to be given cannot be excluded, but the law allows the period to be specified or changed, then that period of time is one day.

### 14.2 Continuing security

The Security is a continuing security despite:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and remains in full force and effect until the Security Trustee has given a discharge of the Security in respect of all the Secured Property under clause 3.

### 14.3 No merger of security

- (a) Nothing in this deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
  - (1) any Security Interest or indemnity in favour of the Security Trustee; or
  - (2) any Power.
- (b) No other Security Interest or Transaction Document which the Security Trustee has the benefit of in any way prejudicially affects any Power.

### 14.4 Exclusion of moratorium

To the extent not excluded by law, a provision of any legislation which directly or indirectly:

- (a) lessens, varies or affects in favour of the Grantor any obligations under this deed or any Transaction Document;
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by the Security Trustee, Receiver or Attorney of any Power; or
- (c) confers any right on the Grantor or imposes any obligation on the Security Trustee or a Receiver or Attorney in connection with the exercise of any Power,

is negated and excluded from this deed and any Transaction Document and all relief and protection conferred on the Grantor by or under that legislation is also negated and excluded.

## 14.5 Exclusion of PPSA provisions

Without limiting clause 14.4:

- (a) the provisions of the PPSA specified in section 115(1) of that Act (except sections 96 (*when a person with an interest in the whole may retain an accession*), 117 (*obligations secured by interests in personal property and land*), 120 (*enforcement of liquid assets*), 123 (*right to seize collateral*), 126 (*apparent possession*), 128 (*secured party may dispose of collateral*), 129 (*disposal by purchase*), 134 (*retention of collateral*) and Division 6 of Part 4.3 (*seizure and disposal or retention of crops and livestock*)) are excluded in full and will not apply to the Security;
- (b) in the circumstances permitted under section 115(7) of the PPSA, sections 132 (*secured party to give statement of account*) and 136(5) (*retaining collateral free of interests*) of the PPSA are also excluded and will not apply to the Security; and
- (c) to the extent not prohibited by the PPSA the Grantor waives its right to receive any notice otherwise required to be given by the Security Trustee under section 157 (*verification statements*) or any other provision of the PPSA.

## 14.6 Conflict

Where any right, power, authority, discretion or remedy conferred on the Security Trustee, Receiver or Attorney by this deed or any Transaction Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, those powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

## 14.7 Consent of Security Trustee

- (a) Whenever the doing of any thing by the Grantor is dependent on the consent of the Security Trustee, the Security Trustee may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Transaction Document.
- (b) Any conditions imposed on the Grantor under clause 14.7(a) must be complied with by the Grantor.

## 14.8 Completion of blank securities

- (a) The Security Trustee, a Receiver, Attorney or any Officer of the Security Trustee may at any time complete, in favour of the Security Trustee, any appointee of the Security Trustee or any purchaser, any instrument executed in blank by or on behalf of the Grantor and deposited with the Security Trustee as security under this deed or under any Collateral Security.

- (b) The Security Trustee, a Receiver, Attorney or any Officer of the Security Trustee must not exercise any Power under clause 14.8(a) until an Event of Default occurs but a breach of this clause 14.8(b) does not affect the validity of the act of the Security Trustee, Receiver, Attorney or Officer of the Security Trustee.

#### **14.9 Principal obligations**

The Security and each Collateral Security is:

- (a) a principal obligation and is not ancillary or collateral to any other Security Interest (other than another Collateral Security) or other obligation; and
- (b) independent of, and unaffected by, any other Security Interest or other obligation which the Security Trustee may hold at any time in respect of the Secured Moneys.

#### **14.10 No obligation to marshal**

The Security Trustee is not required to marshal or to enforce or apply under, or appropriate, recover or exercise:

- (a) any Security Interest or Collateral Security held, at any time, by the Security Trustee; or
- (b) any moneys or assets which the Security Trustee, at any time, holds or is entitled to receive.

#### **14.11 Non-avoidance**

If any payment by the Grantor to the Security Trustee is avoided for any reason including any legal limitation, disability or incapacity of or affecting the Grantor or any other thing, and whether or not:

- (a) any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of the Security Trustee,

the Grantor:

- (c) as an additional, separate and independent obligation, indemnifies the Security Trustee against that avoided payment; and
- (d) acknowledges that any liability of the Grantor under the Transaction Documents and any Power is the same as if that payment had not been made.

#### **14.12 Increase in financial accommodation**

The Security Trustee may at any time increase the financial accommodation provided under any Transaction Document or otherwise provide further financial accommodation.

#### **14.13 Suspense account**

- (a) The Security Trustee may apply to the credit of a suspense account any:
  - (1) amounts received under this deed;
  - (2) dividends, distributions or other amounts received in respect of the Secured Moneys in any liquidation; and

- (3) other amounts received from any Transaction Party or any other person in respect of the Secured Moneys.
- (b) The Security Trustee may retain the amounts in the suspense account for as long as it determines and is not obliged to apply them in or towards satisfaction of the Secured Moneys.

## 15 General

---

### 15.1 Confidential information

The Security Trustee must not disclose to any person:

- (a) this deed; or
- (b) any information about any Transaction Party, except:
  - (c) in connection with an actual or proposed permitted assignment, novation, participation or securitisation or entry by the Security Trustee into a credit default swap where the disclosure is made on the basis that the recipient of the information will comply with this clause 15.1 in the same way that the Security Trustee is required to do;
  - (d) to any professional or other adviser consulted by it in relation to any of its rights or obligations under the Transaction Documents;
  - (e) to the Reserve Bank of Australia, the Australian Tax Office, the Australian Transaction Reports and Analysis Centre or any Government Agency in Australia or elsewhere requiring or requesting disclosure of the information;
  - (f) in connection with the enforcement of its rights under the Transaction Documents;
  - (g) to any Related Body Corporate of the Security Trustee where the disclosure is made on the basis that the recipient of the information will comply with this clause 15.1 in the same way that the Security Trustee is required to do;
  - (h) where the information is already in the public domain, or where the disclosure would not otherwise breach any duty of confidentiality;
  - (i) if required by law in Australia or elsewhere (other than under section 275 of the PPSA to the extent that disclosure would not be required under that section if the disclosure would breach a duty of confidence); or
  - (j) otherwise with the prior written consent of the relevant Transaction Party (such consent not to be unreasonably withheld or delayed).

### 15.2 Performance by Security Trustee of the Grantor's obligations

If the Grantor defaults in fully and punctually performing any obligation contained or implied in any Transaction Document, the Security Trustee may, without prejudice to any Power, do all things necessary or desirable, in the opinion of the Security Trustee, to make good or attempt to make good that default to the satisfaction of the Security Trustee.

**15.3 Grantor to bear cost**

Any thing which must be done by the Grantor under this deed, whether or not at the request of the Security Trustee, must be done at the cost of the Grantor.

**15.4 Notices**

Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be given in accordance with the notice requirements of the Convertible Note Agreement.

**15.5 Governing law and jurisdiction**

- (a) This deed is governed by the laws of Queensland.
- (b) Without limiting clause 15.5(a), for the purposes of section 237 of the PPSA, the law of the Commonwealth of Australia as that law applies in the jurisdiction specified in clause 15.5(a) governs the Security to the extent it is permitted to apply to the Secured Property under that section.
- (c) The Grantor irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- (d) The Grantor irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (e) The Grantor irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

**15.6 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, any Transaction Document or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, any Transaction Document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

**15.7 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (2) a Power created or arising upon default under this deed or upon the occurrence of an Event of Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or

on the occurrence of an Event of Default as constituting a waiver of that right or Power.

- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

### **15.8 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

### **15.9 Cumulative rights**

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Security Trustee, Receiver or Attorney.

### **15.10 Assignment**

- (a) Subject to any Transaction Document, the Security Trustee may assign its rights under this deed and each Collateral Security without the consent of the Grantor.
- (b) The Grantor must not assign any of its rights under this deed or any Collateral Security without the prior written consent of the Security Trustee.

### **15.11 Counterparts**

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.

### **15.12 Attorneys**

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.



Executed as a deed

---

**Grantor**

Signed sealed and delivered by  
**Paradise Phosphate Pty Ltd**  
by

*sign here* ▶ /s/ P J Lee  
Company Secretary/Director

*print name* P J Lee

*sign here* ▶ /s/ J I Gutnick  
Director

*print name* J I Gutnick

---

**Security Trustee**

Signed sealed and delivered for and on behalf of  
**Acorn Capital Limited**  
by

*sign here* ▶ /s/ M Sheehan  
Company Secretary/Director

*print name* M Sheehan

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

Deed

## Security Trust Deed

---

Acorn Capital Limited  
(as **Security Trustee**)

Each party set out in Part A of Schedule 1  
(as **Initial Beneficiary**)

Paradise Phosphate Pty Ltd  
(as **Initial Security Provider**)

Legend International Holdings, Inc.  
(as **Initial Security Provider**)

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## Security Trust Deed

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Date ► **7 February 2012**

This deed is made by

---

Between the parties

---

Initial Beneficiary      **Each party listed in Part A of Schedule 1**  
(each an **Initial Beneficiary**)

---

Initial Security Providers      **Each party listed in Part B of Schedule 1**  
(each an **Initial Security Provider**)

---

Security Trustee      **Acorn Capital Limited**  
ACN 082 694 531 of Level 12, 90 Collins Street, Melbourne Vic 3000  
(**Security Trustee**)

---

Recitals

1. each Beneficiary for the time being and from time to time
2. The Security Trustee will hold, among other things, all its rights, title and interest in, to and under the Securities on trust for the Beneficiaries on the terms of this deed.

---

This deed witnesses

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Accession Deed (Security Provider)</b>	a deed in, or substantially in, the form of Attachment 1 (or in any other form that the parties from time to time agree) under which a New Security Provider becomes a party to this deed in accordance with clause 8.2.
<b>Amount Owing</b>	in respect of a Beneficiary at any time, the Secured Moneys of that Beneficiary at that time.
<b>Attorney</b>	an attorney appointed under any Security.
<b>Beneficiary</b>	<ol style="list-style-type: none"><li>1 each Initial Beneficiary; and</li><li>2 each New Beneficiary,</li></ol> but does not include a Retired Beneficiary.
<b>Business Day</b>	<ol style="list-style-type: none"><li>1 for the purposes of clause 11.4, a day on which banks are open for business in the city where the notice or other communication is received excluding a Saturday, Sunday or public holiday; and</li><li>2 for all other purposes, a day on which banks are open for business in Melbourne, Sydney and New York excluding a Saturday, Sunday or public holiday.</li></ol>
<b>Collateral Security</b>	any present or future Security Interest, Guarantee or other document or agreement created or entered into by a Transaction Party or any other person as security for, or to credit enhance, the payment of any of the Secured Moneys.
<b>Controller</b>	has the meaning given to the word 'controller' in the Corporations Act, but as if 'charge' included any Security, and includes a Receiver.
<b>Convertible Note Agreement</b>	the convertible note agreement dated on or about the date of this deed between, among others, the Initial Beneficiaries, the Initial Security Providers and the Security Trustee.

<b>Term</b>	<b>Meaning</b>
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Default</b>	<ol style="list-style-type: none"><li>1 an Event of Default; or</li><li>2 a Potential Event of Default.</li></ol>
<b>Default Notice</b>	has the meaning given in clause 6.8(a)(1).
<b>Determination Date</b>	the date on which the first of the following occurs: <ol style="list-style-type: none"><li>1 the Security Trustee appoints a Controller under a Security;</li><li>2 the Security Trustee otherwise enforces a Security; or</li><li>3 any other event agreed in writing to be an event for the purposes of this item 3 by the Beneficiaries and the Security Trustee.</li></ol>
<b>Dollars, A\$ and \$</b>	the lawful currency of the Commonwealth of Australia.
<b>Event of Default</b>	an Event of Default as defined in any Transaction Document.
<b>Finally Paid</b>	in respect of the Secured Moneys or any other monetary liability, satisfaction of the following conditions: <ol style="list-style-type: none"><li>1 payment or satisfaction of it in full; and</li><li>2 during the 6 month period from and including the day after the payment or satisfaction, no person, including a Transaction Party, liquidator, provisional liquidator, administrator, official manager, trustee in bankruptcy, receiver, receiver and manager, other controller (as defined in the Corporations Act) or similar official, exercises a right to recoup or claim repayment of any part of the amount paid or satisfied, whether under the laws of preferences, fraudulent dispositions or otherwise.</li></ol>
<b>Finance Party</b>	<ol style="list-style-type: none"><li>1 each Beneficiary;</li><li>2 the Nominee; and</li><li>3 the Security Trustee.</li></ol>
<b>Financing Change Statement</b>	a financing change statement within the meaning of the PPSA.
<b>Financing Statement</b>	a financing statement within the meaning of the PPSA.



<b>Term</b>	<b>Meaning</b>
<b>Government Agency</b>	any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
<b>GST</b>	the goods and services tax levied under the GST Act.
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Guarantee</b>	<p>any guarantee, suretyship, letter of credit, letter of comfort or any other obligation:</p> <ol style="list-style-type: none"><li>1 to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;</li><li>2 to indemnify any person against the consequences of default in the payment of; or</li><li>3 to be responsible for,</li></ol> <p>any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.</p>
<b>Initial Beneficiary</b>	each person who is a party to the Convertible Note Agreement as an 'Noteholder' as at the date of this deed.
<b>Interest Expense</b>	<p>interest and amounts in the nature of, or having a similar purpose or effect to, interest and includes:</p> <ol style="list-style-type: none"><li>1 discount on a bill of exchange or other instrument;</li><li>2 fees and amounts incurred on a regular or recurring basis, such as line fees; and</li><li>3 capitalised amounts of the same or similar name to the foregoing.</li></ol>
<b>Majority Beneficiaries</b>	at any time, one or more Beneficiaries whose aggregate Shares are more than 66%.
<b>New Beneficiary</b>	at any time, a person who is not an existing Beneficiary at that time, and who becomes an Noteholder after that time under the Convertible Note Agreement.
<b>New Security Provider</b>	at any time, a person who is not an existing Security Provider at that time, and who becomes a Security Provider after that time in accordance with this deed.

<b>Term</b>	<b>Meaning</b>
<b>Officer</b>	<ol style="list-style-type: none"><li>1 in relation to a Beneficiary or to the Security Trustee, any person whose title contains the 'Director', 'Managing Director', 'Manager' or 'Vice President', and any other person appointed by the Beneficiary or Security Trustee (as applicable) to act as its authorised officer for the purposes of this deed; and</li><li>2 in relation to a Security Provider, a director or a secretary, or a person notified by the Security Provider to the Security Trustee to be an authorised officer, of the Security Provider.</li></ol>
<b>Potential Event of Default</b>	any thing which would become an Event of Default on the giving of notice (whether or not notice is actually given), the expiry of time, the satisfaction or non-satisfaction of any condition, or any combination of the above.
<b>Power</b>	any right, power, authority, discretion or remedy conferred on the Security Trustee, a Controller or an Attorney by any Transaction Document or any applicable law.
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPSA Security Interest</b>	a security interest within the meaning of the PPSA.
<b>PPS Law</b>	<ol style="list-style-type: none"><li>1 the PPSA;</li><li>2 any regulations made at any time under the PPSA;</li><li>3 any provision of the PPSA or regulations referred to in 2;</li><li>4 any amendment to any of the above, made at any time; or</li><li>5 any amendment made at any time to the Corporations Act or any other legislation in connection with the implementation or as a consequence of the PPSA.</li></ol>
<b>Receiver</b>	a receiver or receiver and manager appointed under a Security or any Transaction Document.
<b>Recovered Moneys</b>	the aggregate amount received or recovered by the Security Trustee under the Transaction Documents or under clauses 2.5 or 4.2 on or after the Determination Date.
<b>Related Body Corporate</b>	a 'related body corporate' as that expression is defined in section 50 of the Corporations Act.
<b>Retired Beneficiary</b>	at any time, a person who was a Beneficiary but who has assigned or

<b>Term</b>	<b>Meaning</b>
	<hr/> <p>novated to one or more New Beneficiaries all of its rights and obligations under the Transaction Documents.</p> <hr/>
<b>Secured Moneys</b>	<p>all debts and monetary liabilities of each Transaction Party to a Finance Party on any account and in any capacity, irrespective of whether the debts or liabilities:</p> <ol style="list-style-type: none"><li>1 are present or future;</li><li>2 are actual, prospective, contingent or otherwise;</li><li>3 are at any time ascertained or unascertained;</li><li>4 are owed or incurred by or on account of a Transaction Party alone, or severally or jointly with any other person;</li><li>5 are owed to or incurred for the account of a Finance Party alone, or severally or jointly with any other person;</li><li>6 are owed to any other person as agent (whether disclosed or not) for or on behalf of a Finance Party;</li><li>7 are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;</li><li>8 are owed to or incurred for the account of a Finance Party directly or as a result of:<ul style="list-style-type: none"><li>• the assignment or transfer to a Finance Party of any debt or liability of a Transaction Party; or</li><li>• any other dealing with any such debt or liability;</li></ul></li><li>9 are owed to or incurred for the account of a Finance Party before the date of this deed, or before the date of any assignment of this deed to a Finance Party by any other person or otherwise; or</li><li>10 comprise any combination of the above.</li></ol> <hr/>
<b>Security</b>	<p>at any time, each of the following which has been granted at that time:</p> <ol style="list-style-type: none"><li>1 any Security Interest entered into by or granted in favour of the Security Trustee (as trustee under this deed) or the benefit of which the Security Trustee acquires after the date of this deed as security for, among other things, the payment of any of the Secured Moneys including any Security as defined in a Transaction Document;</li><li>2 any Collateral Security; or</li><li>3 any other document which the Beneficiaries, the Security Trustee and the Security Providers agree at any time, now or in the future, is a Security for the purposes of this deed.</li></ol> <hr/>
<b>Security Interest</b>	<p>an interest or power:</p> <ol style="list-style-type: none"><li>1 reserved in or over an interest in any asset, including any retention of title; or</li><li>2 created or otherwise arising in or over any interest in any asset under a</li></ol> <hr/>

<b>Term</b>	<b>Meaning</b>
	<p>security agreement, bill of sale, mortgage, charge, lien, pledge, trust or power,</p> <p>by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes any agreement to grant or create any of the above and includes a security interest within the meaning of section 12(1) of the PPSA.</p>
<b>Security Provider</b>	a person who has granted a Security and includes, on the date of this deed, the Initial Security Providers.
<b>Serial Number</b>	a serial number within the meaning of the PPSA.
<b>Share</b>	in respect of a Beneficiary at any time, the Secured Moneys of that Beneficiary at that time expressed as a percentage of the aggregate Secured Moneys of all Beneficiaries at that time.
<b>Special Decision</b>	a resolution passed at a meeting of Beneficiaries in accordance with, or a resolution or decision of Beneficiaries otherwise made in accordance with, clause 10, in each case by the Majority Beneficiaries.
<b>Statement</b>	a statement referred to in clause 3.2(a)(1).
<b>Subsidiary</b>	has the meaning given to that expression in the Corporations Act.
<b>Tax</b>	<ol style="list-style-type: none"><li>1 any tax, levy, charge, impost, duty, fee, deduction or withholding; or</li><li>2 any income, stamp or transaction duty, tax or charge,</li></ol> <p>which is assessed, levied, imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.</p>
<b>Transaction Document</b>	has the meaning set out in the Convertible Note Agreement.
<b>Transaction Party</b>	<ol style="list-style-type: none"><li>1 a Security Provider; or</li><li>2 any other Transaction Party, now or in the future, defined as such in a Transaction Document.</li></ol>
<b>Trust Fund</b>	<ol style="list-style-type: none"><li>1 the sum of \$10 referred to in clause 2.1;</li><li>2 all right, title and interest of the Security Trustee under the Securities and</li></ol>

<b>Term</b>	<b>Meaning</b>
	<p>the other Transaction Documents (other than, in the case of other Transaction Documents, those held in a personal capacity) including all money recovered under them (whether on enforcement or otherwise) including all Recovered Moneys;</p> <p>3 all money paid to the Security Trustee under this deed; and</p> <p>4 all other property acquired by the Security Trustee and intended to be held for the benefit the Beneficiaries on the trusts of this deed.</p>
<b>wilful default</b>	<p>in relation to the Security Trustee, a wilful and intentional failure of the Security Trustee to comply with any of its obligations under the Transaction Documents other than a failure which:</p> <p>1 arises as a result of a failure by a person other than the Security Trustee to comply with a Transaction Document or as a result of a Default;</p> <p>2 arises due to a lack of proper or complete instructions or directions being given to the Security Trustee under and in accordance with this deed; or</p> <p>3 is in accordance with a court order or direction or otherwise required by law.</p>

## **1.2 Interpretation**

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation.
- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed,
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A promise on the part of 2 or more persons binds them jointly and severally.

- (l) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) A reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits.
- (n) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (o) A reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind.
- (p) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.
- (q) A reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (r) References to time are to Melbourne time.
- (s) Where this agreement confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.

### 1.3 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### 1.4 Capacity of Security Trustee

- (a) The Security Trustee executes this deed only in its capacity as trustee of the Paradise Phosphate Security Trust and in no other capacity.
- (b) Any obligation or liability of whatever kind undertaken or incurred by, or devolving upon the Security Trustee under or in respect of this deed (**Obligation**) is incurred by the Security Trustee in its capacity as trustee of the Paradise Phosphate Security Trust and the Security Trustee will cease to have any such obligation or liability under this deed if it ceases for any reason to be the trustee of the Paradise Phosphate Security Trust. This limitation does not apply to any obligation or liability incurred by the Security Trustee which arises under this deed before it ceases to be the trustee of the Paradise Phosphate Security Trust and which does not become a liability of the new trustee under any applicable law.
- (c) The Security Trustee will not be liable to pay or satisfy any Obligation except out of the assets of the Paradise Phosphate Security Trust against which it is entitled to be indemnified in respect of any liability incurred by it as trustee of the Paradise Phosphate Security Trust.
- (d) A party or Beneficiary may enforce its rights against the Security Trustee arising from non-performance or breach of the Obligations only to the extent that the Security Trustee is entitled to be indemnified out of the assets of the Paradise Phosphate Security Trust.

- (e) If a party or Beneficiary does not recover under clauses 1.4(c) or 1.4(d) all money owing to it arising from non-performance or breach of the Obligations, it may not seek to recover the shortfall by:
  - (1) bringing proceedings against the Security Trustee in its personal capacity; or
  - (2) applying to have the Security Trustee wound up or proving in the winding up of the Security Trustee.
- (f) Nothing in this clause 1.4 limits the Security Trustee's personal liability to the extent such liability results from the Security Trustee's fraud, dishonesty, negligence, default or breach of trust or breach of duty.

## **1.5 Personal Property Securities (PPS) Law**

If:

- (a) a PPS Law applies, or will at a future date apply to any of the Transaction Documents or any of the transactions contemplated by them, or the Security Trustee determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
- (b) in the opinion of the Security Trustee, the PPS Law:
  - (1) adversely affects or would or may adversely affect the Security Trustee's security position or the rights or obligations of the Security Trustee under or in connection with the Transaction Documents; or
  - (2) enables or would enable the Security Trustee's security position to be improved without adversely affecting the Security Providers in a material respect,

the Security Trustee may from time to time give notice to the Security Providers requiring the Security Providers to do anything, including:

- (c) promptly providing all necessary information (including Serial Numbers) and taking all necessary action (including obtaining any consent or agreement or giving any notice) to enable the Security Trustee to register fully valid and effective Financing Statements or Financing Change Statements with respect to any PPSA Security Interest held or intended to be held by the Security Trustee under the Transaction Documents at any time;
- (d) amending any Transaction Document or executing any new Transaction Document, that in the Security Trustee's opinion is necessary to ensure that, to the maximum possible extent, the Security Trustee's security position, and rights and obligations, are not adversely affected as contemplated by clause 1.5(b)(1) (or that any such adverse effect is overcome to the maximum extent possible), or that the Security Trustee's security position is improved as contemplated in clause 1.5(b)(2). The Security Providers must comply with the requirements of that notice within the time stipulated in the notice.

## **1.6 Personal Property Securities (PPS)**

- (a) The Security Trustee is not, and its Officers, employees, agents or attorneys are not, liable to any party, for taking, or failing to take, any action for the purposes of the PPSA, whether for the benefit of all the Beneficiaries or one or more of them, unless the Security Trustee:
  - (1) is expressly instructed to do so by the Majority Beneficiaries; and
  - (2) is satisfied that it will be indemnified to its reasonable satisfaction in relation to that matter in accordance with clause 6.16 or otherwise.
- (b) Without limiting clause 1.6(a), none of the Security Trustee nor its Officers, employees, agents or attorneys are:

- (1) required to review or check whether any Transaction Document or any other agreement, arrangement or document relating to them is or contains a Security Interest or whether any such Security Interest has been or should be perfected under the PPSA;
  - (2) liable to any party, for not identifying or perfecting under the PPSA any Security Interest which may be constituted by or contained in any Transaction Document or any other agreement, arrangement or document; and
  - (3) guilty of fraud, wilful default or gross negligence solely because they have not identified, or have failed to perfect under the PPSA, any Security Interest which may be constituted by or be contained in any Transaction Document or any other agreement, arrangement or document relating to them, unless the Security Trustee has been expressly instructed to do so by the Majority Beneficiaries.
- (c) This clause does not limit in any way any other provision of a Transaction Document which benefits, releases, exonerates or indemnifies the Security Trustee or any of its Officers, employees, agents or attorneys.

### **1.7 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### **1.8 Deed components**

This deed includes any schedule.

### **1.9 Benefit**

This deed is given for the benefit of each present and future Beneficiary, whether or not presently contemplated or existing, severally. Each Beneficiary may, except as otherwise stated in a Transaction Document, separately enforce its rights under this deed. Nothing done or omitted to be done by a Beneficiary in relation to this deed in any way affects the rights of any other Beneficiary.

### **1.10 Notice of provisions**

Each Beneficiary is regarding as having notice of, and is bound by, all the provisions of this deed and any amendment to it agreed in accordance with clause 11.8.

## **2 Declaration of trust**

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### **2.1 Holding of Trust Fund on trust**

The Security Trustee declares that it holds the sum of \$10 in Melbourne, Victoria and will hold the Trust Fund, on trust for the Beneficiaries from time to time on the terms of this deed.

### **2.2 Name**

The trust established under this deed is to be known as the 'Paradise Phosphate Security Trust'.



## **2.3 Period**

The trust established under this deed commences on the date of this deed and, unless terminated at an earlier date, terminates on the earlier of:

- (a) the eightieth anniversary of the date of this deed; and
- (b) the date on which all the Securities have been fully and finally discharged according to their terms (or, if discharged at different times, the date on which the last is fully and finally discharged) and all Recovered Moneys have been distributed in accordance with this deed.

## **2.4 Trust Account**

The Security Trustee must promptly credit the sum of \$10 referred to in clause 2.1 to a bank account in Perth or any other place as the Beneficiaries, by Special Decision, agree.

## **2.5 Payment of Secured Moneys**

- (a) Each Security Provider must pay the Secured Moneys due by it in accordance with the Transaction Documents and each other obligation under which the Secured Moneys are payable.
- (b) Each Security Provider must pay the Secured Moneys to the Security Trustee as and when it is due for payment.
- (c) Clause 2.5(b) is an additional, independent and separate obligation to any obligation of a Security Provider to pay to a Beneficiary the Secured Moneys of the Beneficiary in a Transaction Document or otherwise, but:
  - (1) payment by any Security Provider to the Security Trustee of any such Secured Moneys which are Finally Paid operates in satisfaction of the obligation of the Security Provider to pay the amount to the Beneficiary; and
  - (2) payment by any Security Provider to a Beneficiary in accordance with the Transaction Documents of any Secured Moneys of the Beneficiary which are Finally Paid operates in satisfaction of the obligation of the Security Provider to pay the amount to the Security Trustee.
- (d) Nothing in clause 2.5(b) affects or derogates from a Security Provider's obligations to pay Secured Moneys to a Beneficiary (subject to clause 2.5(c)(1) and 2.5(c)(2)).
- (e) Any Secured Moneys paid to a Beneficiary or the Security Trustee by a Security Provider are paid as money secured by the Securities.

# **3 Determination of Secured Moneys**

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## **3.1 Determination of Secured Moneys**

To determine the Secured Moneys of a Beneficiary on any date for the purposes of this deed:

- (a) amounts in a foreign currency must be translated into Dollars at the rate of exchange determined by the Beneficiary as that rate of exchange at which the Beneficiary could have, on that date, purchased from another person in the normal course of business in dealing with currencies that amount of foreign currency with Dollars;
- (b) any liability which is contingent must be included at its face value; and

- (c) Interest Expense due but unpaid and Interest Expense accrued but not yet due must be included.

### **3.2 Details of Secured Moneys**

- (a) The Security Trustee may at any time request a Beneficiary to provide, and the Beneficiary must then, within a reasonable time, provide:
- (1) a statement signed by an Officer of the Beneficiary setting out the Secured Moneys owing to that Beneficiary at the date of the statement or as at any other date requested by the Security Trustee; and
  - (2) any information the Security Trustee reasonably requests in respect of the calculation of the amounts referred to in clause 3.2(a)(1).
- (b) The information provided under clause 3.2(a) must include full details of how the Beneficiary has applied the provisions of clause 3.1 in calculating the amounts referred to in clause 3.2(a)(1).
- (c) As between the Security Trustee and the Beneficiaries, the Security Trustee may rely on a Statement given by a Beneficiary as sufficient evidence of its contents and the respective amounts of Secured Moneys owing to the Beneficiary as at the date set out in the Statement unless the contrary is proved.
- (d) Any Statement is binding on all Beneficiaries, subject to any contrary determination by the Security Trustee, for the purposes of determining the Share of each Beneficiary under this deed as at the date of the Statement.
- (e) If a Beneficiary does not provide a Statement, the Security Trustee may determine the Secured Moneys owing to that Beneficiary and issue an alternative Statement which will be taken as the Statement for that Beneficiary for the purposes of this clause 3.2.

## **4 Receipt of money**

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### **4.1 Money not forming part of Recovered Moneys**

- (a) Where any Transaction Document permits or requires money to be placed to the credit of a suspense account:
- (1) in order to preserve the rights to prove in the bankruptcy or liquidation of any person; or
  - (2) because amounts are contingently due or for any other reason,
- that money will not, unless otherwise decided by all the Beneficiaries, form part of the Recovered Moneys until, in accordance with the terms of the Transaction Documents, the money is paid to or for the account of the Security Trustee or one or more Beneficiaries (at which time it becomes Recovered Moneys).
- (b) Where money is placed in a suspense account referred to in clause 4.1(a), any interest earned and credited to the account is Recovered Moneys.

### **4.2 Receipt of money after Determination Date**

- (a) Subject to clause 4.2(b), if, after the Determination Date, a Beneficiary receives (whether by way of voluntary or involuntary payment or by way of set-off, combination or amalgamation of accounts or otherwise) any Secured Moneys, the Beneficiary must within a reasonable time notify the Security Trustee.

- (b) Clause 4.2 does not apply to money received by a Beneficiary from the Security Trustee under this deed.
- (c) A Beneficiary who receives an amount referred to in clause 4.2(a) must pay the amount to the Security Trustee within 5 Business Days (or any longer period the Security Trustee agrees to) of receiving it.
- (d) An amount paid under clause 4.2(c) is to be:
  - (1) regarded as having been received by the Security Trustee and not by the Beneficiary who receives it; and
  - (2) distributed by the Security Trustee as Recovered Moneys.
- (e) If a Beneficiary who makes a payment referred to in clause 4.2(c) is obliged to refund any part of that amount under laws relating to insolvency or liquidation or similar events, then:
  - (1) on request from the Security Trustee, each party to which any part of the payment was distributed must repay to the Security Trustee the amount received by that party and the Security Trustee must pay to that Beneficiary the amount it is required to refund; and
  - (2) any balance is Recovered Moneys.

## 5 Sharing between Beneficiaries

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### 5.1 Pre Determination Date payments

- (a) If, before the Determination Date, a Beneficiary directs the Security Trustee to demand payment from a Security Provider of Secured Moneys which are then due and payable to the Beneficiary, the Security Trustee must promptly make that demand and the Security Provider must immediately pay the amount demanded to the Security Trustee.
- (b) On receipt of any money from that Security Provider, the Security Trustee holds it on trust for the Beneficiary who made the request and must pay the full amount received to that Beneficiary or as otherwise required by a Transaction Document.
- (c) Subject to the Transaction Documents, if, before the Determination Date, the Security Trustee otherwise receives any Secured Moneys due and payable to a Beneficiary, it must promptly pay that money to that Beneficiary.
- (d) A demand or payment under clause 5.1(a) is not required for money to be made payable or for any enforcement action (including appointment of a Controller or declaring that money is due and payable) under the Transaction Documents, as long as the money is payable or the enforcement action can be taken under the Transaction Documents.

### 5.2 Sharing after Determination Date

- (a) The Recovered Moneys must, as between the Security Trustee and each Security Provider, be applied by the Security Trustee in accordance with the Transaction Documents.
- (b) The Recovered Moneys available for distribution in or towards payment or repayment of the Secured Moneys (after payment out of the Recovered Moneys of any amounts which, under a Security, are required to be paid out of those Recovered Moneys before any distribution is made in or towards payment or repayment of the Secured Moneys) must be applied by the Security Trustee in accordance with any written agreement between all of the Beneficiaries at the time that agreement is made and the Security Trustee at that time but, in the absence of any such agreement, then in the following order of priority:

- (1) first, in or towards payment of any money due to the Security Trustee in its capacity as security trustee under the Transaction Documents; and
  - (2) second, in or towards payment or repayment to each Beneficiary of its Share (calculated as at the date of the distribution) of the Secured Moneys (calculated as at the date of the distribution) until each Beneficiary has received its Secured Moneys in full.
- (c) Clause 5.2(b) is for the benefit of the relevant Beneficiaries only and no other party may claim any benefit under it.
- (d) An agreement effected under clause 5.2(b) is binding on all Beneficiaries even if they become Beneficiaries after that agreement is effected.

## 6 Security Trustee's rights and responsibilities

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### 6.1 Security Trustee entitled to exercise all rights

Subject to this deed, the Security Trustee:

- (a) is entitled to exercise all Powers under the Securities (including those Powers conferred on trustees generally by statute and those conferred on trustees generally by law or equity in respect of the Securities) as if the Security Trustee were the sole beneficial owner of the Securities; and
- (b) may in its absolute discretion determine:
  - (1) whether or not to take any steps to enforce a Security or to otherwise seek to recover any money payable under a Security; and
  - (2) the manner of the enforcement (including the terms of any sale under a Security and the identity of any Controller appointed under a Security).

### 6.2 Instructions and extent of discretion

- (a) Subject to the other terms of this deed, and except in respect of amounts due to the Security Trustee in its personal capacity, in exercising its Powers under a Security, the Security Trustee:
  - (1) must act in accordance with the instructions (if any) of the Majority Beneficiaries; or
  - (2) in the absence of any such instructions, may (but is not obliged to) act as it thinks fit in the best interests of the Beneficiaries.
- (b) Each Beneficiary authorises the Security Trustee to give any consent and do anything else necessary or appropriate for it to give effect to any instructions given in accordance with this deed.
- (c) Any action taken by the Security Trustee in accordance with this deed is binding, as between the Security Trustee and the Beneficiaries, on all the Beneficiaries.
- (d) The Security Trustee is not obliged to take any action under this deed or a Security or exercise any Power until it is first indemnified to its satisfaction in accordance with clause 6.16 or otherwise.

### 6.3 Deemed instructions

- (a) If the Security Trustee specifies in its notice seeking instructions from the Beneficiaries that a failure to respond will be taken to be a consent to the proposed action and a

Beneficiary does not give instructions in relation to the proposed action within 3 Business Days (or any longer period specified by the Security Trustee in the notice), that Beneficiary is taken to have instructed the Security Trustee to take the proposed action.

- (b) Where the Security Trustee has not made the specification described in clause 6.3(a) in its notice seeking instructions from the Beneficiaries, the Share of any Beneficiary who fails to respond will be deducted from the numerator and denominator in calculating the Majority Beneficiaries.

#### **6.4 Exercise of Powers to waive or amend**

The Security Trustee:

- (a) must not, in its capacity as trustee, waive breaches of, or any Default under, or otherwise excuse the performance of any obligation of a Transaction Party under, a Transaction Document without the prior instructions of the Majority Beneficiaries;
- (b) must exercise or refrain from exercising a Power and must waive or excuse performance of a Security if so instructed:
  - (1) by the Majority Beneficiaries; or
  - (2) where a Transaction Document provides for such instructions from the Beneficiaries on a different basis, from the Beneficiaries on that basis;
- (c) must not amend or vary any Transaction Document unless instructed to do so by:
  - (1) the Majority Beneficiaries; or
  - (2) where a Transaction Document provides for such instructions from the Beneficiaries on a different basis, from the Beneficiaries on that basis,

but is not obliged to effect any such amendment or variation to the extent it would increase the personal liability of the Security Trustee or derogate from any of its rights under the Transaction Documents; and

- (d) must confer with the Beneficiaries before exercising a Power or giving any consent, approval or agreement or making any determination under a Transaction Document.

#### **6.5 Exercise of enforcement and other powers**

- (a) The Security Trustee must, if so instructed by the Majority Beneficiaries following the occurrence of an Event of Default which has not been waived in writing:
  - (1) give notice in writing to a Security Provider declaring that the relevant Secured Moneys are immediately due and payable;
  - (2) appoint, or remove, a Controller under a Security;
  - (3) otherwise enforce or take steps to enforce a Security as directed in writing by the Majority Beneficiaries; or
  - (4) do any one or more of the things in clauses 6.5(a)(1), 6.5(a)(2) and 6.5(a)(3).
- (b) The Security Trustee must if entitled by law to do so, appoint, or remove, a Controller under the Corporations Act to a Security Provider if so instructed by the Majority Beneficiaries.
- (c) The Security Trustee must if entitled by law to do so, appoint an administrator under the Corporations Act to a Security Provider if, but only if, instructed to do so by the Majority Beneficiaries.
- (d) The Security Trustee must at any time after action under clause 6.5(a), (b) or (c) has been taken, do any other things it considers appropriate (or as instructed by the Majority

Beneficiaries) to enforce the whole or any part of the Security in respect of which that first mentioned action was taken and to exercise its Powers under that Security.

- (e) The Security Trustee must, if so instructed by the Majority Beneficiaries, release or discharge:
- (1) any specified Security in full; or
  - (2) all or any specified assets from any specified Security,
- but otherwise must not release or discharge a Security unless required by law or by the express provisions of a Transaction Document to do so.
- (f) If the Security Trustee is directed by the Majority Beneficiaries to appoint a Controller under a Security, it must appoint a Controller selected by the Majority Beneficiaries (subject to any instructions of the Majority Beneficiaries).
- (g) If an administrator is appointed under Part 5.3A of the Corporations Act to a Security Provider which has granted a Security over the whole, or substantially the whole, of the Security Provider's property and the Security Trustee has not received instructions under this clause 6.5 in time to enable it to appoint a Controller under the relevant Security within the 'decision period' (as defined in the Corporations Act) then despite any other provision of this deed, the Security Trustee must appoint a Controller within that decision period.
- (h) A notice under clause 6.5(a)(1) is not required for money to be made payable or for any enforcement action (including appointment of a Controller or declaring that money is due and payable) under the Transaction Documents as long as the money is payable or the enforcement action can be taken under the Transaction Documents.

## **6.6 Exercise of other ancillary powers**

- (a) The Security Trustee:
- (1) is not responsible for, or liable to any person in respect of, any absence of, or defect in, title or for its inability to exercise any of its Powers under a Security arising from any absence of, or defect in, title; and
  - (2) need not give notice to any person of the execution of any Security nor obtain any licence, consent or other authority for the execution of any Security and is not liable to any person for failure to do so.
- (b) The Security Trustee:
- (1) may rely on any certificate, notice or other document (including any email, facsimile transmission or telegram) it believes to be genuine and correct and to have been signed or sent by or on behalf of the proper or authorised person or persons;
  - (2) may rely on any advice or statements of solicitors, independent accountants or other experts selected by the Security Trustee with reasonable care; and
  - (3) must place any Security, title document or other document, deed or certificate relating to a Security for the time being in its possession in any properly and safely maintained safe deposit, safe or receptacle selected by it, or with any bank or financial institution (including a Beneficiary) or person whose business includes undertaking the safe custody of documents, or with any lawyer or firm of lawyers,

in any such case without being responsible, or liable, to any person for any loss occasioned by doing so.

## 6.7 Right to appoint agent, delegates

- (a) The Security Trustee, instead of acting personally, may employ an agent to do any act required or permitted to be done under this deed or in relation to the Securities.
- (b) The Security Trustee may:
  - (1) delegate any of its Powers under this deed or in relation to the Securities, either wholly or partially or subject to any limitations or restrictions, to any person (including any Beneficiary) as it thinks fit, proper or appropriate in its absolute discretion if that delegate agrees to be bound by the terms of this deed as if it was a party to it;
  - (2) for the purpose of any delegation under clause 6.7(b)(1), execute such powers of attorney or other instruments as it thinks proper; and
  - (3) revoke any delegation under clause 6.7(b)(1) or power or instrument under clause 6.7(b)(2), from time to time.
- (c) No person dealing with the Security Trustee, or any delegate referred to in clause 6.7(b) is bound to enquire whether the delegation remains in force.
- (d) The Security Trustee may act or rely on the opinion, certificate or advice of, or information obtained from, any agent, delegate or adviser appointed by it. The Security Trustee is not responsible for any loss occasioned by doing so if the Security Trustee has acted in good faith and has not been guilty of fraud, wilful default or gross negligence in so acting.
- (e) Despite an appointment under clause 6.7(b), but subject to clause 6.15(a)(2), the Security Trustee remains liable for any act or omission of any appointee as if such act or omission was of the Security Trustee.

## 6.8 Events of Default

- (a) The Security Trustee is not to be regarded as having knowledge of the occurrence of any Default unless the Security Trustee:
  - (1) has received notice (**Default Notice**) from a Transaction Party or Beneficiary referring to this deed or the relevant Transaction Document and stating that a Default has occurred and describing the event and stating that the notice is a 'Default Notice'; or
  - (2) is actually aware that a Default has occurred.
- (b) If the Security Trustee receives a Default Notice or becomes actually aware that a Default has occurred, the Security Trustee must promptly notify all Beneficiaries of the occurrence.
- (c) If the Security Trustee receives a Default Notice, the Security Trustee may consider the Default to be continuing until it has received a further notice from the party giving the original notice stating that the Default is no longer continuing. The Security Trustee may rely on the second notice for all purposes under this deed and the Transaction Documents.

## 6.9 No monitoring

The Security Trustee is not required to:

- (a) keep itself informed as to the performance or observance by any Transaction Party of its obligations under any Transaction Document or any other document or agreement to which any one or more of them is a party; or

- (b) inspect the properties or books of any Transaction Party or to assess or keep under review the business, operations, financial condition, creditworthiness or status of the affairs of any Transaction Party.

### **6.10 Information**

- (a) The Security Trustee must forward to each Beneficiary a copy of each notice, report, set of accounts or other document promptly after the Security Trustee receives it from a Transaction Party under any Transaction Document.
- (b) The Security Trustee is not obliged to review or check the accuracy or completeness of any report, notice or other document it forwards to any Beneficiary or other person.
- (c) Except for any notices, reports, accounts or other documents or information which the Security Trustee is required to provide under any Transaction Document, the Security Trustee has no duty or responsibility, but is authorised in its absolute discretion, to provide any Beneficiary with any credit or other information concerning the assets, liabilities, financial condition or business of any Transaction Party or any of its respective Subsidiaries or Related Body Corporate, which may come into the possession of the Security Trustee.
- (d) Nothing in any Transaction Document obliges the Security Trustee to disclose any information relating to any Transaction Party if the disclosure would or might in the reasonable opinion of the Security Trustee constitute a breach of any law or duty of secrecy or confidence.

### **6.11 Security Trustee to have same rights as Beneficiaries**

The Security Trustee, in its capacity as a Beneficiary (if it is or becomes one) has the same rights, powers and discretions under this deed as any other Beneficiary and may exercise the same as if it were not acting as the Security Trustee.

### **6.12 Security Trustee may contract**

The Security Trustee may, despite any rule of law or equity to the contrary, enter into any contract or arrangement and transact any kind of business with any Beneficiary or Transaction Party and is not liable to account for any fee, remuneration or profit received or accruing in connection with that contract, arrangement or transaction.

### **6.13 Exercise of Powers**

The Security Trustee or any shareholder, director, Officer or employee of the Security Trustee may be interested as a director, Officer, employee, shareholder, manager or professional advisor or may otherwise stand in a fiduciary position in relation to any party to this deed or any other person and that interest or fiduciary position does not preclude the Security Trustee from exercising any Power (including where an exercise of that Power may benefit that party or person).

### **6.14 Application to court for direction**

The Security Trustee may apply to a court for directions in relation to any question relating to its duties under this deed or to its Powers.

### **6.15 Security Trustee not liable**

- (a) The Security Trustee is not, and its Related Body Corporate (if any), Subsidiaries, directors, Officers, employees, agents, successors or attorneys are not, liable to any party for:



- (1) any loss or damage occurring as a result of it exercising, failing to exercise or purporting to exercise any Power under this deed or in relation to a Transaction Document;
- (2) any act of any agent, delegate, Officer or employee of the Security Trustee;
- (3) any other matter or thing done, or not done, by it in relation to this deed or a Transaction Document;
- (4) any absence of, or defect in, title or any inability to exercise any of its Powers under a Security;
- (5) any failure by a Transaction Party to perform its obligations under a Transaction Document;
- (6) the financial condition or solvency of a Transaction Party;
- (7) any statement, representation or warranty of a Transaction Party being incorrect or misleading in any respect;
- (8) acting in accordance with the instructions of one or more of the Beneficiaries or all of the Beneficiaries (as applicable) in accordance with this deed or for refraining from acting in accordance with the instructions of one or more of the Beneficiaries or all of the Beneficiaries (as applicable) in accordance with this deed, or where there are no instructions which are required by this deed for the Security Trustee to act or refrain from acting;
- (9) acting on any written communication, notice or other document containing a direction or instructions purporting to have been given by one or more of the Beneficiaries, the Majority Beneficiaries or all of the Beneficiaries which the Security Trustee believes to be genuine and correct and to have been signed by, or sent by or on behalf of, the proper person;
- (10) acting on any written communication, notice or other document containing a direction or instructions purporting to have been given by one or more of the Beneficiaries, the Majority Beneficiaries or all of the Beneficiaries passed at a meeting of the Beneficiaries at which minutes were made and signed, even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any other reason the resolution was not valid or binding on any of the Beneficiaries whom it purported to bind, or on the Security Trustee; or
- (11) the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Security, Transaction Document or any other certificate or document given under any of them,

to the extent that the Security Trustee and its agents, delegates, Officers and employees have acted reasonably in all the circumstances and have not been guilty of fraud, wilful default or gross negligence.

- (b) Nothing in this clause 6.15 exempts the Security Trustee from liability to a Beneficiary if it fails to follow the lawful directions of one or more of the Beneficiaries, the Majority Beneficiaries or all of the Beneficiaries given in accordance with this deed (as applicable) or fails to obtain the required consent of one or more of the Beneficiaries, the Majority Beneficiaries or all of the Beneficiaries in any circumstance where the direction is lawfully given or the consent is required under this deed.
- (c) Failure by the Security Trustee to act due to lack of instructions or lack of proper instructions from one or more of the Beneficiaries, the Majority Beneficiaries or all of the Beneficiaries required to be given under this deed (as applicable) does not amount to fraud, wilful default or gross negligence of the Security Trustee.
- (d) The Security Trustee is not bound by any waiver, amendment, supplement or modification of any Transaction Document unless it gives its prior written consent as Security Trustee under the Transaction Document.

- (e) The Security Trustee is not liable to any Transaction Party because a Beneficiary fails to perform its obligations under a Transaction Document.

## **6.16 Indemnity**

- (a) Subject to clause 6.16(c) and:

- (1) without prejudice to any right of indemnity given to it by law or equity; and
- (2) in addition to, and without prejudice to, any other indemnity in any other Transaction Document,

the Security Trustee is entitled to be indemnified out of any money from time to time received by the Security Trustee under the Securities or otherwise forming part of the Trust Fund in respect of:

- (3) all liabilities and expenses (including any money paid or to be paid for the employment or appointment of any agent) incurred by it in the exercise or purported exercise of the Powers under this deed or in relation to the other Transaction Documents; and
- (4) all actions, proceedings, costs, claims and demands arising in relation to this deed or any other Transaction Document,

and the Security Trustee may from time to time retain and pay out of any money recovered from the Securities or otherwise forming part of the Trust Fund an amount to satisfy that indemnity.

- (b) If there is no money available for the Security Trustee to satisfy its indemnity under clause 6.16(a)(1), each Beneficiary severally in its Share indemnifies the Security Trustee against that amount and must pay its Share to the Security Trustee within 3 Business Days of demand (the Share of a Beneficiary being determined, as if the date of demand was the Determination Date).
- (c) The indemnity in clause 6.16(a)(1) does not apply:
- (1) where the Security Trustee or any of its Officers, agents, delegates, or employees is guilty of fraud, wilful default or gross negligence; or
  - (2) to the extent that any Beneficiary (as beneficiary under this deed) may have a claim against the Security Trustee in accordance with any Transaction Document.
- (d) Each Security Provider jointly and severally indemnifies each Beneficiary against all amounts it is required to pay under clause 6.16(b) (other than amounts arising from any dispute between any Beneficiary and any other Beneficiary or the Security Trustee as to the determination of priority amounts or the sharing of money under this deed) and must pay amounts under this clause 6.16(d) on demand.

## **6.17 Protection of third parties**

No person dealing with the Security Trustee is bound to enquire whether the Security Trustee:

- (a) has been properly appointed under this deed; or
- (b) has the requisite Power under this deed or another Transaction Document,

and any person dealing with the Security Trustee may assume that anything purported to be done by the Security Trustee under this deed or another Transaction Document has been duly authorised by this deed and the Beneficiaries.

**6.18 Exclusions of law where permitted**

All liabilities and responsibilities which may from time to time be imposed on the Security Trustee at law or in equity are, to the extent permitted at law or in equity, and, except to the extent provided to the contrary in this deed, expressly negated and waived by the other parties.

**6.19 Independent decisions by Beneficiaries**

- (a) Each Beneficiary acknowledges that it has, independently and without reliance on the Security Trustee or any other Beneficiary, and based on the documents and information it has considered appropriate, made its own investigation into the affairs and financial condition of each Transaction Party and the value, validity, effectiveness, genuineness and enforceability of each Transaction Document.
- (b) Each Beneficiary must independently and without reliance on the Security Trustee or any other Beneficiary, and based on the documents and information it considers appropriate, continue to make its own analysis and decisions in relation to its rights and obligations under any document or agreement to which it and any other Beneficiary or any other Transaction Party is a party.
- (c) The Security Trustee is not liable if a Beneficiary fails to do anything referred to in clause 6.19(a) or 6.19(b) or if a Beneficiary suffers loss or damage as a result of doing anything referred to in clause 6.19(a) or 6.19(b).

**6.20 Variation**

The provisions of this clause 6, other than clauses 6.15 and 6.16, may be amended from time to time by written agreement between the Security Trustee and the Beneficiaries without the approval of the Security Providers.

**6.21 Additional matters**

- (a) The rights and obligations of the Security Trustee under this deed are in addition to, and without prejudice to, its rights and obligations under the other Transaction Documents.
- (b) If there is any inconsistency between the rights and obligations of the Security Trustee under this deed and the rights and obligations of the Security Trustee under any other Transaction Document, those under this deed prevail to the extent of the inconsistency.

**6.22 Fees**

The Security Trustee must be paid the fees by the persons agreeing to pay them in accordance with any letters to that effect from or to the Security Trustee.

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**7 Termination of Security Trustee's appointment****7.1 Termination of appointment**

- (a) The Security Trustee may resign at any time by giving at least 5 Business Days' notice to each Beneficiary and the Security Providers, or their representative to that effect.
- (b) The Security Trustee may (with the prior written consent of the Security Providers, or their representative) be removed at any time by the Majority Beneficiaries giving to the Security Trustee and the Security Providers, or their representative at least 5 Business Days' notice to that effect.

- (c) If the Majority Beneficiaries give a notice under clause 7.1(b), they must, as soon as reasonably practicable after giving the notice, provide a copy of the notice to all other Beneficiaries, the Security Providers, or their representative.
- (d) On the termination of the Security Trustee's appointment, whether by resignation, removal or otherwise, the Security Trustee is released from any further obligations as Security Trustee under this deed and the other Transaction Documents from the time of that termination, but the release does not prejudice any liability in respect of any default arising before the termination of appointment.

## **7.2 Assurances**

Despite clause 7.1 and the terms of any Transaction Document, no resignation, removal or release of the Security Trustee takes effect unless:

- (a) a successor Security Trustee has been appointed in accordance with clause 7.3;
- (b) the successor Security Trustee undertakes to act as Security Trustee and be bound in that capacity by the terms of this deed and each Security to which the Security Trustee is a party and executes documents to confirm that undertaking; and
- (c) the successor Security Trustee obtains title to each Security and the Trust Fund in its capacity as Security Trustee.

## **7.3 Appointment of successor Security Trustee**

- (a) If the appointment of the Security Trustee is terminated, by resignation, removal or otherwise, the Majority Beneficiaries may appoint a successor Security Trustee.
- (b) If no successor Security Trustee is appointed by the Majority Beneficiaries, or accepts the appointment, within 10 Business Days after:
  - (1) notice of resignation or removal is given in accordance with clause 7.1; or
  - (2) the Security Trustee's appointment is otherwise terminated,the terminated Security Trustee may, on behalf of each Beneficiary, appoint a successor Security Trustee on the same terms as the terminated Security Trustee.
- (c) Each Beneficiary and each Security Provider is bound by the terms of any appointment made under this clause 7.3.
- (d) The appointment of a successor Security Trustee may be made:
  - (1) by instrument in writing executed by or on behalf of the person or persons authorised to make the appointment; or
  - (2) by deed of appointment; or
  - (3) by any other method permitted by law.
- (e) The Security Trustee, each Beneficiary and each Transaction Party must do all things necessary, including executing any deeds or other documents, to ensure that the appointment of any successor Security Trustee is properly and promptly effected and to ensure that all assets and property of the Trust Fund is vested in the successor Security Trustee.
- (f) When a successor Security Trustee is appointed, the new Security Trustee and each other party to the Transaction Documents has the same rights and obligations among themselves as they would have had if the new Security Trustee had been an original party to the Transaction Documents (other than in relation to any accrued rights against the terminated Security Trustee for default under the Transaction Documents).
- (g) Each Beneficiary and each other party to this deed (other than the Security Trustee), for consideration received, appoints the Security Trustee and each Officer for the time being

and from time to time of the Security Trustee severally its attorney, in its name and on its behalf, to do all things and execute, sign seal and deliver (conditionally or unconditionally in the attorney's discretion) all documents, deeds and instruments necessary or desirable for the appointment of a successor Security Trustee under this clause 7.3 and to vest in that successor Security Trustee all of the Trust Fund or any part of it.

- (h) For the avoidance of doubt, in exercising its powers under clause 7.3(g) the Security Trustee must comply with the provisions of this clause 7.3.
- (i) The power in clause 7.3(g) may be delegated or a sub-power may be given, and any delegate or sub-attorney may be removed by the attorney appointing it.

## 8 Changes to Beneficiaries and Security Providers

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### 8.1 Transfers by Beneficiaries

A Beneficiary may assign any of its rights or novate any of its rights and obligations under any of the Transaction Documents to any person and in any manner permitted under and in accordance with the Transaction Documents.

### 8.2 New Beneficiaries pursuant to transfers

- (a) If a Beneficiary assigns any of its rights or novates any of its rights and obligations under any of the Transaction Documents to which it is a party to a New Beneficiary, the New Beneficiary may become a party to this deed by executing an Accession Deed (Beneficiary).
- (b) Each Security Provider and each other Beneficiary for consideration received, irrevocably appoints the Security Trustee, and each Officer for the time being and from time to time of the Security Trustee, severally its attorney to execute any Accession Deed (Beneficiary) for and in the name of the Security Provider or the Beneficiary (as applicable).
- (c) When a New Beneficiary executes an Accession Deed (Beneficiary):
  - (1) it becomes bound by this deed and receives the benefits of a Beneficiary under this deed on the same basis as if it were a party to this deed;
  - (2) the assigning or transferring Beneficiary continues to be bound by this deed unless it has assigned all of its rights, or novated all of its rights and obligations, to one or more New Beneficiaries, in which case it is a Retired Beneficiary;
- (d) any Retired Beneficiary is released from any further obligations under this deed, but the release does not prejudice any liability in respect of any default of it arising before it became a Retired Beneficiary.
- (e) A Beneficiary that assigns any of its rights or novates any of its rights and obligations under any of the Transaction Documents to which it is a party to a New Beneficiary must require, as a condition of that assignment or novation, that the New Beneficiary execute an Accession Deed (Beneficiary) in accordance with this clause 8.2.

### 8.3 Other New Beneficiaries

- (a) A person may become a party to this deed as a Beneficiary other than pursuant to an assignment or novation pursuant to clause 8.2 by executing an Accession Deed (Beneficiary).
- (b) Each Beneficiary and each Security Provider, for consideration received, irrevocably appoints the Security Trustee, and each Officer for the time being and from time to time

of the Security Trustee, severally as its attorney to execute for and in the name of the Beneficiary or the Security Provider, (as applicable) each Accession Deed (Beneficiary) referred to in clause 8.3(a).

- (c) When a New Beneficiary executes an Accession Deed (Beneficiary) referred to in clause 8.3(a) it becomes bound by this deed and receives the benefits of a Beneficiary under this deed on the same basis as if it were a party to this deed.

#### **8.4 New Security Provider**

- (a) Immediately a person who is not already a Security Provider grants a Collateral Security, each Transaction Party must ensure that the person becomes a party to this deed as a Security Provider by executing an Accession Deed (Security Provider).
- (b) Each Beneficiary and each Security Provider, for consideration received, irrevocably appoints the Security Trustee, and each Officer for the time being and from time to time of the Security Trustee, severally its attorney to execute for and in the name of the Beneficiary or the Security Provider, (as applicable) any Accession Deed (Security Provider).

#### **8.5 Notice of change**

- (a) A Beneficiary must promptly notify the Security Trustee of any assignment or novation of that Beneficiary's rights, benefits or obligations under any Transaction Document.
- (b) The Security Trustee may treat each Beneficiary (or any assignee or substitute Beneficiary of which the Security Trustee has actual notice) as the holder of the benefit of that Beneficiary's interests under the Transaction Documents for all purposes, until it receives notice under clause 8.5(a) to the contrary.

## **9 Savings provisions**

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### **9.1 Continuing indemnities**

- (a) Each indemnity contained in this deed and each other Transaction Document is a continuing obligation despite:
- (1) any settlement of account; or
  - (2) the occurrence of any other thing,
- and remains in full force and effect until:
- (3) all money owing, contingently or otherwise, under any Transaction Document has been paid in full; and
  - (4) each Transaction Document has been finally discharged.
- (b) Each indemnity in this deed and each other Transaction Document is an additional, separate and independent obligation and no one indemnity limits the general application of any other indemnity.

### **9.2 Non-avoidance**

The provisions of this deed are not affected by anything which, but for this provision, might have that effect, including:

- (a) the respective times and dates on which, or the order in which, any of the Transaction Documents were executed, delivered or registered;

- (b) the respective times and dates on which, or the order in which, the debts and monetary liabilities comprising all or any part of any of the Secured Moneys are incurred or become due;
- (c) anything contained in any of the Transaction Documents;
- (d) the enforcement or attempted enforcement of, or the exercise or attempted exercise of any other Power under, any of the Transaction Documents;
- (e) the repayment from time to time of all or any part of any of the Secured Moneys;
- (f) the fluctuation (including the reduction and subsequent increase) from time to time of all or any part of any of the Secured Moneys;
- (g) a Beneficiary being or not being from time to time obliged to:
  - (1) perform its obligations under any Transaction Document at the request, or for the benefit, of any Transaction Party; or
  - (2) do anything which may cause money to become due by any Transaction Party to that Beneficiary;
- (h) that all or any part of the Secured Moneys are contingent or prospective;
- (i) the appointment of a liquidator, Controller or other similar officer to a Transaction Party or to all or any part of the assets of a Transaction Party;
- (j) the liquidation of a Transaction Party;
- (k) a person becoming or ceasing to be a Beneficiary or a Transaction Party; or
- (l) any provision of any statute or any rule of law or equity to the contrary.

### **9.3 Exclusion of moratorium**

To the extent not excluded by law, a provision of any legislation which at any time directly or indirectly lessens, stays, postpones, prevents or otherwise prejudicially affects the exercise of any Power, is negated and excluded from this deed, and all relief and protection conferred on a Transaction Party by or under that legislation is also negated and excluded.

## **10 Meetings of Beneficiaries**

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### **10.1 Meetings**

The Security Trustee may convene a meeting of Beneficiaries at any time.

### **10.2 Meeting on application**

The Security Trustee must convene a meeting of Beneficiaries if Beneficiaries having alone, or together, a Share (determined as if the date of application was the Determination Date) of not less than 66% of all Beneficiaries apply in writing.

### **10.3 Notice of meeting**

- (a) If the purpose of a meeting is to determine the instructions of the Majority Beneficiaries to be given to the Security Trustee, the person or persons calling the meeting must notify all Beneficiaries of the meeting at least 21 days (exclusive of the day on which the notice is given and of the day on which the meeting is held) (or any shorter period the Majority Beneficiaries may agree on) in advance under clause 10.3(c).

- (b) The Security Trustee must give notice of each meeting of all Beneficiaries to each Beneficiary.
- (c) A notice to Beneficiaries must set out:
  - (1) the place, day and time of the meeting;
  - (2) the general nature of the business to be transacted;
  - (3) the terms of any resolution to be proposed;
  - (4) a summary of any information in the possession of the Security Trustee which the Security Trustee reasonably determines may influence the Beneficiaries' vote;
  - (5) a statement to the effect that proxies may be appointed more than 24 hours before the time fixed for the meeting but not after that time; and
  - (6) any other information the person preparing the notice reasonably considers appropriate.
- (d) In giving notice of a meeting to Beneficiaries, the Security Trustee complies with its obligations if it sends the notice to the address of each relevant Beneficiary specified under clause 11.4.
- (e) If:
- (e) the Security Trustee accidentally omits to give notice under clauses 10.3(a) or 10.3(b) or fails to give notice in the form required by clause 10.3(c) and 10.3(d); or
- (f) a relevant Beneficiary does not receive a notice,  
the relevant meeting is still valid.
- (g) Even if a meeting is called by shorter notice than that specified in this clause 10.3, it will be considered to be duly called if it is so agreed to by the relevant Beneficiaries representing a quorum required for the resolutions to be passed at that meeting.

#### **10.4 Who may attend and address meeting**

The following persons are entitled to attend and address a meeting, including an adjourned meeting, of all Beneficiaries:

- (a) each Security Provider's representative;
- (b) each Security Provider's solicitor;
- (c) the Security Trustee's representative;
- (d) the Security Trustee's solicitor;
- (e) each Beneficiary or its representative or both; and
- (f) each Beneficiary's solicitor.

No person other than a Beneficiary has a right to vote.

#### **10.5 Quorum**

- (a) No business (other than the election of a chairman, if necessary) may be transacted at a meeting of Beneficiaries unless there is a quorum.
- (b) A quorum for any meeting of all Beneficiaries to pass a Special Decision is the Beneficiaries (whether in person, proxy, representative or attorney) having alone or together a Share of 66%.
- (c) If a quorum has not been reached within 30 minutes after the time appointed for the meeting, the meeting, if called on the requisition of relevant Beneficiaries must be



dissolved or, if called to pass a Special Decision, must be adjourned to the same day, time and place in the following week.

### **10.6 Chair**

- (a) The Security Trustee's nominee (who may be a Beneficiary or the Security Trustee) must preside as chair at a meeting of any Beneficiaries.
- (b) If the Security Trustee's nominee does not appear within 15 minutes after the time appointed for the meeting, the Beneficiaries present must elect one of their number to preside as chair.

### **10.7 Voting and decisions**

- (a) Any question submitted to a meeting of Beneficiaries must be decided in the first instance by a show of hands unless a poll is required under clause 10.7(b).
- (b) A poll must be taken if any Transaction Document or the applicable law requires the question to be decided by a Special Decision.
- (c) The chair does not have a casting vote in addition to any other vote which the chair may exercise.
- (d) A resolution passed by the Majority Beneficiaries in accordance with this clause 10 on any matter constitutes the instructions of the Majority Beneficiaries under any Transaction Document in relation to that matter and is binding on all the Beneficiaries.
- (e) A resolution, decision or instruction:
  - (1) expressly required in this deed to be given by all Beneficiaries must be made by all of the Beneficiaries;
  - (2) otherwise to be made by the Beneficiaries must be made by the Majority Beneficiaries; or
  - (3) to replace or remove the Security Trustee must be made by Special Decision.

### **10.8 Votes**

- (a) On a show of hands, each Beneficiary present at a meeting:
  - (1) in person; or
  - (2) by proxy, representative or attorney,has one vote.
- (b) On a poll, each Beneficiary present at a meeting:
  - (1) in person; or
  - (2) by proxy, representative or attorney;has one vote for each dollar of the Amount Owing of it at that time.
- (c) In determining whether or not a resolution constitutes a resolution of the Majority Beneficiaries, the votes in clauses 10.8(a) and 10.8(b) must be weighted by the chair accordingly.
- (d) If Amounts Owing by Beneficiaries is held jointly, the most senior Beneficiary's vote either in person or by proxy, representative or attorney will be accepted to the exclusion of the other joint Beneficiaries.
- (e) The most senior Beneficiary is the person nominated in writing to the Security Trustee by all joint Beneficiaries in respect of that Amount Owing or failing such nomination the person selected by the Security Trustee in its absolute discretion.

**10.9 Objection to voter's qualification**

- (a) An objection may be raised to the qualification of a voter only at the meeting where the vote objected to is to be exercised.
- (b) An objection must be referred to the chair whose decision is final.
- (c) The chair may consult with any representative of a Beneficiary or the Security Trustee present at the meeting.
- (d) A vote allowed at a meeting is valid for all purposes.

**10.10 Proxies and other powers**

- (a) Any person including a Beneficiary may act as a proxy.
- (b) A proxy has the same right to be heard as a Beneficiary.
- (c) A vote given in accordance with the terms of a proxy form is valid despite the previous revocation or amendment, unless notice in writing of the revocation or amendment is deposited with the Security Trustee at least 24 hours before the time appointed for the meeting or adjourned meeting at which the proxy proposes to vote.
- (d) A notarially certified copy of each proxy form and satisfactory proof of due execution, if applicable, must be produced at a meeting or adjourned meeting if required by the Security Trustee, who is not obliged to investigate or be concerned with the validity or authority of a proxy.

**10.11 Proxy and other instruments**

- (a) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (b) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (1) under its common seal (if it has one); or
  - (2) under the hand of an Officer or attorney who has been authorised by the corporation.
- (c) An instrument appointing a proxy must be in the following form or in any other common or usual form:

'I [ ] of [ ] being a Beneficiary under the Security Trust Deed constituting the [insert name of trust] Trust appoint [ ] of [ ] as my proxy to vote at the meeting of Beneficiaries to be held on [ ] and at any adjournment of that meeting.

Signed at [ ] by me on [ ].

This form is to be used \*in favour/against the resolution. (\*Strike out whichever is not desired.) Unless otherwise directed the proxy may vote as he or she thinks fit.'

**10.12 Adjournments**

The chair may adjourn a meeting with the consent of the Majority Beneficiaries or if a quorum is required under a Transaction Document but not present.

**10.13 Declaration by chair of voting**

At a meeting of Beneficiaries a declaration by the chair or Security Trustee (as applicable) that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.

**10.14 Manner of poll**

- (a) If at a meeting a poll is demanded or required in accordance with clause 10.7(b), that poll must be conducted as directed by the chair at the meeting.
- (b) A demand for a poll may be withdrawn at any time.
- (c) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (d) The result of the poll is regarded as the relevant resolution of the meeting.

**10.15 Poll on election of chair or question of adjournment**

A poll demanded at a meeting of Beneficiaries on the election of the chair or on a question of adjournment must be taken at the meeting without adjournment.

**10.16 Minutes**

- (a) The chair or Security Trustee (as applicable) must ensure that minutes of proceedings at every meeting of Beneficiaries are taken and entered in a minute book provided by the Security Trustee.
- (b) The signature by the chair of minutes of a meeting is conclusive evidence of the matters stated in the minutes.

**10.17 Passing of resolutions by instrument in writing**

- (a) Despite the preceding provisions of this clause 10, a resolution, decision or instruction of Beneficiaries may be passed or made, without any meeting or previous notice being required or even if a meeting has been called, by an instrument or instruments in writing signed by one or more Beneficiaries having alone or together the relevant number of votes to pass the relevant resolution or make the relevant decision or give the relevant instruction.
- (b) Any such instruments are effective on presentation to the Security Trustee for entry in the records referred to in clause 10.16.
- (c) Any such resolution, decision or instruction is binding on all Beneficiaries.

**11 General**

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**11.1 Performance by Security Trustee of obligations**

If a Transaction Party defaults in fully and punctually performing any obligation contained or implied in any Transaction Document, the Security Trustee may, without prejudice to any Power, do all things necessary or desirable, in the Security Trustee's opinion, to make good or attempt to make good that default to the Security Trustee's satisfaction.

**11.2 Transaction Party to bear cost**

Except as otherwise expressly provided in a Transaction Document, any thing which must be done by a Transaction Party under any Transaction Document, whether or not at the request of the Security Trustee, is to be done at the cost of the Transaction Party.

### 11.3 GST

If a party is entitled under this deed to be reimbursed or indemnified by another party for a cost or expense incurred in connection with this deed, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.

### 11.4 Notices

Any notice or other communication including any request, demand, consent or approval, to or by a party to any Transaction Document:

- (a) must be in legible writing and in English addressed as shown below:
- (1) if to the Security Trustee:  
Address: Level 12, 90 Collins Street, Melbourne Vic 3000  
Attention: Robert Routley / Matthew Sheehan  
Phone: +613 9639 0522
  - (2) if to an Initial Beneficiary, to the address set out in the Convertible Note Agreement;
  - (3) if to an Initial Security Provider, to the address set out in Schedule 1;
- or as specified to the sender by any party by notice;
- (b) must be signed by an Officer of the sender;
- (c) is regarded as being given by the sender and received by the addressee:
- (1) if by delivery in person, when delivered to the addressee;
  - (2) if by post, on delivery to the addressee; or
  - (3) if by facsimile transmission, whether or not legibly received, when received by the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and

- (d) can be relied on by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under clause 11.4(c) and informs the sender that it is not legible.

### 11.5 Governing law and jurisdiction

- (a) This deed is governed by the laws of Victoria.
- (b) The parties irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.
- (c) Each Security Provider irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) Each Security Provider irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

- (e) Legend International Holdings, Inc appoints Paradise Phosphate Pty Ltd of Level 8, 580 St Kilda Road, Melbourne VIC 3004 in relation to proceedings in Australia as its agent to receive service of any legal process on its behalf without excluding any other means of service permitted by the law of the relevant jurisdiction.

### **11.6 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, any Transaction Document or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, any Transaction Document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### **11.7 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising on default under this deed or on the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed or the occurrence of an Event of Default; or
  - (2) a Power created or arising on default under this deed or on the occurrence of an Event of Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

### **11.8 Variation**

Subject to clause 6.20, any term of this deed may be amended or waived only with the written consent of each Beneficiary, the Security Trustee and the Security Providers.

### **11.9 Cumulative rights**

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the Security Trustee, Receiver or Attorney.

### **11.10 Consents of Security Trustee**

Despite the terms of any other Transaction Document, to be binding or effective a consent or approval given by the Security Trustee must be in writing signed by a director, secretary or Officer of the Security Trustee.

**11.11 Counterparts**

This deed may be executed in any number of counterparts. All counterparts together and taken to form one and the same instrument.

**11.12 Attorneys**

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

# Schedule 1

## Part A Initial Beneficiaries

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<b>Name</b>	<b>ABN/ACN/ARBN</b>	<b>Address</b>
Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 1	ACN 127 745 395	Level 12, 90 Collins Street, Melbourne 3000
Australian Microcap Investments Pty Ltd as trustee for Microcap Investment Trust 2	ACN 127 745 395	Level 12, 90 Collins Street, Melbourne VIC 3000

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## Part B Initial Security Providers

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<b>Name</b>	<b>ABN/ACN/ARBN</b>	<b>Address</b>
Legend International Holdings, Inc	ARBN 120 855 352	<b>Address:</b> Level 8, 580 St Kilda Road, Melbourne VIC 3004 <b>Attention:</b> Company Secretary
Paradise Phosphate Pty Ltd	ACN 154 180 882	<b>Address:</b> of Level 8, 580 St Kilda Road, Melbourne VIC 3004 <b>Attention:</b> Company Secretary

---

Executed as a deed

---

**Initial Security Provider**

Signed sealed and delivered by  
**Legend International Holdings, Inc**  
by

*sign here* ▶ /s/ J I Gutnick

*print name* J I Gutnick

*sign here* ▶ /s/ P J Lee

*print name* P J Lee

---

**Initial Security Provider**

Signed sealed and delivered by  
**Paradise Phosphate Pty Ltd**  
by

*sign here* ▶ /s/ P J Lee  
Company Secretary/~~Director~~

*print name* P J Lee

*sign here* ▶ /s/ J I Gutnick  
Director

*print name* J I Gutnick

---



**Security Trustee**

Signed sealed and delivered for and on behalf of  
**Acorn Capital Limited**  
by

*sign here* ▶ /s/ M Sheehan  
Company Secretary/Director

*print name* M Sheehan

*sign here* ▶ /s/ Barry Fairley  
Director

*print name* Barry Fairley

Accession Deed (Security Provider)

---

**Clause 8.2**

Date ►

Between the parties

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New Security Provider	<i>[insert name of New Security Provider]</i> <i>[insert ACN/ABN/ARBN] of [insert address]</i>
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Security Trustee	<b>Acorn Capital Limited</b> ACN 082 694 531 of Level 12, 90 Collins Street, Melbourne Vic 3000
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Recitals	<i>[insert details]</i>
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---

This deed witnesses as follows:

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**1 Interpretation**

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**1.1 Incorporated definitions**

A word or phrase (other than one defined in clause 1.2) defined in the Security Trust Deed has the same meaning in this deed.

**1.2 Definitions**

The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Effective Date</b>	the date of this deed.

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<b>Term</b>	<b>Meaning</b>
<b>Security Trust Deed</b>	the deed dated [ <i>insert</i> ] entered into by the Security Trustee and each party listed in Schedule 1 to that deed constituting the Paradise Phosphate Security Trust.

### **1.3 Interpretation**

Clause 1.2 of the Security Trust Deed applies to this deed as if set out in full in this deed.

## **2 New Security Provider becomes a party**

With effect on and from the Effective Date:

- (a) the New Security Provider is taken to be a party to the Security Trust Deed;
- (b) the New Security Provider becomes bound by the Security Trust Deed and has the same rights and assumes the same obligations as if it were a party to the Security Trust Deed as a Security Provider; and
- (c) each reference in the Security Trust Deed to 'Security Provider' includes a reference to the New Security Provider.

## **3 Acknowledgments**

### **3.1 Copies of documents**

The New Security Provider acknowledges that it has received a copy of the Security Trust Deed together with the other information it has required in connection with this deed.

### **3.2 Acknowledgment to Security Trustee**

Without limiting the general application of clause 2, the New Security Provider acknowledges and agrees as specified in clause 6 of the Security Trust Deed.

### **3.3 Appointment of attorney**

Without limiting the general application of clause 2, the New Security Provider irrevocably, for consideration received, appoints as its attorney each person who under the terms of the Security Trust Deed, is appointed an attorney of a Security Provider on the same terms and for the same purposes as contained in the Security Trust Deed.

## **4 Notices**

The details of the New Security Provider for the purpose of the Security Trust Deed are as follows:

Name: [Insert]  
 Office: [Insert]  
 Address: [Insert]  
 Attention: [Insert]  
 Facsimile: [Insert]

**5 General**

---

Clause 10 of the Security Trust Deed applies to this deed as if it were fully set out in this deed.

**6 Governing law**

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- (a) This deed is governed by the laws of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

**7 Attorneys**

---

Each of the attorneys executing this deed states that the attorney has no notice of revocation of the attorney's power of attorney.

**Executed as a deed**

---

**New Security Provider**

Signed sealed and delivered for and on behalf of  
**[New Security Provider]**  
 by its attorney

*sign here* ► \_\_\_\_\_  
 Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
 Witness

*print name* \_\_\_\_\_

**Security Trustee**

Signed sealed and delivered for and on behalf of  
**Acorn Capital Limited**  
for itself and as attorney on behalf of the other parties  
to the Security Trust Deed by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

Accession Deed (Beneficiary)

---

**Clause 8.2**

Date ►

Between the parties

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Existing Beneficiary     *[insert name of Existing Beneficiary]*  
                                  *[insert ACN/ABN/ARBN ] of [insert address]*

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New Beneficiary         *[insert name of New Beneficiary]*  
                                  *[insert ACN/ABN/ARBN ] of [insert address]*

---

Security Trustee         *[insert name of Security Trustee]*  
                                  *[insert ACN/ABN/ARBN] of [insert address]*

---

Recitals                 *[insert details]*

---

This deed witnesses as follows:

---

**1 Interpretation**

---

**1.1 Incorporated definitions**

A word or phrase (other than one defined in clause 1.2) defined in the Security Trust Deed has the same meaning in this deed.

## 1.2 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Effective Date	the date on which all parties have executed this deed.
Retired Beneficiary	<i>[insert name of any Beneficiary who is to become a Retired Beneficiary (if none, delete the definition)].</i>
Security Trust Deed	the deed dated <i>[insert date]</i> between the Security Trustee and each party listed in Schedule 1 of that deed constituting the <i>[insert name of Trust]</i> Trust.

## 1.3 Interpretation

Clause 1.2 of the Security Trust Deed applies to this deed as if set out in full in this deed.

## 2 Novation

### 2.1 New Beneficiary becomes a party

With effect on and from the Effective Date:

- (a) the New Beneficiary is taken to be a party to the Security Trust Deed;
- (b) the New Beneficiary becomes bound by the Security Trust Deed and receives the benefits of a Beneficiary under the Security Trust Deed in accordance with clause **8.2(c)(1)/8.3(c)** of the Security Trust Deed; and
- (c) each reference in the Security Trust Deed to 'Beneficiary' includes a reference to the New Beneficiary.

### 2.2 Preservation of accrued rights

- (a) Despite anything contained in this deed, the Security Trustee, the Existing Beneficiary and all other parties to the Security Trust Deed remain entitled to and bound by their respective rights and obligations which have accrued up to the Effective Date.
- (b) Without limiting the general application of clause 2.3(a), the Existing Beneficiary remains entitled to repayment or payment from the Security Trustee of the Secured Moneys due to Existing Beneficiary under the Security Trust Deed actually payable before the Effective Date.

### 2.3 Release of Existing Beneficiary

Subject to clause 2.2, with effect on and from the Effective Date, the Security Trustee for itself and for each other party to the Security Trust Deed other than the Existing

Beneficiary acknowledges that the Existing Beneficiary is released from and has no further obligation in respect of any of them under the Security Trust Deed.

### 3 Acknowledgments

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#### 3.1 Copies of documents

The New Beneficiary acknowledges that it has received a copy of the Security Trust Deed together with the other information which it has required in connection with this deed.

#### 3.2 Acknowledgment to Security Trustee

Without limiting the general application of clause 2, the New Beneficiary acknowledges and agrees as specified in clause 6 of the Security Trust Deed.

#### 3.3 Appointment of attorney

Without limiting the general application of clause 2, the New Beneficiary, for consideration received, irrevocably appoints as its attorney each person who under the terms of the Security Trust Deed is appointed an attorney of a Beneficiary on the same terms and for the same purposes as contained in the Security Trust Deed.

### 4 Notices

---

The details of the New Beneficiary for the purpose of the Security Trust Deed are as follows:

Name:

Office:

Address:

Attention:

Facsimile:

### 5 General

---

Clause 10 of the Security Trust Deed applies to this deed as if it were fully set out in this deed.

### 6 Governing law

---

- (a) This deed is governed by the laws of **[insert relevant jurisdiction]**.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of **[insert relevant jurisdiction]**.



## 7 Attorneys

---

Each of the attorneys executing this deed states that the attorney has no notice of revocation of the attorney's power of attorney.

### Executed as a deed

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#### Existing Beneficiary

Signed sealed and delivered for and on behalf of  
**[Existing Beneficiary]**  
by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

#### New Beneficiary

Signed sealed and delivered for and on behalf of  
**[New Beneficiary]**  
by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

**Security Trustee**

Signed sealed and delivered for and on behalf of  
**[Security Trustee]**  
for itself and as attorney on behalf of the other parties  
to the Security Trust Deed (other than the Existing Beneficiary)  
by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_