

Amended and Restated MCN Trust Deed

Dated 21 May 2013

Macquarie Group Limited (ACN 122 169 279) ("**Issuer**")

The Trust Company (Australia) Limited (ACN 000 000 993) ("**Trustee**")

King & Wood Mallesons

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Amended and Restated MCN Trust Deed

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Amended and Restated MCN Trust Deed

Details

Parties	Issuer and Trustee	
Issuer	Name	Macquarie Group Limited
	ACN	122 169 279
	Address	No. 1 Martin Place Sydney NSW 2000
	Fax	+61 2 8232 4330
	Attention	Company Secretary
Trustee	Name	The Trust Company (Australia) Limited
	ACN	000 000 993
	Address	Level 3, 530 Collins Street Melbourne Vic 3000
	Fax	+61 3 9620 5826
	Telephone	+61 3 9665 0200
	Attention	Head of Structured Finance Services
Recitals	A	On 14 May 2013, the Issuer and Trustee entered into the MCN Trust Deed (" Original MCN Trust Deed ").
	B	With effect on and from the date of this deed, the Issuer and the Trustee wish to amend and restate the Original MCN Trust Deed.
Date of deed	21 May 2013	

Amended and Restated MCN Trust Deed

General terms

1 Interpretation

1.1 Definitions

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

MCN Trust Deed means the Original MCN Trust Deed as amended and restated by this deed.

Original MCN Trust Deed means the document entitled “MCN Trust Deed” dated 14 May 2013 between the Issuer and the Trustee.

1.2 Interpretation

Clause 1.2 (“*Interpretation*”), 1.3 (“*General Compliance provision*”), 1.4 (“*Inconsistency with ASX Listing Rules*”) and 1.5 (“*Inconsistency with Terms*”) of Schedule 1 of the MCN Trust Deed apply to this deed.

2 Amendment and Restatement

2.1 Amendment and Restatement

As from the date of this deed, the Original MCN Trust Deed is amended as set out in the marked up copy of the Original MCN Trust Deed attached as Annexure A to this document.

2.2 Issuer confirmation

The Issuer confirms that the Terms (referred to in the MCN Trust Deed) are amended and restated in relations to MCNs issued on and after the date of this deed as set out in schedule 1 of the MCN Trust Deed.

3 General

Clauses 19 (“*Notices*”), 20 (“*General*”) and 21 (“*Governing law, jurisdiction and service of documents*”) of the MCN Trust Deed apply to this document as if they were fully set out in this document.

EXECUTED as a deed

Amended and Restated MCN Trust Deed

Signing page

DATED: 21 May 2013

The Issuer

SIGNED, SEALED AND DELIVERED)
as attorneys for MACQUARIE GROUP)
LIMITED pursuant to a power of)
attorney dated 20 May 2013)
in the presence of:)


.....)
Signature of witness)

COH. KOUZOUKAS.....)
Name of witness (block letters))



.....MICHAEL FAVALORO.....

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



Brad Milson
Division Director

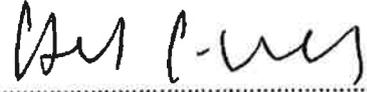
.....)
By executing this deed the attorney
states that the attorney has received no
notice of revocation of the power of
attorney

The Trustee

SIGNED, SEALED AND DELIVERED)
by STENICK SILAVECKY)
as attorney for THE TRUST COMPANY)
(AUSTRALIA) LIMITED pursuant to a)
power of attorney dated 12 July 2010 in)
the presence of:)

W Thorpe)
Signature of witness)

WENDY THORPE)
Name of witness (block letters))



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

Stenick Silavecky
Head of Structured Finance Services

Amended and Restated MCN Trust Deed

Annexure A – Amended and Restated MCN Trust Deed



MCN Trust Deed

Dated: 14 May 2013 (as amended and restated on 21 May 2013)

Macquarie Group Limited (ACN 122 169 279) ("**Issuer**")
The Trust Company (Australia) Limited (ACN 000 000 993) ("**Trustee**")

King & Wood Mallesons

Level 61
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MCN Trust Deed

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MCN Trust Deed

Details

Parties	Issuer and Trustee	
Issuer	Name	Macquarie Group Limited
	ACN	122 169 279
	Address	No. 1 Martin Place Sydney NSW 2000
	Fax	+61 2 8232 4330
	Attention	Company Secretary
Trustee	Name	The Trust Company (Australia) Limited
	ACN	000 000 993
	Address	Level 3, 530 Collins Street Melbourne Vic 3000
	Fax	+61 3 9620 5826
	Telephone	+61 3 9665 0200
	Attention	Head of Structured Finance Services
Interpretation	Terms used in this deed are defined in Schedule 1	
Date of deed	14 May 2013 (as amended and restated on 21 May 2013)	

MCN Trust Deed

General terms

1 Benefit and burden of deed

1.1 Holders bound

- (a) Each Holder (and any person claiming through or under a Holder) is bound by, and is taken to have notice of, each Transaction Document. The Holders are taken to have authorised the Trustee to enter into each Transaction Document in its capacity as trustee of the Trust.
- (b) It is a fundamental condition of receiving any of the rights or benefits under a MCN that a Holder must perform all of the obligations and comply with all restrictions and limitations applicable to it under this deed (including, for the avoidance of doubt, the Terms) in respect of the MCN.

1.2 Limit on Holders' rights

All of the rights against the Issuer in connection with the MCN are held by the Trustee for the Holders. Accordingly, subject to clause 1.4 (*"Holder's rights to take action"*):

- (a) no Holder is entitled to proceed directly against the Issuer to enforce the performance of any of the provisions of this deed or the MCN (including any right, power or remedy in connection with the MCN and whether under this deed or the other Transaction Documents); and
- (b) the rights, powers and remedies of the Trustee under and in respect of the Transaction Documents are exercisable and enforceable by the Trustee only. No Holder may exercise any of them (whether in its own name or the Trustee's name).

1.3 Enforcement on direction

Subject to the Transaction Documents and to section 283DA(h) of the Corporations Act, the Trustee must take action to enforce the Transaction Documents in accordance with their terms provided all the following conditions are met and is not required to act in accordance with any direction from the Holders or any of them unless all the following conditions are met:

- (a) the Trustee is requested in writing to take action by Holders who hold between them at least 25% of the outstanding principal amount of the MCN then outstanding or it has been so directed by a Special Resolution of the Holders;
- (b) the Trustee is indemnified to its reasonable satisfaction (including being placed in funds, if required), against:
 - (i) all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action;
 - (ii) all Costs which the Trustee may incur in taking the action; and
 - (iii) all management time spent by employees or officers of the Trustee in relation to such action which will be charged at the

Trustee's standard hourly rates prevailing from time to time provided that such rates have been notified to the Issuer in writing; and

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

1.4 Holder's right to take action

No Holder is entitled to proceed directly against the Issuer to enforce the performance of any of the provisions of this deed or the MCN (including any right, power or remedy in connection with the MCN and whether under this deed or the other Transaction Documents) unless the Trustee being entitled and, having become bound to proceed, fails to do so within 14 days and such failure is continuing, in which case the Holder is entitled to institute proceedings against the Issuer in accordance with this deed and the Terms.

2 MCN Trust Deed

2.1 MCN Trust Deed

This deed:

- (a) is the trust deed for the Trust; and
- (b) is the trust deed in respect of the MCN required by Part 2L.1 of Chapter 2L of the Corporations Act.

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

This deed is to be interpreted so as not to give rise to the operation of section 283DB(1) of the Corporations Act.

2.3 Constitution and status

The MCN are debt obligations of the Issuer constituted by, and owing under, this deed and issued on the Terms and which are unconditional except as provided in the Terms and the other provisions of this deed. The obligations of the Issuer in respect of each MCN:

- (a) constitute separate and independent acknowledgments of the indebtedness of the Issuer;
- (b) are subject to the terms of this deed (including the Terms);
- (c) are direct and unsecured;
- (d) rank equally with all other MCN as described in the Terms; and
- (e) will be subordinated and otherwise rank as described in the Terms.

2.4 Undertaking to pay

- (a) In respect of each MCN, the Issuer undertakes to the Trustee (on behalf of the relevant Holder), to pay the amounts due and payable in respect of that MCN under and in accordance with the Transaction Documents.
- (b) The Trustee directs the Issuer to pay such amounts directly to the Holders, unless:

- (i) a Controller (as defined in the Corporations Act), statutory manager or similar official has been appointed to the Issuer;
- (ii) the Issuer is directed by the Trustee to make the payments to the Trustee by the giving of notice to that effect not less than five Business Days before the scheduled date for the making of the payment; or
- (iii) the Issuer advises the Trustee that it is not likely to meet its obligations under this deed,

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

- (c) The payment of an amount due under a MCN to either the Holder or the Trustee in accordance with the Terms and this deed discharges the obligation of the Issuer to pay that amount under that MCN to each of the Holder and the Trustee.

2.5 Undertaking to comply with other obligations

In respect of each MCN, the Issuer undertakes to the Trustee (on behalf of the relevant Holder), to comply with its obligations in respect of that MCN under and in accordance with the Transaction Documents.

2.6 Unsecured notes

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

3 Declaration of trust

3.1 Trustee

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

3.2 Constitution of Trust

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

3.3 Declaration of Trust

The Trustee declares that, on execution of this deed, it holds the sum of A\$10, and that it will hold the Trust Fund, on trust at any time for the benefit of itself and the persons who are Holders from time to time on the terms of this deed.

3.4 Name of Trust

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

3.5 Commencement and termination of Trust

The Trust commences on the date of this deed and unless determined earlier ends on the earlier of:

- (a) the day occurring immediately before the 80th anniversary of the date of this deed; or

- (b) the day on which this deed is terminated under clause 18.1 (*“Discharge and release”*).

3.6 Perpetuity period

The perpetuity period applicable to the Trust is the period of 80 years commencing on the date of this deed.

3.7 Beneficiaries

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

3.8 Safe custody of this deed

The Trustee will hold its counterparts of this deed in safe custody for itself and the Holders in either New South Wales or Victoria or other place as agreed between the Trustee and the Issuer.

3.9 Receipt of moneys

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

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

4 General powers, rights and responsibilities

4.1 Extent of obligations

The Trustee has no obligations except those expressly set out in the Transaction Documents to which it is a party and those arising under Chapter 2L of the Corporations Act. The obligations of the Trustee to act, or refrain from acting, are at all times subject to the Corporations Act.

4.2 Excluded roles and duties

The appointment as trustee does not mean that the Trustee:

- (a) is a trustee for the benefit of;
- (b) is a partner of; or
- (c) has a fiduciary duty to, or other fiduciary relationship with,

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

4.3 Binding nature of relationship

Each Holder is bound by anything properly done or not done by the Trustee in accordance with the Transaction Documents, whether or not on instructions, and whether or not the Holder gave an instruction or approved of the thing done or not done.

4.4 Exercise of rights and compliance with obligations

- (a) **(Powers of a natural person)** The Trustee has all the powers of a natural person or corporation in connection with the exercise of its rights and compliance with its obligations under the Transaction Documents.
- (b) **(Exercise of powers)** The Trustee may exercise its rights and comply with its obligations under the Transaction Documents in any manner it thinks fit.
- (c) **(Waiver)** The Trustee may waive in writing, at any time and on any terms or conditions, any breach by the Issuer under this deed, provided that where a breach is the failure of the Issuer to Redeem or Resell any MCN under the Terms the Trustee may waive the breach only if:
- (i) the Holders have by a Special Resolution consented in writing to the waiver; or
 - (ii) the breach has been remedied to the satisfaction of the Trustee,
- and provided that the Trustee shall not exercise this power so as to affect the eligibility of the MCN as Eligible Capital. If requested by the Trustee, the Issuer shall promptly provide to the Trustee an Officer's Certificate stating whether the waiver affects the eligibility of the MCN as Eligible Capital.
- (d) **(Dealings with the Issuer)** The Trustee and any Related Body Corporate of the Trustee may, without being liable to account to the Issuer or any Holder:
- (i) hold, in any capacity, MCN, shares or any other marketable securities issued by the Issuer or any other entity in the Macquarie Group;
 - (ii) in any capacity, represent or act for, or contract with, individual Holders;
 - (iii) deal in any capacity with the Issuer or any associates or Related Body Corporate of the Issuer; or
 - (iv) act in any capacity in relation to any other managed investment schemes or trusts,

but the Trustee may not act in a manner which would preclude the Trustee from acting as trustee under this deed under and in accordance with Chapter 2L of the Corporations Act.

4.5 Trustee's undertakings

The Trustee must:

- (a) perform its duties under Chapter 2L of the Corporations Act and the Terms;

- (b) act honestly and in good faith and comply with all applicable laws in performing its duties and in the exercise of its discretions under this deed and the Terms;
- (c) exercise such diligence and prudence as a person carrying on the business of a professional trustee would exercise in performing its duties and in the exercise of its discretions under this deed;
- (d) keep or cause to be kept accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee under this deed; and
- (e) keep the assets of the Trust which are held by the Trustee separate from all other assets of the Trustee which are held in a capacity other than trustee under this deed.

4.6 Delivery of Ordinary Shares to the Trustee

- (a) If MCN are required to be Exchanged and clause 8.14(a), (b), (c) or (d) of the Terms applies, then the Trustee must act in accordance with clause 8.14(f) and (g) of the Terms and this clause 4.6 will apply.
- (b) For the purposes of this clause 4.6(b), if the Trustee is required to sell the Ordinary Shares in accordance with clause 8.14(f) of the Terms then the Trustee may appoint one or more entities, which may include a Related Body Corporate of the Trustee, to act as the sale agent ("**Sale Agent**") (which entity must not be the Issuer or any Related Entity of the Issuer). If the Trustee appoints such entity as the Sale Agent, it must use best endeavours to procure that the Sale Agent:
 - (i) at the first reasonable opportunity sell the Ordinary Shares of all relevant Holders in one or more marketable parcels in such manner as the Sale Agent advises is appropriate; and
 - (ii) upon a sale of a parcel of Ordinary Shares occurring, pays the Proceeds:
 - (A) directly to the Trustee; or
 - (B) at the direction of the Trustee,
 in either case for payment to each relevant Holder in accordance with clause 8.14(f) of the Terms.
- (c) The Trustee gives no assurance (and is not required to procure the Sale Agent to give such assurance) as to:
 - (i) the appropriateness of the size of the parcels for, the manner of, the timing of, or the price that will be achieved from, the sale of the Ordinary Shares described in clause 4.6(b) or clause 8.14(f) of the Terms;
 - (ii) whether a willing buyer for all or some of the Ordinary Shares will be found by the Sale Agent; or
 - (iii) whether a sale of all or some of the Ordinary Shares will be achieved.

For the purposes of this clause 4.6 and clause 8.14(f) of the Terms, the Trustee does not owe any obligations or duties to the Holders in relation to the price at which Ordinary Shares are sold and has no liability for any

loss suffered by a Holder as a result of the sale of Ordinary Shares under this clause 4.6 and clause 8.14(f) of the Terms.

- (d) Payments to the relevant Holders under clause 4.6(b) of this deed or clause 8.14(f) of the Terms may be made by either crediting an Australian dollar bank account maintained in Australia with a financial institution and nominated by the relevant Holder in writing or in any other manner that the Trustee decides.
- (e) Where the Trustee is unable to cause a payment to one or more of the relevant Holders to be made in accordance with clause 4.6(d), the amount may be returned to the Issuer who will be subject to the obligation to hold the relevant amount as if it was an unsuccessful payment under clause 10.7 ("*Unsuccessful attempts to pay*") of the Terms, unless the winding up of the Issuer has commenced in which case the Trustee must hold the amount until the Trustee pays the amount in accordance with the law relating to unclaimed money. No additional payment is payable in respect of any delay in payment. Payment by the Trustee of an amount to the Issuer or in accordance with the law relating to unclaimed money under this clause 4.6(e) will discharge the Trustee's liability in respect of the payment.
- (f) A payment to any one of joint Holders or return of an unsuccessful payment under subclause (e) will discharge the Trustee's liability in respect of the payment. Clause 10.1 of the Terms shall apply to payments by the Trustee under this clause 4.6, with any necessary amendments.
- (g) All payments under this clause 4.6 are subject in all cases to:
 - (i) compliance by the Trustee with applicable laws; and
 - (ii) any applicable fiscal or other laws in the place of payment.
- (h) In relation to payments by the Trustee under this clause 4.6, within 48 hours of a request by the Trustee in writing, the Issuer will provide the Trustee with a statement setting out the appropriate deductions for withholding taxes or other deductions required by law that are to be made in respect of each relevant Holder entitled to a payment, along with such other information that is reasonably requested by the Trustee in connection with such deductions.
- (i) In addition to clause 4.6(h), the Issuer will also provide all necessary information to the Trustee (including a copy of the Register) within 48 hours of a request by the Trustee :
 - (i) so that the Trustee may make payments to the relevant Holders under this clause 4.6 or comply with the law relating to unclaimed money;
 - (ii) where the information is otherwise required by the Trustee in connection with payments under this clause 4.6.

The Trustee is entitled to accept the correctness of all information contained in the Register and all information provided to it by the Issuer under this clause 4.6 without investigation for the purpose of the Trustee making payments to the relevant Holders under this clause 4.6.

4.7 Holder information

Each Holder agrees to provide the Issuer or its Nominee with any information necessary or desirable to give effect to an Exchange.

4.8 Appointment of Nominee by Issuer

If the Issuer appoints a Nominee under the Terms, in relation to an Exchange:

- (a) the appointment of the Nominee in relation to that Exchange is to the exclusion of the Trustee;
- (b) the Trustee has no duties or obligations under clauses 8.14(f) or 8.14(g) of the Terms or clause 4.6 of this deed in connection with the Ordinary Shares issued to the Nominee under clause 8.14(f) of the Terms in relation to the relevant Exchange;
- (c) the Trustee has no liability to Holders in connection with the actions of the Nominee (under clauses 8.14(f) or 8.14(g) of the Terms or clause 4.6 of this deed or otherwise) in relation to the relevant Exchange; and
- (d) the terms of such appointment shall be no less favourable to the Holders with respect to the delivery of Ordinary Shares and/or their sale than would have been the case under both the Terms and this clause 4.

5 Delegation and reliance on advice

5.1 Power to delegate

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

5.2 Trustee may rely on communications and opinions

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

- (a) on any communication or document which it has had no reasonable grounds to believe:
 - (i) is not genuine and correct; or
 - (ii) has not been signed or sent by the appropriate person; and
- (b) as to legal, accounting, taxation or other professional matters, on opinions and statements received by it from any legal, accounting, taxation or other professional advisers engaged or appointed by it, provided that it reasonably believes the adviser engaged or appointed by it is fit, proper and appropriate.

5.3 Dispute or ambiguity

If there is any dispute or ambiguity in relation to any matter connected with the Transaction Documents, the Trustee may (but need not) do one or both of the following:

- (a) obtain and rely on advice from any adviser referred to in clause 5.2(b) (“*Trustee may rely on communications and opinions*”); or
- (b) apply to a court for any direction or order the Trustee considers appropriate and comply with any such directions or orders.

The Trustee may (but need not) refuse to do anything in relation to matters affected by the dispute or ambiguity.

Nothing in this clause limits the Trustee’s obligations under clause 4.5 (“*Trustee’s undertakings*”).

6 Trustee indemnity

6.1 Corporations Act

The Trustee’s right of indemnity and any limitation on the Trustee’s liability under the Transaction Documents is subject to the Corporations Act.

6.2 Indemnity

The Trustee, its officers, directors, employees and attorneys (together included in the defined term “Trustee” for the purposes of this clause 6.2) are entitled to be indemnified by the Issuer and, without limitation, out of the property of the Trust Fund in respect of all costs, losses, liabilities, expenses, demands or claims suffered or properly incurred by the Trustee in the execution of the Trust or the exercise or performance of any of the powers, duties, obligations, authorities or discretions vested in the Trustee under this deed and any other Transaction Document or under chapter 2L of the Corporations Act, but this indemnity does not extend to:

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

The Trustee may retain and pay out of any moneys in its hand (or any other property of the Trust Fund) in priority to any claim by a Holder, all sums necessary to effect and satisfy an amount due and payable to the Trustee under this clause 6 or any other amount due and payable to the Trustee by the Issuer under this deed or any other Transaction Document.

6.3 Indemnity additional

Any indemnity to which the Trustee is entitled under this deed is in addition to, and without prejudice to, any indemnity allowed by law or equity to the Trustee.

6.4 No obligation to act

The Trustee is not obliged to carry out any act or refrain from doing any act (including incurring any liability) under any Transaction Document until such time as it is placed in funds or is otherwise indemnified to its reasonable satisfaction against any expense or liability which it may incur as a result of doing so.

6.5 No indemnity by Holders

Except as otherwise agreed with any Holder or Holders in connection with the taking of any action by the Trustee, the Trustee is not to be indemnified by any Holder personally.

6.6 Rights held on trust for third parties

Where a person who is not a party to this deed becomes entitled to claim under the indemnity in clause 6.2 (“**Third Persons**”), the Trustee shall hold on trust the rights of those Third Persons, and those rights may be exercised by the Trustee or by those Third Persons as beneficiaries.

6.7 Right of indemnity not affected by unrelated breach

Where a cost, loss, liability, expense, demand or claim is suffered or incurred pursuant to a proper exercise of the Trustee’s powers under this deed or at law, the Trustee may exercise any of its rights of indemnification or reimbursement out of the Trust Fund or as against the Issuer to satisfy that cost, loss, liability, expense, demand or claim, despite any loss the Trust Fund may have suffered or any diminution in the value of Trust Fund as a consequence of any unrelated act or omission by the Trustee or by any person or entity acting on behalf of the Trustee.

6.8 Survival

The provisions of this clause 6 shall survive the termination of this deed and any other Transaction Document and where the Trustee ceases for any reason to be trustee of the Trust.

7 Trustee’s liability

7.1 Limitation of liability

- (a) The Trustee enters into this deed in its capacity as trustee of the Trust and in no other capacity.
- (b) The Issuer and Holders acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.
- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
 - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the Trust Fund; and
 - (ii) there is sufficient property held by the Trustee as trustee of the Trust at the time, which is available to meet that indemnity amount (after all Trust assets have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to paragraph (e), no person will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust,
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the

Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or

- (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in paragraphs (c) and (d) do not apply to any Trustee Liability to the extent to which there is, whether under this deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust Fund, as a result of a Trustee Default.
- (f) The Issuer and Holders agree that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will be considered a Trustee Default for the purposes of paragraph (e) or clauses 6.2 or 8.2 to the extent to which the act or omission was caused or contributed to by any failure of the Issuer or a Holder to fulfil their obligations relating to the Trust or by any other act or omission of that person or by the non-performance of any other person of any of their obligations under or in respect of this deed or any other Transaction Document.
- (g) No attorney, agent or other person appointed in accordance with this deed or any other Transaction Document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered a Trustee Default for the purposes of paragraph (e) or clauses 6.2 or 8.2.
- (h) This limitation of the Trustee's liability applies, to the maximum extent permitted by Section 283DB of the Corporations Act, despite any other provisions of this deed or any other Transaction Document or any provisions of equity or law to the contrary and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed or any other Transaction Document or their performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under this deed or any other Transaction Document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in paragraphs (a) to (h).
- (j) In this clause, "**Trustee Liability**" means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this deed or any other Transaction Document or their performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this deed or any other Transaction Document or their performance.

7.2 Certificate by Issuer

The Trustee is entitled to:

- (a) accept and rely upon an Officer's Certificate as to any fact or matter as conclusive evidence of it;

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

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

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

7.3 Evidence of claims

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

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

7.4 Certificate

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

7.5 Not bound to give notice

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

7.6 No monitoring obligation

Notwithstanding any other provisions of the Transaction Documents, but subject to the Trustee's obligations under the Corporations Act, the Issuer acknowledges that the Trustee has no obligation to:

- (a) monitor compliance by the Issuer with its covenants and obligations under the Transaction Documents or any other activities, financial position or status of the Issuer whatsoever; or
- (b) request information or otherwise keep itself informed about the circumstances of the Issuer, or consider or provide to any Holder or any other person any information with respect to the Issuer (whenever

coming into its possession), except to the extent expressly set out in the Transaction Documents or under applicable law.

7.7 Holder capacity

The Trustee's duties and obligations to a Holder are owed to that Holder only in its capacity as a Holder.

7.8 Knowledge of the Trustee

Without limiting the Trustee's obligations under Chapter 2L of the Corporations Act, the Trustee will only be considered to have knowledge or awareness of a thing, or grounds or reason to believe anything, by virtue of the officers of the Trustee having the day to day responsibility for the administration of the Trust, having actual knowledge, actual notice or actual awareness of that thing, or actual grounds or reason to believe that thing (and similar references will be interpreted in this way). In addition, notice, knowledge or awareness of a default or breach of this deed means actual knowledge, notice or awareness of the events or circumstances constituting the default or breach.

7.9 Acting on directions

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

8 Fees and expenses

8.1 Fees

- (a) The Issuer agrees to pay fees to the Trustee on terms agreed between the Issuer and the Trustee from time to time. The payment of such fees must be made by the Issuer by transfer to such account nominated from time to time by the Trustee to the Issuer or by such other means notified by the Trustee to the Issuer from time to time.
- (b) If the Trustee is required at any time to undertake duties which are of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee, the Issuer agrees to pay to the Trustee on demand, such additional remuneration as shall be reasonably commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such action provided that the Trustee has advised the Issuer in writing of those duties.

8.2 Costs and expenses

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

- (a) all reasonable Costs (including legal fees, costs and disbursements) incurred in connection with negotiating, preparing and executing the Transaction Documents, the Prospectus and any subsequent consent, agreement, approval, waiver or amendment relating to the Transaction Documents;
- (b) all Costs, losses and other liabilities (including legal fees, costs and disbursements, determined without taxation, assessment, or similar process) incurred in connection with exercising, enforcing or preserving,

or attempting to exercise, enforce or preserve, rights under the Transaction Documents; and

- (c) all Costs, losses and other liabilities (including legal fees, costs and disbursements) suffered or properly incurred by the Trustee which arise out of, or in the course of, the Trustee acting as the trustee of the Trust, except where such expenses are incurred by the Trustee as a direct result of a Trustee Default.

9 Retirement and removal of Trustee

9.1 Retirement

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

9.2 Eligible Trustee

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

9.3 Trustee may appoint Eligible Trustee

Subject to the Corporations Act, if 60 days (or such other period as the Trustee and the Issuer may agree) after the Trustee has given notice in writing to the Issuer of its desire to retire or the Issuer has given notice in writing to the Trustee of the Trustee's removal under clause 9.5 (as relevant), a new Trustee has not been appointed, the retiring Trustee may appoint (or, in its discretion, apply to the court for the appointment of) an Eligible Trustee as the new Trustee and any such appointment will be effective without the approval of the Issuer or the Holders being required, but the Trustee may, in lieu of exercising the power conferred by this clause 9.3, call a meeting of Holders for the purpose of appointing by the passing of an Ordinary Resolution a person nominated either by the Trustee or by any Holder as the new Trustee.

9.4 When retirement to take effect

Notwithstanding anything contained in this clause 9.4, the Trustee covenants that the retirement of the Trustee under this clause 9.4 will not take effect unless and until:

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

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

9.5 Removal of Trustee

- (a) Subject to compliance with the relevant statutory requirements for the time being where:
 - (i) the Trustee is in material breach of its obligations under any Transaction Document and has not rectified the breach within 7

Business Days of receiving a notice from the Issuer specifying the breach and requesting that it be remedied;

- (ii) a Trustee Default has occurred and is continuing;
- (iii) the Trustee ceases or has ceased or has expressed an intention to cease to carry on business;
- (iv) the Trustee is placed in liquidation or is wound-up or dissolved;
- (v) a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Trustee (other than to any assets of any trust of which the Trustee is trustee other than the Trust);
- (vi) any licence, consent, authorisation, permit or similar thing the Trustee is required to hold to carry out its obligations and duties under or in respect of this deed is revoked or not renewed;
- (vii) the Issuer reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred;
- (viii) the Trustee ceases to be a person who can be appointed a trustee under section 283AC(1) of the Corporations Act;
- (ix) the Trustee cannot continue to act as Trustee because of the operation of section 283AC(2) of the Corporations Act; or
- (x) the Issuer is authorised or requested to do so by a Special Resolution passed at a meeting of the Holders called under clause 15 (*"Meetings of Holders"*),

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

- (b) Any removal of the Trustee under this clause 9.5 will only take effect upon the appointment of a new Trustee under clauses 9.2 (*"Eligible Trustee"*) or 9.3 (*"Trustee may appoint Eligible Trustee"*) or under section 283AE of the Corporations Act.
- (c) On the retirement or removal of the Trustee, the Trustee must at the cost of the Issuer do all such things and execute all such deeds and assurances as are necessary for the purpose of vesting in a new Trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed or any Transaction Document. The Trustee is entitled to its remuneration up to the date of its retirement or removal and reimbursement for its Costs of complying with this clause 9.5(c).

9.6 Reasonable steps

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

- (a) has ceased to exist;
- (b) has not been validly appointed;
- (c) cannot be a trustee under section 283AC of the Corporations Act; or

- (d) has failed or refused to act as Trustee.

9.7 Discharge

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

9.8 ASIC

The Issuer must advise ASIC of the name of the incoming Trustee within 14 days of the relevant appointment.

10 Covenants

10.1 Issuer's general duties

The Issuer must:

- (a) make all of its respective financial and other records available for inspection by:
 - (i) the Trustee;
 - (ii) an officer or employee of the Trustee authorised by the Trustee to carry out the inspection; or
 - (iii) a registered company auditor appointed by the Trustee to carry out the inspection,

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

- (b) for so long as any of the MCN remain outstanding:
 - (i) notify the Trustee promptly after it becomes aware of a breach by the Issuer of Chapter 2L of the Corporations Act, this deed or the Terms in each case giving details of that breach;
 - (ii) carry on and conduct its business in a proper and efficient manner;
 - (iii) keep proper books of account;
 - (iv) if requested by a Holder or the Trustee, provide a copy of this deed to that Holder or the Trustee; and

- (v) maintain, or cause to be maintained, a Register;
- (c) comply with the Terms; and
- (d) provide to the Trustee:
 - (i) within 120 days after the close of each financial year, a copy of the Issuer's audited financial statements lodged with ASIC in respect of that financial year;
 - (ii) within 75 days after the close of each financial half year, a copy of the Issuer's auditor reviewed financial statements lodged with ASIC in respect of that half year;
 - (iii) to the extent not already provided under this clause 10.1(d), within 7 days of issue, copies of all reports and releases made by the Issuer to the ASX;
 - (iv) promptly, copies of all documents and notices given to Holders and any material documents and notices received from Holders; and
 - (v) all other information or reports required to be provided to the Trustee under the Corporations Act or requested by the Trustee which is reasonably required for the purposes of the discharge of the duties, trusts and powers vested in the Trustee under this deed or imposed upon it by law,

and, if requested by a Holder, provide copies of any of the above to such Holder within a reasonable time of such request;

- (e) comply with:
 - (i) all laws applicable to it (including under Chapter 2L of the Corporations Act) to the extent they relate to its obligations under the Transaction Documents, where a failure to do so would have or would be likely to have a material adverse effect in relation to the MCN; and
 - (ii) any conditions imposed by the ASX in connection with the MCN except to the extent such conditions may affect the eligibility of MCN as Eligible Capital.

10.2 Notification of Non-Viability Event

If a Non-Viability Event occurs, the Issuer must promptly notify the Trustee in writing of the Non-Viability Event (including in the notice all material details and consequences of the Non-Viability Event known to the Issuer). Following issue of a notice under this clause, the Issuer must keep the Trustee informed in writing of material developments in connection with the Non-Viability Event promptly upon becoming aware of those developments.

10.3 Reports

The Issuer undertakes to comply with their reporting obligations to the Trustee, to the Holders and ASIC under the Corporations Act (including section 283BF and section 318), the applicable ASX Listing Rules and the ASTC Operating Rules. For the purpose of subsection 283BF(2) of the Corporations Act, the Issuer will, by written notice to the Trustee, fix a date as the last day of the relevant first quarter.

10.4 Benefit

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

11 Representations and warranties

11.1 Representations and warranties by the Issuer

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

- (a) **(incorporation and existence)** it has been incorporated as a company limited by shares in accordance with the law of its place of incorporation, is validly existing under that law and has power and authority to carry on its business as it is now being conducted;
- (b) **(power)** it has the power to enter into the Transaction Documents to which it is a party and to issue MCN and to comply with its obligations under each of them;
- (c) **(no contravention or exceeding power)** the Transaction Documents and the transactions under them which involve it do not contravene its constituent documents (if any) or any law, directive or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (d) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, to comply with its obligations and exercise its rights under them, to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under the Transaction Documents and MCN constitute legal, valid, binding and (subject to insolvency and other laws generally affecting creditors' rights and the discretionary nature of equitable remedies) enforceable obligations;
- (f) **(accounts)** its most recent audited financial statements and those of the Macquarie Group which have been provided to the Trustee in accordance with this deed:
 - (i) were prepared in accordance with the applicable accounting standards for a financial year; and
 - (ii) are a true and fair statement of its financial position as at the date to which they are prepared and disclose or reflect all its actual and contingent liabilities as at that date; and
- (g) **(solvency)** it is Solvent.

11.2 Representations and warranties by the Trustee

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

- (a) **(status)** the Trustee is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation;

- (b) **(power, authority and due authorisation)** the Trustee:
 - (i) has the power to enter into, and exercise its rights and perform and comply with its obligations (if any) under the Transaction Documents to which it is a party;
 - (ii) has taken or will take all necessary action to authorise the entry into the relevant Transaction Documents to which it is a party and the performance of all its obligations under those documents; and
 - (iii) meets the requirements of a trustee as provided in sections 283AC(1) and 283AC(2) of the Corporations Act;
- (c) **(binding obligations)** the obligations assumed by it in the Transaction Documents to which it is a party are legal, valid, binding and enforceable under their terms, subject to any necessary stamping and registration and subject to principles of equity and laws affecting creditors' rights generally and legal reservations in any legal opinions delivered in connection with the issue of the MCN; and
- (d) **(no contravention or exceeding power)** the Transaction Documents and the transactions under them which involve it do not contravene its constituent documents (if any) or any law, directive or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded.

11.3 Representations and warranties repeated

Each of the representations and warranties in clause 11.1 (*"Representations and warranties by the Issuer"*) is deemed to be repeated by the Issuer on the Issue Date and on each Distribution Payment Date by reference to the facts and circumstances existing on such date.

11.4 Reliance

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

12 Issue of MCN

12.1 Issue

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

12.2 Entry in Register

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

A MCN is issued when it is entered in the Register.

All MCN in respect of which an entry is made in the Register are (subject to rectification for fraud or error) taken to have been validly issued under this deed, regardless of any non-compliance by the Issuer with the provisions of this deed.

12.3 No certificates

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

12.4 Statement of Holding

- (a) The Issuer or the Registrar (as applicable) must issue to each Holder a Statement of Holding as soon as reasonably practicable after the MCN have been issued.
- (b) A Statement of Holding is no assurance or guarantee that any amounts will be paid to the Holder.

12.5 Issuer dealing with MCN

The Issuer, any other member of the Macquarie Group or any third party nominated by the Issuer may purchase or otherwise deal with any MCN in accordance with the Terms.

13 Registers

13.1 Registers

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

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

13.2 Location of Register

The Register will be kept at:

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

(c) another place in Australia approved by ASIC,
provided that the Register must not be located in South Australia.

13.3 Issuer not liable for mistakes

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

13.4 Trustee may accept correctness

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

13.5 Inspection

Each Register will be available for inspection by the Trustee, the Holders and other persons authorised in writing by the Trustee or a Holder during normal business hours and at any other times approved by the Trustee and the Registrar.

13.6 Change in information

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

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

13.7 Rectification of Registers

If:

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

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

13.8 Closure of Registers

On giving a notice by advertisement or otherwise as may be required by law, or the requirements of an applicable ASX Listing Rule, the Issuer may from time to time close any Register for any period or periods not exceeding in any one year the maximum period permitted by law or those requirements in aggregate in any calendar year.

13.9 Appointment of Registrar

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

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

Neither the Issuer nor the Trustee is liable for any act or omission of any person appointed by the Issuer under this clause 13.9, provided that the Issuer will be liable unless it has taken reasonable steps to select a person competent to perform the intended functions. If the Issuer is not establishing or maintaining the Registers, the Issuer must immediately notify the Trustee of the person who is establishing and maintaining the Registers.

13.10 Replacement of Registrar

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

13.11 Copy to the Trustee

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

13.12 Property in MCN situated where Register is

The property in the MCN will for all purposes be regarded as situate in the place where the relevant Register is, for the time being, situated and not elsewhere.

13.13 Clearing System sub-register

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

14 Title and transfer of MCN

14.1 Register conclusive as to ownership

An entry in the Register is conclusive evidence that the person is the absolute owner of MCN subject to correction for fraud or error. Joint holdings of MCN will be recognised in accordance with clause 11.5 ("*Joint holders*") of the Terms.

14.2 Effect of entries in Register

Each entry in the Register in respect of a MCN constitutes:

- (a) an unconditional and irrevocable undertaking by the Issuer to the Holder to pay distributions and any other amount in accordance with and subject to this deed and the Terms; and
- (b) an entitlement to the other benefits given to Holders under this deed and the Terms in respect of the MCN.

14.3 Non-recognition of interests

Except as required by law, the Issuer the Trustee and the Registrar must treat the person whose name is entered in the Register as the holder of a MCN as the absolute owner of that MCN.

14.4 Transfers

Subject to the other provisions of this clause 14, transfers of MCN will be given effect in accordance with and subject to clause 11 ("*Title and transfer of*") of the Terms.

14.5 Estates

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

14.6 Transfer of unidentified MCN

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

15 Meetings of Holders

15.1 Meeting provisions

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

15.2 Ordinary Resolution

Subject to clause 15.3 ("*Special Resolution*"), Holders may, by an Ordinary Resolution give directions to the Trustee as to, or authorise, ratify or confirm anything done or not done by the Trustee in respect of the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to the Transaction Documents or the MCN, or any other instrument to which the Trustee is or becomes a party in the capacity of trustee under this deed.

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

15.3 Special Resolution

Notwithstanding any other term of this deed, Holders may by a Special Resolution approve the release of the Trustee from liability for something done or omitted to be done by the Trustee or any other person before the release is given.

16 Amendment

16.1 Amendment in accordance with the Terms

At any time and from time to time, but subject to compliance with the Corporations Act, all other applicable laws and any other conditions in the Terms, the Trustee, together with the Issuer, may amend the Terms, or other provisions of this deed if such amendment is permitted by clause 13 ("Amendment of Terms") of the Terms.

16.2 Where APRA approval required

To the extent any amendment may affect the eligibility of the MCN as Eligible Capital, such amendment requires the prior written approval of APRA. If requested by the Trustee, the Issuer shall provide to the Trustee an Officer's Certificate stating whether the amendment affects the eligibility of the MCN as Eligible Capital and, if it is required, that the written approval of APRA to the amendment has been obtained.

16.3 Meaning of amend

In this deed, "**amend**" includes modify, vary, cancel, amend, waive or add to, and "**amendment**" has a corresponding meaning.

17 Confidentiality

17.1 Financial information

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

17.2 Confidential Information

The Trustee must keep confidential all Confidential Information of the Issuer except:

- (a) as (but only to the extent) required by the Transaction Documents or in connection with any obligation, duty or power of the Trustee under the Transaction Documents;
- (b) any disclosure the Trustee reasonably believes is required by any law or stock exchange (except that this paragraph does not permit the Trustee to disclose any information under section 275(4) of the Personal Property Securities Act 2009 (Cth) unless section 275(7) of the Personal Property Securities Act 2009 (Cth) applies);
- (c) to those officers, employees, attorneys, agents, delegates and professional advisers of the Trustee to whom it is necessary or desirable to reveal the information or any part of it; or
- (d) to a person approved in writing by the Issuer (such approval to be given or withheld in the Issuer's absolute discretion or on such conditions as it deems fit).

17.3 Undertaking

The Trustee agrees to use its reasonable endeavours to ensure that every person to whom it provides Confidential Information under this clause 17 (except clauses

17.2(a) and 17.2(b)) gives and performs obligations under a confidentiality undertaking in the same terms as this clause 17.

17.4 Meaning

In this clause 17, "**Confidential Information**" means all information and other material provided to or obtained by the Trustee, a delegate or any officer, employee, attorneys, agents, professional adviser or other consultant of the Trustee under, in connection with or related to a Transaction Document or any obligation, duty or power of the Trustee under a Transaction Document, except for information that:

- (a) is not in the public domain;
- (b) the Trustee can prove by contemporaneous written documentation was already known to it at the time of disclosure (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Trustee acquired from a source other than the Issuer or any Related Body Corporate or representative of the Issuer where such source is entitled to disclose it.

18 Discharge and release

18.1 Discharge and release

By force of this clause 18, the Issuer will immediately be discharged and released from its liabilities, obligations and covenants under this deed when:

- (a) each MCN has been Redeemed, Exchanged or Written-Off or otherwise satisfied including under this deed;
- (b) the Issuer provides an Officer's Certificate to the Trustee stating that each MCN has been Redeemed, Exchanged or Written-Off or satisfied including under this deed;
- (c) the Issuer has furnished to the Trustee a statement in writing that it does not intend to, and will not, create any MCN in the future under this deed; and
- (d) all fees and Costs reasonably incurred by the Trustee and all other amounts which are payable or reimbursable by the Issuer to the Trustee have been paid.

The Trustee must then, if required by the Issuer, execute a confirmation of release in favour of the Issuer (which includes a statement that the requirements of this clause have been satisfied) and terminate this deed and this deed will terminate on such a release being given. The Trustee is, to the extent permitted by law, discharged and released from its obligations, covenants and liabilities under this deed with effect from the termination of this deed.

18.2 Distribution

If this deed is terminated under clause 18.1 ("*Discharge and release*"), the Trustee will distribute the balance of the capital and income (if any) of the Trust (including cash) at the direction of the Issuer.

19 Notices and other communications

19.1 Notices to and from Holders and the Issuer

All notices and other communications to Holders and the Issuer must be given in the manner described in clause 12 ("*Notices and other communications*") of the Terms.

19.2 Notices to and from the Trustee

All notices and other communications to the Trustee must be in writing and must be sent by fax to the fax number or left at the address, or sent by prepaid post (airmail, if appropriate) to the address, set out in the Details or as may have otherwise been notified to the Issuer and Holders.

19.3 Notices generally

All other provisions with respect to notices and other communications set out in the Terms shall apply to notices and other communications under this clause 19 ("*Notices and other communications*").

20 General

20.1 Application to Transaction Documents

If anything in this clause 20 is inconsistent with a provision in another Transaction Document, then the provision in the other Transaction Document prevails for the purposes of that Transaction Document.

20.2 Certificates

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

20.3 Remedies cumulative

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

20.4 Payments of commission, brokerage etc

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

20.5 Indemnities

Any indemnity in a Transaction Document is a continuing obligation, independent of the Issuer's other obligations under that Transaction Document and continues after the Transaction Document ends. It is not necessary for the Trustee or any other indemnified party under clause 6 to incur expense or make payment before enforcing a right of indemnity under a Transaction Document.

20.6 Serving documents

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

20.7 Indirect Tax

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

Terms used in this clause 20.7 have the meaning given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as appropriate).

20.8 Counterparts

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

21 Governing law, jurisdiction and service of documents

21.1 Governing law

This deed and the MCN are governed by, and shall be construed in accordance with, the laws of New South Wales, Australia.

21.2 Jurisdiction

- (a) The Issuer has irrevocably agreed for the benefit of the Holders that the courts of New South Wales, Australia are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with this deed and the MCN and accordingly has submitted to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) The Holders may take any suit, action or proceeding arising out of or in connection with this deed or the MCN ("**Proceedings**") against the Issuer in any other court of competent jurisdiction and may take concurrent Proceedings in any number of jurisdictions.

21.3 Service of process

Without preventing any other method of service, any document in any action may be served on the Issuer by being delivered or left at its registered office or principal place of business.

EXECUTED as a deed

MCN Trust Deed

Schedule 1 - Definitions and Interpretation

Definitions used in the Terms have the same meaning when used in this deed.

1.1 Definitions

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

ASIC means the Australian Securities and Investments Commission;

ASTC means the ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532);

ASTC Operating Rules means the operating rules of ASTC;

Clearing System means the Clearing House Electronic Sub-register System operated by ASTC or any other applicable securities trading and/or clearance system.

Confidential Information has the meaning given in clause 17.4 ("*Meaning*");

Costs includes costs, charges and expenses;

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

Eligible Trustee means a body corporate (other than the Issuer or any Related Entity of the Issuer) eligible to act as a trustee for the purposes of section 283AA and 283AC of the Corporations Act;

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

MCN means a MCN constituted by, and owing under, this deed and the Terms;

Meeting Provisions means the provisions for meetings of the Holders set out in schedule 3 to this deed;

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

Ordinary Resolution means:

- (a) a resolution passed at a meeting of Holders by a majority of at least 50% of the votes validly cast by Holders in person or by proxy and entitled to vote on the resolution; or
- (b) the consent in writing of Holders holding at least 50% of the MCN then on issue;

Proceedings, for the purposes of clause 21.2 ("*Jurisdiction*"), has the meaning given in clause 21.2 ("*Jurisdiction*");

Prospectus means the prospectus dated 14 May 2013 (as to be replaced by a replacement prospectus dated 22 May 2013) or other offering document in relation to the MCN;

Sale Agent has the meaning given in clause 4.6(b) ("*Delivery of Ordinary Shares to the Trustee*");

A person is **Solvent** if:

- (a) it is able to pay its debts when they fall due; and
- (b) its total consolidated gross assets (as shown by its latest published audited financial statements) exceed its total consolidated gross liabilities (as shown by its latest published audited financial statements), in each case adjusted for events subsequent to the date of such financial statements in such manner and to such extent as its directors, its auditors or, as the case may be, its liquidator may determine to be appropriate;

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

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

Terms means the terms and conditions of that MCN as set out in schedule 2;

Transaction Documents means:

- (a) this deed;
- (b) any other document agreed by the Trustee and Issuer to be a Transaction Document for the purposes of this deed (and provided that no such agreement will be made if the document may affect the eligibility of the MCN as Eligible Capital unless the written approval of APRA to the agreement has been obtained);

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

Trust means the trust constituted by this deed;

Trust Fund means:

- (a) the right to enforce any duties or obligations that the Issuer has:
 - (i) under the Terms;
 - (ii) under this deed;
 - (iii) to the Holders under the other Transaction Documents; or
 - (iv) under Chapter 2L of the Corporations Act;
- (b) the amount of A\$10 referred to in clause 3.3 ("*Declaration of Trust*"); and
- (c) any other property held by the Trustee on the trust established under this deed (including, without limitation and to the extent such property is held on trust, the benefit of any covenants, undertakings, representations, warranties, rights, powers, benefits or remedies in favour of the Trustee under the Transaction Documents);

Trustee means The Trust Company (Australia) Limited (ACN 000 000 993); and

Trustee Default means, in respect of the Trustee, fraud, gross negligence, wilful default or breach of section 283DA(a), (b) or (c) of the Corporations Act.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) a reference to a person includes a natural person, any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (b) a reference to a person (including the Trustee) includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (c) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (d) a reference to a document includes an amendment, or supplement to, or replacement or novation of, that document;
- (e) a reference to a clause or paragraph is to a clause or paragraph of this deed or its schedules or annexes provided that a reference to a clause in the Terms is to the correspondingly numbered term and a reference in the Terms to "the MCN Trust Deed" is to this deed;
- (f) if a calculation is required under this deed, the calculation will be rounded to four decimal places (with 0.00005 being rounded to 0.0001);
- (g) headings and bold typeface are for convenience only and do not affect the interpretation of this deed;
- (h) the singular includes the plural and vice versa;
- (i) a reference to a statute, ordinance, directive, code or law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them and references to law includes statutes, ordinances, codes, directives or common law and principles of equity having general application;
- (j) if an event under this deed must occur on a stipulated day which is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (k) a reference to "dollars", "Australian Dollars", "AUD", "\$" or "A\$" is a reference to the lawful currency of Australia;
- (l) calculations, elections and determinations made by or on behalf of the Issuer or the Directors under this deed or the Terms are binding on Holders in the absence of manifest error or fraud;
- (m) a reference to a party to an agreement, deed, authority or other instrument includes a reference to any successor, replacement, assignee, substitute or addition of the party according to that agreement, deed, authority or instrument;

- (n) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (o) a reference to an agreement, deed or other instrument includes a reference to that agreement, deed or instrument as amended, modified, added to or restated from time to time; and
- (p) the words “includes” or “including”, “for example” or “such as” do not exclude a reference to other items, whether of the same class or genus or not.

1.3 General compliance provision

- (a) A provision of this deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) Paragraph 3(a) is subject to any declarations made by or exemptions granted by ASIC which are applicable to this deed.
- (c) This paragraph 0 prevails over all other provisions of this deed including any that are expressed to prevail over it.

1.4 Inconsistency with ASX Listing Rules

For so long as the MCN are quoted on the ASX, this deed and the Terms as they relate to those MCN are to be interpreted in a manner consistent with applicable ASX Listing Rules, except to the extent that an interpretation consistent with the ASX Listing Rules would affect the eligibility of the MCN as Eligible Capital.

1.5 Inconsistency with Terms

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

MCN Trust Deed

Schedule 2 - Terms and Conditions of the MCN

These Terms have been established pursuant to, and are incorporated by reference into, the MCN Trust Deed. In the event of any inconsistency between the MCN Trust Deed and these Terms, the provisions of these Terms shall prevail.

1 Form and ranking

1.1 Issue Price

Each Macquarie Group Capital Note ("**MCN**") is issued fully paid for an issue price of A\$100 ("**Issue Price**").

1.2 Form

- (a) MCN are convertible preferred securities of the Issuer. They are in the form of fully paid, unsecured, subordinated, mandatorily convertible notes of the Issuer.
- (b) Subject, if required by these Terms, to the prior written consent of APRA, each MCN may be:
 - (i) Redeemed or Resold by the Issuer; or
 - (ii) Exchanged for fully paid Ordinary Shares,in accordance with these Terms.
- (c) The MCN cannot be Redeemed, Resold or Exchanged at the option of a Holder.
- (d) The MCN do not represent protected accounts of any member of the Macquarie Group for the purposes of section 13A(3) of the Banking Act or any similar law of any jurisdiction and nor do they represent deposits with, or deposit liabilities of, any member of the Macquarie Group for any other purposes of the Banking Act or the laws of any other jurisdiction.
- (e) Except for a claim made on the Issuer in accordance with these Terms, a Holder has no claim on any member of the Macquarie Group for payment of any amount or the performance of any obligation in respect of any MCN held by that Holder.
- (f) The MCN are not obligations of the Australian Government or of any other government and, in particular, are not guaranteed or insured by the Commonwealth of Australia or any other government, government agency or compensation scheme in any jurisdiction or by any other person.
- (g) MCN are constituted by the MCN Trust Deed of which these Terms form part.

1.3 Entries in the Register

The MCN are issued when they are entered in the Register.

1.4 CHESS

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

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

will be subject to and governed by the ASX Settlement Operating Rules (but without affecting any provisions of these Terms which affect the eligibility of MCN as Eligible Capital).

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

1.5 Ranking

Subject to the MCN Trust Deed, and, except to the extent mandatorily provided by law, each MCN ranks for payment, and ranks in a Winding Up of the Issuer:

- (a) senior to Ordinary Shares;
- (b) equally with all other MCN in all respects;
- (c) equally with all Equal Ranking Obligations; and
- (d) subordinate to all Senior Creditors in respect of distributions and payments in a Winding Up of the Issuer.

1.6 Independent obligations

Each entry in the Register constitutes a separate and individual acknowledgement to the relevant Holder of the obligations of the Issuer to the relevant Holder under these Terms.

1.7 No other rights

Except as expressly provided in these Terms in respect of Exchange, MCN confer no rights on a Holder to:

- (a) subscribe for new securities or to participate in any bonus issues of securities of the Issuer or any other member of the Macquarie Group; or
- (b) to otherwise participate in the profits or property of the Issuer or any other member of the Macquarie Group, except by receiving payments as set out in these Terms.

Nothing in these Terms limits the ability of any member of the Macquarie Group, in its absolute discretion from time to time, from issuing shares or other securities of any kind.

2 Distributions

2.1 Distributions

Subject to these Terms, each MCN entitles the Holder on a Record Date to receive on each Distribution Payment Date a cash distribution for the Distribution

Period ending on that Distribution Payment Date (“**Distribution**”) calculated according to the following formula:

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

where:

Distribution Payment Date means, in respect of a MCN:

- (a) each 7 June and 7 December commencing on 7 December 2013 until (but not including) the date on which that MCN has been Redeemed or Exchanged in accordance with these Terms; and
- (b) the Redemption Date or, subject to clause 7.6(c), the Resale Date or an Exchange Date, except where the Exchange is on account of a Non-Viability Event;

Distribution Rate means (Reference Rate + Margin) × Franking Adjustment Factor, where:

- (a) **Reference Rate** means, for a Distribution Period, the rate (expressed as a percentage per annum) which is the average mid-rate for Bills for a term of 180 days as displayed on the “BBSW” page of the Reuters Monitor System (or any page that replaces that page) on the first Business Day of the Distribution Period. However, if the average mid-rate is not displayed by 10.30am on that day, or if it is displayed but the Issuer determines that there is a manifest error in that rate, Reference Rate means the rate specified by the Issuer in good faith at or around 10.30am on that day, having regard, to the extent possible, to:
 - (i) the rates otherwise bid and offered for Bills of a term of 180 days at or around that time on that day (including any displayed on the “BBSW” page of the Reuters Monitor System (or any page that replaces that page)); and
 - (ii) if bid and offer rates for Bills of a term of 180 days are not otherwise available, the rates otherwise bid and offered for funds of a term of 180 days at or around that time on that day,

(and provided that where a MCN is Resold on a day which is not a scheduled semi-annual Distribution Payment Date, the Reference Rate for the Distribution Period commencing on the Resale Date is the Reference Rate for the Distribution Period preceding the Resale Date);

- (b) **Bills** has the meaning it has in the Bills of Exchange Act 1909 (Cth);
- (c) **Franking Adjustment Factor** means:

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

where:

- (i) **F** means the Franking Rate; and
- (ii) **T** means the Tax Rate;
- (d) **Margin** means 4.00 percent per annum;

N means, in respect of a Distribution Period, the number of days in that Distribution Period; and

Record Date means, for payment of Distributions:

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

2.2 Business Days

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

2.3 Distribution payment conditions

The payment of any Distribution will be made unless:

- (a) the Issuer, in its absolute discretion, determines that the Distribution is not payable to Holders;
- (b) payment of the Distribution would result in the Issuer breaching APRA's capital adequacy requirements applicable to it;
- (c) payment of the Distribution would result in the Issuer becoming, or being likely to become, insolvent for the purposes of the Corporations Act; or
- (d) APRA objects to the payment of the Distribution.

In determining not to pay a Distribution, the Issuer shall consider payment of Distributions as if it were payment of a dividend on a preference share which is an Equal Ranking Obligation.

2.4 Non-payment of Distributions

- (a) Distributions are non-cumulative. If all or any part of any Distribution is not paid because of clause 2.3, the Issuer has no liability to pay the unpaid amount of the Distribution and Holders have no claim or entitlement in respect of any person in respect of such non-payment and such non-payment does not constitute an event of default however described, determined or defined.
- (b) No interest accrues on any unpaid Distributions and the Holders have no claim or entitlement in respect of interest on any unpaid Distributions.
- (c) If all or any part of a Distribution will not be paid in whole or part because of clause 2.3, the Issuer must give notice to the Trustee, Registrar and ASX promptly after determining or becoming aware that payment will not be made.

2.5 Dividend Restriction

- (a) If, for any reason, an amount of any Distribution has not been paid in full on the relevant Distribution Payment Date, a Dividend Restriction shall apply from that date until the next Distribution Payment Date unless the

Distribution is paid in full within 10 Business Days of the relevant Distribution Payment Date.

“**Dividend Restriction**” means that the Issuer must not, without prior approval of a Special Resolution of Holders:

- (i) determine, declare or pay any Ordinary Share Dividend; or
 - (ii) undertake any Buy-Back or Capital Reduction.
- (b) The Dividend Restriction does not apply:
- (i) in connection with any employment contract, employee equity plan, other benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants of a member of the Macquarie Group;
 - (ii) in connection with the Issuer or a member of the Macquarie Group purchasing Ordinary Shares:
 - (A) in connection with transactions for the account of customers of a member of the Macquarie Group; or
 - (B) with the prior written approval of APRA, in connection with the distribution or trading of any securities of the Issuer or any other shares in the capital of the Issuer in the ordinary course of business; or
 - (iii) to the extent that at the time a Distribution has not been paid on the relevant Distribution Payment Date, the Issuer is legally obliged to pay on or after that date an Ordinary Share Dividend or complete on or after that date a Buy-Back or Capital Reduction.

3 Scheduled Mandatory Exchange

3.1 Scheduled Mandatory Exchange

Subject to this clause 3 and clause 15, the Issuer must Exchange all (but not some) of the MCN for Ordinary Shares in accordance with clause 8 on the Mandatory Exchange Date.

3.2 Mandatory Exchange Date

The **Mandatory Exchange Date** is the first to occur of the following dates:

- (a) 7 June 2021 (the “**Scheduled Mandatory Exchange Date**”) (a “**Scheduled Mandatory Exchange**”); or
- (b) any Distribution Payment Date (within the meaning of paragraph (a) of the definition of that term) after the Scheduled Mandatory Exchange Date (a “**Deferred Mandatory Exchange Date**”),

(each a “**Relevant Mandatory Exchange Date**”) on which the Exchange Conditions relevant to those dates as described in clause 3.3 are satisfied, unless the MCN have been or will be Redeemed or Exchanged before that date.

3.3 Exchange Conditions

The Exchange Conditions are:

- (a) the Daily VWAP on the 25th Business Day immediately preceding (but not including) the Relevant Mandatory Exchange Date (or, if that day is not an ASX Trading Day, the last ASX Trading Day prior to that day) is greater than 56% of the Issue Date VWAP ("**First Exchange Condition**");
- (b) the VWAP during the 20 ASX Trading Days immediately preceding (but not including) the Relevant Mandatory Exchange Date is such that the number of Ordinary Shares to be issued (calculated in accordance with clause 8.1 as if it were not limited by the Maximum Exchange Number applicable to a Mandatory Exchange Date) is less than or equal to the Maximum Exchange Number applicable to a Mandatory Exchange Date ("**Second Exchange Condition**");
- (c) no Suspension Event applies in respect of the Relevant Mandatory Exchange Date ("**Third Exchange Condition**"); and
- (d) the Issuer is not Delisted as at the Relevant Mandatory Exchange Date ("**Fourth Exchange Condition**"),

together, the "**Exchange Conditions**".

3.4 Mandatory Exchange Notices

- (a) Between the 25th and 21st Business Day (inclusive) before a Relevant Mandatory Exchange Date, the Issuer will notify Holders as to whether or not the First Exchange Condition is satisfied in relation to that Relevant Mandatory Exchange Date and, if it is not, that Exchange will not occur.
- (b) If the First Exchange Condition is satisfied in relation to that Relevant Mandatory Exchange Date, and any of the other Exchange Conditions are not satisfied in relation to a Relevant Mandatory Exchange Date, the Exchange will not occur and the Issuer will notify Holders on or as soon as practicable after the Relevant Mandatory Exchange Date that Exchange did not occur.

Failure to give a notice when required by this clause 3.4 (including where in accordance with clause 12 such notice takes effect only after the last date for the giving of that notice) does not affect the obligations of the Issuer and the Holders to Exchange each MCN for Ordinary Shares when required in accordance with these Terms.

4 Non-Viability Event Exchange

4.1 Exchange on account of a Non-Viability Event

Subject to this clause 4, if a Non-Viability Event occurs, the Issuer must immediately on the Non-Viability Exchange Date, and in accordance with this clause 4 and clause 8, Exchange such number of MCN as is equal (following or together with any conversion into Ordinary Shares or write-off of Relevant Tier 1 Securities as referred to in clause 4.2) to the aggregate face value of capital instruments which APRA has notified the Issuer must be exchanged into Ordinary Shares, converted into Ordinary Shares or written-off (or, if APRA has not so notified the Issuer, such number of MCN as the Issuer determines is necessary to satisfy APRA that the Issuer will not become non-viable).

4.2 Determination of number of MCN to be Exchanged

In determining the number of MCN which must be Exchanged in accordance with this clause 4, the Issuer may in its discretion, Exchange (in the case of MCN) or convert into Ordinary Shares or write-off (in the case of any other Relevant Tier 1 Securities) MCN and any Relevant Tier 1 Securities on a proportionate basis unless the terms of any Relevant Tier 1 Security provide for that Relevant Tier 1 Security to be written-off other than on a proportionate basis with MCN and other Relevant Tier 1 Securities, or such other basis as the Issuer considers fair and reasonable (subject to such adjustment as the Issuer may determine to take into account the effect on marketable parcels and whole numbers of Ordinary Shares and any MCN or other Relevant Tier 1 Securities remaining on issue), provided always that nothing in the making of the determination or the adjustments is to delay or impede the Exchange taking effect on the Non-Viability Exchange Date.

4.3 Treatment of Holders

- (a) If, in accordance with clause 4.2, only some MCN are to be Exchanged, the Issuer will endeavour to treat Holders on an approximately proportionate basis, but may discriminate to take account of the effect of marketable parcels and other similar considerations and the need to effect the Exchange immediately.
- (b) In determining the identity of the Holder at the time that the Exchange is to take effect on the Non-Viability Exchange Date the Issuer may make any decision as may be necessary or desirable to ensure Exchange occurs in an orderly manner, including disregarding any transfers of MCN that have not been settled or registered at that time.

4.4 Exchange is automatic and irrevocable

If a Non-Viability Event has occurred and all or some of the MCN are required to be Exchanged in accordance with clause 4.1, then, subject to clause 4.5:

- (a) Exchange of the relevant MCN will be taken to have occurred in accordance with clause 8 immediately upon the date of occurrence of the Non-Viability Event;
- (b) none of the following shall prevent, impede or delay the Exchange of MCN as required by clause 4.1:
 - (i) any failure to or delay in the conversion or write-off of other Relevant Tier 1 Securities;
 - (ii) any failure to or delay in giving a Non-Viability Exchange Notice;
 - (iii) any failure or delay in quotation of the Ordinary Shares to be issued on Exchange; or
 - (iv) any requirement to select or adjust the amount of MCN to be Exchanged in accordance with clause 4.3; and
- (c) from the Non-Viability Exchange Date the Issuer shall treat the Holder in respect of its MCN as the holder of the Exchange Number of Ordinary Shares and will take all such steps, including updating any register, required to record the Exchange.

4.5 Conditions to Exchange on account of a Non-Viability Event

- (a) An Exchange on account of a Non-Viability Event is not subject to the Exchange Conditions or any other condition except as provided in this clause 4.

- (b) If an Inability Event is subsisting on the Non-Viability Exchange Date then Exchange will not occur and clause 8.17 will apply.

4.6 Non-Viability Exchange Notices

As soon as practicable after the occurrence of a Non-Viability Event, the Issuer must give notice that the Exchange has occurred (“**Non-Viability Exchange Notice**”) to the Holders, the Trustee, the Registrar and the ASX.

A Non-Viability Exchange Notice must specify:

- (a) the date on which the Exchange occurred; and
- (b) the number of MCN Exchanged and the relevant number of Relevant Tier 1 Securities converted into Ordinary Shares or written-off.

Failure to give a Non-Viability Exchange Notice when required by this clause 4.6 (including where in accordance with clause 12 such notice takes effect only after the Non-Viability Exchange Date) does not affect the obligations of the Issuer and the Holders to Exchange each MCN for Ordinary Shares when required in accordance with these Terms or affect or impede the Exchange in any way.

4.7 Priority of Exchange obligations

An Exchange on account of a Non-Viability Event takes place on the relevant date, and in the manner required by clause 8 notwithstanding anything in clauses 5, 6, 7 or 15 (and any Redemption Notice or Resale Notice in respect of the MCN given before the Non-Viability Exchange Date but in respect of which the Redemption or Resale has not completed will be taken to be revoked and of no force or effect).

4.8 Interpretation

A reference in this clause 4 to the “conversion” of a Relevant Tier 1 Security includes any method by which the Relevant Tier 1 Security is converted or exchanged into Ordinary Shares.

5 Optional Exchange and Acquisition Event Exchange

5.1 Optional Exchange

Subject to this clause 5 and to clause 15, by notice (an “**Optional Exchange Notice**”) to Holders the Issuer may, in its sole discretion, elect to:

- (a) Exchange all or some of the MCN on any Scheduled Optional Exchange Date; and
- (b) Exchange all or some of the MCN following the occurrence of a Tax Event or a Regulatory Event.

An Optional Exchange Notice is irrevocable and takes effect despite anything in clause 3, except as provided in clause 4.7 and clause 15.

5.2 Scheduled Optional Exchange Dates

The Scheduled Optional Exchange Dates are the Distribution Payment Dates falling on or about:

- (a) 7 June 2018 (the “**First Scheduled Optional Exchange Date**”);

- (b) 7 December 2018 (the “**Second Scheduled Optional Exchange Date**”); and
 - (c) 7 June 2019 (the “**Third Scheduled Optional Exchange Date**”),
- each a “**Scheduled Optional Exchange Date**”.

5.3 Contents of the Optional Exchange Notice

An Optional Exchange Notice must specify:

- (a) in the case of an Optional Exchange Notice given following the occurrence of a Tax Event or Regulatory Event, the details of the Tax Event or Regulatory Event to which the Optional Exchange Notice relates; and
- (b) the date on which the Exchange is to occur (an “**Optional Exchange Date**”), which:
 - (i) in the case of Exchange on a Scheduled Optional Exchange Date, is the relevant Scheduled Optional Exchange Date falling no earlier than 25 Business Days after the date of the Optional Exchange Notice;
 - (ii) in the case of a Tax Event or Regulatory Event, will be a day no earlier than 25 Business Days nor more than 60 Business Days after the date of the Optional Exchange Notice; or
 - (iii) is such other date as APRA may require.

5.4 Optional Exchange Restriction

The Issuer may not elect to Exchange under this clause 5 if:

- (a) on the second Business Day before the date on which an Optional Exchange Notice is to be sent by the Issuer (or, if that Business Day is not an ASX Trading Day, the last ASX Trading Day prior to that day) (the “**Non-Exchange Test Date**”) the Daily VWAP on that date is less than or equal to 25% of the Issue Date VWAP (the “**First Optional Exchange Restriction**”); or
- (b) the Issuer is Delisted as at the Non-Exchange Test Date (the “**Second Optional Exchange Restriction**”) and together with the First Optional Exchange Restriction, the “**Optional Exchange Restrictions**”).

5.5 Conditions to Exchange occurring once elected by the Issuer

If the Issuer has given an Optional Exchange Notice but, if the Exchange Date were a Relevant Mandatory Exchange Date for the purposes of clause 3, any one or more of the Second Exchange Condition (tested on the basis of the Maximum Exchange Number applicable to an Optional Exchange Date), the Third Exchange Condition or the Fourth Exchange Condition would not be satisfied in respect of that date, then, notwithstanding any other provision of these Terms:

- (a) the Exchange Date will be deferred until the first Distribution Payment Date (within the meaning of paragraph (a) of the definition of that term) on which:
 - (i) the Daily VWAP on the 25th Business Day immediately preceding (but not including) that Distribution Payment Date (or, if that day is not an ASX Trading Day, the last ASX Trading Day

prior to that day) is greater than 25% of the Issue Date VWAP;
and

- (ii) each of the Second Exchange Condition (tested on the basis of the Maximum Exchange Number applicable to an Optional Exchange Date), the Third Exchange Condition and the Fourth Exchange Condition would be satisfied if that Distribution Payment Date were a Relevant Mandatory Exchange Date for the purposes of clause 3,

(the “**Deferred Exchange Date**”);

- (b) the Issuer must Exchange the MCN on the Deferred Exchange Date (unless the MCN are Exchanged or Redeemed earlier in accordance with these Terms); and
- (c) until the Deferred Exchange Date, all rights attaching to the MCN will continue as if the Optional Exchange Notice had not been given.

The Issuer will notify Holders on or as soon as practicable after an Exchange Date in respect of which this clause 5.5 applies that Exchange did not occur on that Exchange Date (a “**Deferred Exchange Notice**”).

5.6 Exchange on account of an Acquisition Event

If an Acquisition Event occurs, the Issuer must Exchange all but not some of the MCN in accordance with clauses 5.6 to 5.7 inclusive, unless the Directors determine that:

- (a) as at the Acquisition Exchange Date the Issuer will be, or will be likely to be, Delisted (except where, despite the Issuer being Delisted, the Exchange would be in the best interests of Holders as a whole); or
- (b) the Exchange Number of Ordinary Shares to be issued in exchange for a MCN (calculated in accordance with clause 8.1 as if it were not limited by the Maximum Exchange Number applicable to an Acquisition Exchange Date) would exceed the Maximum Exchange Number applicable to an Acquisition Exchange Date (except where, despite the Exchange Number being limited to the Maximum Exchange Number applicable to an Acquisition Exchange Date, the Exchange would be in the best interests of Holders as a whole).

Exchange on account of an Acquisition Event is not subject to any Exchange Conditions or other conditions except as expressly provided in this clause 5.6.

5.7 Acquisition Exchange Notice

No later than 5.00 pm (Sydney time) on the tenth Business Day after the occurrence of the Acquisition Event, the Issuer must give each Holder a notice (an “**Acquisition Exchange Notice**”) specifying:

- (a) details of the Acquisition Event to which the notice relates; and
- (b) if an Exchange is to occur,
 - (i) the date on which the Exchange is to occur (an “**Acquisition Exchange Date**”), which is to be:
 - (A) no later than the second Business Day prior to the date reasonably determined by the Issuer to be the last date

on which holders of Ordinary Shares can participate in the bid or scheme concerned;

- (B) such other earlier date as the Issuer may reasonably determine having regard to the best interests of Holders as a whole and the timing of the Acquisition Event concerned (provided that the Acquisition Exchange Date must be at least 25 Business Days after the date of the Acquisition Exchange Notice); or
 - (C) such other date as APRA may require; and
- (ii) whether any Distribution will be paid in respect of MCN on the Acquisition Exchange Date; or
- (c) otherwise, the reason why an Exchange is not to occur.

6 Optional Redemption

6.1 Optional Redemption

Subject to clause 6.2, by notice (a “**Redemption Notice**”) to Holders, the Issuer may, in its sole discretion, but with APRA’s prior written approval, elect to:

- (a) Redeem all or some of the MCN on a Scheduled Optional Exchange Date; or
- (b) Redeem all or some of the MCN following the occurrence of a Tax Event or a Regulatory Event.

A Redemption Notice, once given, is irrevocable and takes effect despite anything in clause 3, except as provided in clause 4.7 and clause 15.

Holders should not expect that APRA’s approval will be given for any Redemption of MCN.

6.2 Redemption conditions

A Redemption in accordance with clause 6.1 must not occur unless either:

- (a) the MCN which are to be Redeemed are replaced, concurrently with the Redemption or beforehand, with Eligible Capital of the same or better quality, and the replacement of those MCN is done under conditions which are sustainable for the income capacity of the Level 3 Group; or
- (b) APRA is satisfied that the capital position of the Level 3 Group is sufficient after the MCN are Redeemed.

6.3 Contents of the Redemption Notice

A Redemption Notice must specify:

- (a) in the case of Redemption following the occurrence of a Tax Event or Regulatory Event, the details of the relevant Tax Event or Regulatory Event;
- (b) the date on which the Redemption is to occur (the “**Redemption Date**”), which:

- (i) in the case of a Scheduled Optional Exchange Date, will be the next Scheduled Optional Exchange Date falling no earlier than 10 Business Days after the date of the Redemption Notice; and
 - (ii) in the case of a Tax Event or Regulatory Event, will be a day no earlier than 10 Business Days nor more than 60 Business Days after the date of the Redemption Notice; and
- (c) if less than all of the outstanding MCN are to be Redeemed, the proportion of each Holder's holding which is to be Redeemed.

6.4 Redemption Price

On the Redemption Date:

- (a) each MCN being Redeemed will be Redeemed by payment of the Issue Price of that MCN (the "**Redemption Price**") to the relevant Holder recorded on the Register at 10:00am on the Redemption Date (or such other time required by the ASX Listing Rules); and
- (b) Distributions from (and including) the immediately preceding Distribution Payment Date and up to (but excluding) the Redemption Date will be paid in respect of the MCN being Redeemed on such date, to the extent the conditions of payment of Distributions under clause 2.3 are met.

6.5 No right of Holders to require Redemption

No MCN can, or will, be Redeemed at the option of a Holder.

6.6 Effect of Redemption

Upon payment of the Redemption Price and any Distribution payable on the Redemption Date, all other rights conferred, or restrictions imposed, by each MCN being Redeemed on that date will no longer have effect and that MCN will be cancelled.

6.7 Partial Redemption or Resale

If some but not all of the outstanding MCN are Redeemed in accordance with this clause 6 or Resold in accordance with clause 7, the Issuer must select the MCN to be Redeemed or Resold:

- (a) in a manner that is, in the opinion of the Issuer, fair and reasonable; and
- (b) in compliance with any applicable law, directive or requirement of ASX.

7 Resale

7.1 Issuer may give Resale Notice

On any date on which it may issue a Redemption Notice, in lieu of such Redemption Notice, the Issuer may, at its sole discretion, but with APRA's prior written approval, issue to each Holder a notice (a "**Resale Notice**") specifying that all or some of each Holder's holding of MCN will be transferred to one or more Nominated Parties ("**Resale**").

A Resale Notice to a Holder must specify:

- (a) the date on which the Resale is to occur (the "**Resale Date**"), which:

- (i) in the case of a Scheduled Optional Exchange Date, will be the next Scheduled Optional Exchange Date falling no earlier than 10 Business Days after the date of the Resale Notice; and
 - (ii) in the case of a Tax Event or Regulatory Event, will be a day no earlier than 10 Business Days nor more than 60 Business Days after the date of the Resale Notice; and
- (b) the name of each Nominated Party to whom that Holder's offer under clause 7.3 is being made and, where there is more than one Nominated Party, the basis for determining the MCN to be purchased by each Nominated Party, and any special provisions to be applied if there is a Non-Completing Nominated Party,

and, subject to clause 4.7 and clause 15, once given is irrevocable.

Holders should not expect that APRA's approval will be given for any Resale of MCN.

7.2 Appointment of Nominated Party

- (a) The Issuer may not appoint itself or a Related Entity of the Issuer as a Nominated Party.
- (b) The Issuer may appoint one or more Nominated Parties for the Resale on such terms including as to the conditions of any Resale as may be agreed between the Issuer and the Nominated Parties and with the prior written approval of APRA.
- (c) If the Issuer appoints more than one Nominated Party in respect of a Resale, all or any of the MCN held by a Holder which are being Resold may be purchased for the Resale Price by any one or any combination of the Nominated Parties, as determined by the Issuer.

7.3 Irrevocable offer to sell

- (a) If the Issuer gives a Resale Notice in accordance with clause 7 each Holder on the Resale Date is taken to irrevocably offer to sell the MCN that are the subject of the Resale Notice to the Nominated Party or Nominated Parties on the Resale Date for a purchase price per MCN equal to the Issue Price of that MCN (the "**Resale Price**").
- (b) Subject to payment of the Resale Price on the Resale Date each MCN which is to be Resold will be transferred to the relevant Nominated Party or Nominated Parties free from any Encumbrance.

7.4 Effect of transfer

The transfer will convey to the relevant Nominated Party all rights to:

- (a) Distributions payable on the MCN in respect of any Distribution Payment Date arising after the Resale Date;
- (b) be issued with Ordinary Shares on Exchange on or after the Resale Date; and
- (c) any Redemption Price payable on or after the Resale Date,

but excluding any Distribution payable on the MCN in respect of any Distribution Payment Date on or before the Resale Date, which, to the extent the conditions of payment of Distribution under clause 2.3 are met, shall be paid by the Issuer to

the holder of the MCN entitled to such amounts as otherwise provided in these Terms.

7.5 Terms after Resale

If any MCN are Resold in accordance with these Terms, these Terms will apply in all respects to the MCN held by the Nominated Party on and from the Resale Date.

7.6 Nominated Party not completing

If a Nominated Party does not for any reason pay the Resale Price in full on the relevant Resale Date (a “**Non-Completing Nominated Party**”):

- (a) the Resale Notice will be void in so far as it relates to MCN referable to the Non-Completing Nominated Party and any obligations of the Holder and Non-Completing Nominated Party in respect of the Resale of the MCN that is the subject of the Resale Notice will terminate;
- (b) the Holder will continue to hold the MCN that are the subject of the Resale Notice which are referable to the Non-Completing Nominated Party; and
- (c) the Issuer has no liability for the Non-Completing Nominated Party not paying the Resale Price and the Resale Date will not be a Distribution Payment Date unless:
 - (i) such date would otherwise have been a Distribution Payment Date; or
 - (ii) a Distribution is paid on that date to Holders whose MCN have been transferred to a Nominated Party on that date.

7.7 No right of Holders to require Resale

No MCN can, or will, be Resold at the option of a Holder.

8 Exchange Mechanics

8.1 Exchange

On an Exchange Date, subject to clauses 4.7, 8.14 and 8.17, the Issuer will allot and issue the Exchange Number of Ordinary Shares to the Holders (or as they may direct) for each MCN held by the Holder.

The **Exchange Number** will be calculated by the Issuer in accordance with the following formula:

$$\text{Exchange Number} = \frac{\text{Issue Price}}{0.99 \times \text{Exchange Date VWAP}}$$

subject to the Exchange Number being no greater than the Maximum Exchange Number, where:

- (a) **Exchange Date VWAP** (expressed in Australian Dollars) means the VWAP during the VWAP Period;
- (b) **VWAP** means, subject to any adjustment under clauses 8.3 or 8.4, for a period or relevant number of days, the average of the Daily VWAPs

(such average being rounded to the nearest full cent) of Ordinary Shares sold on ASX during the relevant period or on the relevant days;

- (c) **VWAP Period** means for the purposes of calculating the Exchange Date VWAP and the Exchange Number:
- (i) in the case of an Exchange on a Relevant Mandatory Exchange Date or an Optional Exchange Date, the 20 ASX Trading Days immediately preceding, but not including, that Exchange Date;
 - (ii) in the case of an Exchange on account of an Acquisition Event, the lesser of 20 ASX Trading Days and the number of ASX Trading Days that Ordinary Shares are entitled to trade on ASX after the occurrence of the Acquisition Event immediately preceding, but not including, the Acquisition Exchange Date; and
 - (iii) in the case of an Exchange on account of a Non-Viability Event, the 5 ASX Trading Days immediately preceding, but not including, the Non-Viability Exchange Date; and
- (d) the **Maximum Exchange Number** will be calculated by the Issuer on the Issue Date in accordance with the following formula for each MCN held by the Holder:

$$\text{Maximum Exchange Number} = \frac{\text{Issue Price}}{\text{Exchange Floor Price}}$$

where:

- (i) **Exchange Floor Price** means Issue Date VWAP x the Relevant Percentage;
- (ii) **Issue Date VWAP** is the VWAP during the 8 ASX Trading Days immediately preceding, but not including, the Issue Date (as such number may be adjusted under clauses 8.5, 8.6 or 8.7); and
- (iii) **Relevant Percentage** is:
 - (A) if the Exchange is occurring on a Mandatory Exchange Date, 50%; and
 - (B) if the Exchange is occurring on any other Exchange Date, 20%.

Each Holder's rights (including to payment of Distributions other than the Distribution, if any, payable on the Exchange Date) in relation to each MCN that is being Exchanged will be immediately and irrevocably terminated for an amount equal to the Issue Price of that MCN and the Issuer will apply that Issue Price by way of payment for the subscription for the Ordinary Shares to be allotted and issued under this clause 8.1. Each Holder is taken to have irrevocably directed that any amount payable under this clause 8.1 is to be applied as provided for in this clause 8.1 and no Holder has any right to payment in any other way.

If the total number of Ordinary Shares to be allotted to a Holder in respect of their aggregate holding of MCN upon Exchange includes a fraction of an Ordinary Share, that fraction of an Ordinary Share will be disregarded.

8.2 Holder information

Each Holder agrees to provide to the Issuer (and, where clause 8.14 applies, the Trustee (or Nominee)) any information necessary or desirable to give effect to an Exchange.

8.3 Adjustments to VWAP

For the purposes of calculating VWAP in these Terms:

- (a) where, on some or all of the ASX Trading Days in the relevant VWAP Period, Ordinary Shares have been quoted on ASX as cum dividend or cum any other distribution or entitlement and the MCN will be Exchanged for Ordinary Shares after the date those Ordinary Shares no longer carry that dividend or any other distribution or entitlement, then the VWAP on the ASX Trading Days on which those Ordinary Shares have been quoted cum dividend or cum any other distribution or entitlement shall be reduced by an amount (“**Cum Value**”) equal to:
- (i) in case of a dividend or other distribution, the amount of that dividend or other distribution including, if the dividend or other distribution is franked, the amount that would be included in the assessable income of a recipient of the dividend or other distribution who is both a resident of Australia and a natural person under the Tax Act and eligible to receive a franked distribution;
 - (ii) in the case of any other entitlement that is not a dividend or other distribution under clause 8.3(a)(i) which is traded on ASX on any of those ASX Trading Days, the volume weighted average sale price of all such entitlements sold on ASX during the VWAP Period on the ASX Trading Days on which those entitlements were traded; or
 - (iii) in the case of any other entitlement which is not traded on ASX during the VWAP Period, the value of the entitlement as reasonably determined by the Directors; and
- (b) where, on some or all of the ASX Trading Days in the VWAP Period, Ordinary Shares have been quoted on ASX as ex dividend or ex any other distribution or entitlement, and the MCN will be Exchanged for Ordinary Shares which would be entitled to receive the relevant dividend or other distribution or entitlement, the VWAP on the ASX Trading Days on which those Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement shall be increased by the Cum Value.

8.4 Adjustments to VWAP for divisions and similar transactions

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

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

where:

- (i) **A** means the aggregate number of Ordinary Shares immediately before the Reclassification; and
 - (ii) **B** means the aggregate number of Ordinary Shares immediately after the Reclassification.
- (b) Any adjustment made by the Issuer in accordance with clause 8.3 and clause 8.4(a) will be effective and binding on Holders under these Terms and these Terms will be construed accordingly. Any such adjustment must be notified to all Holders as soon as reasonably practicable following its determination by the Issuer.

8.5 Adjustments to Issue Date VWAP

For the purposes of determining the Issue Date VWAP, adjustments to VWAP will be made in accordance with clause 8.3 and clause 8.4 during the VWAP Period for the Issue Date VWAP. On and from the Issue Date, adjustments to the Issue Date VWAP:

- (a) may be made in accordance with clauses 8.6 to 8.7 (inclusive); and
- (b) if so made, will correspondingly cause an adjustment to the Maximum Exchange Number.

8.6 Adjustments to Issue Date VWAP for bonus issues

- (a) Subject to clause 8.6(b) below, if the Issuer makes a pro rata bonus issue of Ordinary Shares to holders of Ordinary Shares generally, the Issue Date VWAP will be adjusted immediately in accordance with the following formula:

$$V = V_0 \times \frac{RD}{RD + RN}$$

where:

- (i) **V** means the Issue Date VWAP applying immediately after the application of this formula;
 - (ii) **V₀** means the Issue Date VWAP applying immediately prior to the application of this formula;
 - (iii) **RN** means the number of Ordinary Shares issued pursuant to the bonus issue; and
 - (iv) **RD** means the number of Ordinary Shares on issue immediately prior to the allotment of new Ordinary Shares pursuant to the bonus issue.
- (b) Clause 8.6(a) does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
- (c) For the purpose of clause 8.6(a), an issue will be regarded as a pro rata issue notwithstanding that the Issuer does not make offers to some or all holders of Ordinary Shares with registered addresses outside Australia, provided that in so doing the Issuer is not in contravention of the ASX Listing Rules.

- (d) No adjustments to the Issue Date VWAP will be made under this clause 8.6 for any offer of Ordinary Shares not covered by clause 8.6(a), including a rights issue or other essentially pro rata issue.
- (e) The fact that no adjustment is made for an issue of Ordinary Shares except as covered by clause 8.6(a) shall not in any way restrict the Issuer from issuing Ordinary Shares at any time on such terms as it sees fit nor be taken to constitute a modification or variation of rights or privileges of Holders or otherwise requiring any consent or concurrence.

8.7 Adjustment to Issue Date VWAP for divisions and similar transactions

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

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

where:

- (i) **A** means the aggregate number of Ordinary Shares immediately before the Reclassification; and
 - (ii) **B** means the aggregate number of Ordinary Shares immediately after the Reclassification.
- (b) Each Holder acknowledges that the Issuer may, consolidate, divide or reclassify securities so that there is a lesser or greater number of Ordinary Shares at any time in its absolute discretion without any such action constituting a modification or variation of rights or privileges of Holders or otherwise requiring any consent or concurrence.

8.8 No adjustment to Issue Date VWAP in certain circumstances

Despite the provisions of clauses 8.6 and 8.7, no adjustment shall be made to the Issue Date VWAP where such cumulative adjustment (rounded if applicable) would be less than one percent of the Issue Date VWAP then in effect. Any adjustment not made in accordance with this clause 8.8 shall be carried forward and taken into account in determining whether any subsequent adjustment shall be made.

8.9 Announcement of adjustment to Issue Date VWAP

If the Issuer determines an adjustment to the Issue Date VWAP under clauses 8.6 and 8.7, such an adjustment will be:

- (a) determined as soon as reasonably practicable following the relevant event; and
- (b) notified to Holders (an “**Adjustment Notice**”) within 10 Business Days of the Issuer determining the adjustment.

The adjustment set out in the Adjustment Notice will be final and binding on Holders and these Terms will be construed accordingly.

8.10 Listing of Ordinary Shares

The Issuer agrees to use all reasonable endeavours to list the Ordinary Shares issued or arising from an Exchange on the ASX.

8.11 Status of Ordinary Shares

The Ordinary Shares issued or arising from an Exchange will rank equally with all other fully paid Ordinary Shares.

8.12 Effect of Exchange

When an Exchange of a MCN occurs all other rights conferred or restrictions imposed on that MCN under these Terms will no longer have effect (except for rights relating to a Distribution which is payable but has not been paid on or before the Exchange Date) and the MCN is cancelled.

8.13 Failure to Exchange

(a) Subject to clauses 8.14(g) and 8.17, if, in respect of an Exchange of a MCN, the Issuer fails to issue the Ordinary Shares in respect of a MCN to, or in accordance with the instructions of, the relevant Holder on the applicable Exchange Date or to the Trustee (or other nominee) where clause 8.14 applies, that MCN remains on issue (and without limitation clause 2 applies) until:

- (i) the Ordinary Shares are issued to, or in accordance with the instructions of, that Holder or, where clause 8.14 applies, to the Trustee (or Nominee); or
- (ii) that MCN is Redeemed in accordance with these Terms,

and the remedies of the Trustee and a Holder in respect of that failure are limited to seeking an order for specific performance of the Issuer's obligations to issue Ordinary Shares.

(b) This clause 8.13 does not affect the obligation of the Issuer to deliver the Ordinary Shares or of the Holder to transfer MCN when required in accordance with these Terms.

8.14 Holders whose Ordinary Shares are to be sold

Subject to clause 8.17, if any MCN of a Holder are required to be Exchanged and:

- (a) the Holder has notified the Issuer that it does not wish to receive Ordinary Shares as a result of the Exchange (whether entirely or to the extent specified in the notice), which notice may be given at any time on or after the Issue Date and no less than 15 Business Days prior to the Exchange Date, and the Issuer and the Trustee (or Nominee) appointed in accordance with paragraph (f) are satisfied that the obligation in paragraph (f) may be performed in respect of the relevant Holder and the relevant Ordinary Shares in accordance with all applicable laws and without the Issuer or the Trustee (or Nominee) having to take steps which either or both regard as onerous;
- (b) the MCN are held by a Foreign Holder;
- (c) if for any reason (whether or not due to the fault of a Holder) the Issuer does not receive any information required by it in accordance with these Terms so as to impede the Issuer issuing the Ordinary Shares to the Holder on the Exchange Date; or

- (d) the Issuer is of the opinion that under an Applicable Shareholding Law the Holder is prohibited from acquiring some or all of the Exchange Number of Ordinary Shares on the Exchange Date, (to the extent it is so prohibited, an “**Ineligible Holder**”),

then, on the Exchange Date,

- (e) where paragraph (a), (b) or (d) applies, the Issuer will issue the Exchange Number of Ordinary Shares to the Holder only to the extent (if at all) that:
 - (i) where paragraph (a) applies, the Holder wishes to receive them;
 - (ii) where paragraph (b) applies, the Issuer is satisfied that the laws of both Australia and the Foreign Holder’s country of residence permit the issue of the Exchange Number of Ordinary Shares to the Foreign Holder as contemplated by this clause 8 (but as to which the Issuer is not bound to enquire), either unconditionally or after compliance with conditions which the Issuer regards as acceptable and not unduly onerous; and
 - (iii) where paragraph (d) applies, the issue would result in the Holder receiving the maximum number of Ordinary Shares the Holder is permitted to acquire in compliance with the Applicable Shareholding Law as at the Exchange Date;
- (f) otherwise, subject to paragraph (g), the Issuer will issue the balance of the Exchange Number of Ordinary Shares in respect of that Holder to the Trustee (or any other nominee appointed by the Issuer which is not the Issuer, any Related Entity of the Issuer or any Related Body Corporate of the Trustee (the “**Nominee**”)) for no additional consideration and on the terms that, at the first reasonable opportunity to sell the Ordinary Shares, the Trustee (or Nominee) will arrange for their sale and pay to the relevant Holder on a date determined by the Trustee (or Nominee) a cash amount equal to the Attributable Proceeds of the relevant Holder. The issue of Ordinary Shares to the Trustee (or Nominee) will satisfy all obligations of the Issuer in connection with the Exchange, the MCN will be deemed Exchanged and will be dealt with in accordance with clause 8.1 and, on and from the issue of Ordinary Shares, the rights of a Holder the subject of this clause 8.14 are limited to its rights in respect of the Ordinary Shares or the Attributable Proceeds as provided in this clause 8.14; and
- (g) where paragraph (f) applies in respect of a Holder and either or both of the Issuer and the Trustee (or Nominee) is of the opinion that the issue of Ordinary Shares to the Trustee (or Nominee) in accordance with paragraph (f) cannot be undertaken in accordance with Applicable Shareholding Law or other applicable law (or can be undertaken in accordance with Applicable Shareholding Law or applicable law only after the Issuer or the Trustee (or Nominee) take steps which either or both the Issuer and the Trustee (or Nominee) regard as onerous) then:
 - (i) in respect of a Non-Viability Exchange Date, but without in any way limiting clause 8.17, if either or both of the Issuer and the Trustee (or Nominee) is of the opinion that the issue of Ordinary Shares cannot be undertaken within 5 Business Days of the Non-Viability Exchange Date to the Trustee (or Nominee) in accordance with paragraph (f) or otherwise to the relevant Holder in accordance with clause 8, then the relevant MCN will be Written-Off; or

- (ii) in respect of an Exchange Date other than a Non-Viability Exchange Date:
 - (A) the issue of Ordinary Shares to the Trustee (or Nominee) in accordance with paragraph (f) shall occur as soon as practicable after the Issuer is able to issue the relevant Ordinary Shares to the Trustee (or Nominee) in accordance with Applicable Shareholding Law and other applicable law (and without the Issuer or the Trustee (or Nominee) taking steps which either or both of the Issuer and the Trustee (or Nominee) regard as onerous); and
 - (B) on and from the Exchange Date, the MCN of the relevant Holder remain on issue (and without limitation clause 2 applies) until the first to occur of:
 - (aa) the issue of the relevant Ordinary Shares in accordance with paragraphs (f) and (g)(ii)(A) or otherwise to that relevant Holder in accordance with clause 8; or
 - (ab) the relevant MCN are Redeemed in accordance with these Terms; or
 - (ac) the date which is six months after the Exchange Date, upon which date all rights of the Holder of MCN cease, other than the rights to be issued Ordinary Shares or to receive the Attributable Proceeds if and when the Ordinary Shares are issued and sold.

Nothing in this clause 8.14 shall affect the Exchange of MCN to a Holder which is not a person to which any of paragraphs (a) to (d) (inclusive) applies.

8.15 No duty on sale

For the purpose of clause 8.14, none of the Issuer, the Trustee or Nominee owes any obligations or duties to the Holders in relation to the price at which Ordinary Shares are sold or has any liability for any loss suffered by a Holder as a result of the sale of Ordinary Shares.

8.16 No right of Holders to require Exchange

No MCN can, or will, be Exchanged at the option of a Holder.

8.17 Write-Off on Inability to perform Exchange

- (a) Notwithstanding any other provisions of this clause 8, if on the Non-Viability Exchange Date, an Inability Event subsists and such Inability Event prevents the issue of Ordinary Shares within 5 Business Days of the Non-Viability Exchange Date, then Exchange will not occur on that Non-Viability Exchange Date and each MCN shall be Written-Off.
- (b) The Issuer must give notice to Holders if that Exchange has not occurred by operation of this clause 8.17, but failure to give that notice shall not affect the operation of this clause.

9 Acknowledgements and appointments

9.1 Acknowledgements

Each Holder, by subscribing for, purchasing or otherwise acquiring a MCN:

- (a) is taken to have notice of, and irrevocably agrees to be bound by, the terms of the MCN Trust Deed and these Terms;
- (b) upon an Exchange, consents to becoming a member of the Issuer and agrees to be bound by the constitution of the Issuer;
- (c) agrees that any Redemption, Resale or Exchange shall occur on a Redemption Date, Resale Date or Exchange Date (as the case may be) in accordance with these Terms;
- (d) agrees that it is obliged to accept the Ordinary Shares in respect of its MCN upon an Exchange Date, notwithstanding anything which might otherwise affect the Exchange including:
 - (i) any change in the financial position of the Issuer or the Macquarie Group since the Issue Date;
 - (ii) any disruption to the market or potential market for the Ordinary Shares or to capital markets generally;
 - (iii) it being impossible or impracticable to list the Ordinary Shares on the ASX; or
 - (iv) it being impossible or impracticable to sell or otherwise dispose of the Ordinary Shares;
- (e) acknowledges and agrees that Exchange must occur immediately on the Non-Viability Event and that may result in disruption or failures in trading or dealings in the MCN;
- (f) acknowledges and agrees that:
 - (i) if Exchange does not occur in the circumstances contemplated in clause 8.17, each MCN will be Written-Off; and
 - (ii) clause 8.17 is a fundamental term of the MCN and where it applies, no other conditions or events will affect its operation;
- (g) agrees to provide to the Issuer any information that the Issuer considers necessary or desirable, or to take any and all such action as is within the reasonable control of that Holder, to give effect to a Redemption, Resale or an Exchange;
- (h) acknowledges and agrees that it has:
 - (i) no right to request a Redemption, Resale or an Exchange;
 - (ii) to the fullest extent permitted by law:
 - (A) no right to initiate the Winding Up of the Issuer or any member of the Macquarie Group or to have any such entity placed in administration; or
 - (B) to cause a receiver or receiver and manager to be appointed in respect of the entity,

merely on the grounds that Distribution or any other amount is not paid; and

- (iii) no rights against any member of the Macquarie Group in connection with the MCN except as expressly provided in these Terms and under the MCN Trust Deed;
- (i) acknowledges and agrees that these Terms contain no events of default (however described, determined or defined). Accordingly (but without limitation), failure to pay in full, for any reason, a Distribution on the scheduled Distribution Payment Date will not constitute an event of default; and
- (j) acknowledges and agrees it has no remedies on account of a failure by the Issuer to issue Ordinary Shares in accordance with clause 8 other than (and subject always to clause 8.17) to seek specific performance of the obligation to issue the Ordinary Shares.

9.2 Appointment of agents and Directions

Each Holder irrevocably:

- (a) appoints the Issuer, its respective Authorised Officers and any liquidator, administrator, statutory manager or other similar official of it (each an **"Appointed Person"**) severally to be the attorneys of the Holder and the agents of the Holder, with the power in the name and on behalf of the Holder to:
 - (i) do all such acts and things (including, without limitation, signing all documents, instruments or transfers or instructing CHESS) as may, in the opinion of the Appointed Person, be necessary or desirable to be done in order to give effect to, record or perfect a Redemption, Resale or Exchange in accordance with clauses 3, 4, 5, 6, 7 and 8; or
 - (ii) where clause 8.17 applies, a Write-Off in accordance with that clause;
 - (iii) do all other things which an Appointed Person reasonably believes to be necessary or desirable to give effect to these Terms; and
 - (iv) appoint in turn its own agent or delegate; and
- (b) authorises and directs the Issuer and/or the Registrar to make such entries in the Register, including amendments and additions to the Register, which the Issuer and/or the Registrar may consider necessary or desirable to record:
 - (i) a Redemption, Resale or an Exchange; or
 - (ii) where clause 8.17 applies, a Write-Off in accordance with that clause.

The power of attorney given in this clause 9.2 is given for valuable consideration and to secure the performance by the Holder of the Holder's obligations under these Terms and is irrevocable and shall survive and not be affected by the subsequent disability or incapacity of the Holder (or, if such Holder is an entity, by its dissolution or termination). An Appointed Person shall have no liability in respect of any acts duly performed in accordance with power of attorney given in this clause 9.2.

10 Payments to Holders

10.1 Calculation of payments

All calculations of payments will be rounded to the nearest four decimal places (with 0.00005 being rounded to 0.0001). For the purposes of making any payment in respect of a Holder's aggregate holding of MCN, any amount less than A\$0.01 will be disregarded.

10.2 Payments subject to laws

All payments are subject in all cases to:

- (a) compliance by the Issuer with applicable laws; and
- (b) any applicable fiscal or other laws in the place of payment, but without prejudice to the provisions of clause 10.3.

No commissions or expenses shall be charged to the Holders in respect of such payments (except in respect of the calculation of Attributable Proceeds in accordance with clause 8.14(f)).

10.3 Deductions

- (a) The:
 - (i) Issuer, and any financial institutions or intermediaries through which payments are made or securities issued, may withhold or deduct from any payment payable or securities issuable to a Holder; and
 - (ii) Trustee (or Nominee) may withhold or deduct from any payment payable to a Holder in accordance with clause 8.14(f),

the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such payment or issue of securities including, without limitation, any withholding or deduction of taxes, interest or penalties required under FATCA or where the Issuer or the Trustee (or Nominee) (as applicable) has reasonable grounds to suspect that a Holder or a beneficial owner of any MCN (or any financial institution or intermediary) may be subject to FATCA, and may deal with such payment, issue of securities and the Holder's MCN in accordance with FATCA, including withholding any tax or reporting payment or account information to the IRS or other relevant taxing authority as prescribed by FATCA. For the avoidance of doubt, any withholding required under FATCA is a tax, the deduction or withholding of which is required by applicable law for purposes of this clause 10.

- (b) If any withholding or deduction from any payment payable or securities issuable is permitted in accordance with clause 10.3(a), none of the Issuer, the Trustee (or Nominee) or any other person (including any financial institution or intermediary) will be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of any MCN for or in respect of any such withholding or deduction.
- (c) If any deduction is required, the Issuer or the Trustee (or Nominee) (as applicable) must pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring a penalty under the applicable law.

- (d) If:
- (i) a deduction is made;
 - (ii) the amount of the deduction is accounted for by the Issuer or the Trustee (or nominee) (as applicable) to the relevant revenue authority; and
 - (iii) the balance of the amount payable has been paid to the Holder,
- then the Issuer's or the Trustee's (or Nominee's) (as applicable) obligation to make the payment to the Holder is taken to have been satisfied in full by the Issuer or the Trustee (or Nominee) (as applicable).

10.4 No set-off

A Holder has no right to set-off any amounts owing by it to a member of the Macquarie Group against any claims owing by the Issuer or another member of the Macquarie Group to such Holder. The Issuer has no right to set-off any amounts owing by it to a Holder in respect of the MCN against any claims owing by the Holder to it or any member of the Macquarie Group.

10.5 Payment method

Subject to clause 10.2, all monies payable by the Issuer to a Holder may be paid in any manner the Issuer decides, which may include any of the following:

- (a) by any method of direct crediting determined by the Issuer to the Holder or Holders shown on the Register or to such person or place directed by them;
- (b) by sending on or before the payment date a cheque, through the post at the Holder's risk directed to the physical or postal address of the Holder as shown in the Register or, in the case of joint Holders, to the physical or postal address notified to the Registrar for receipt of such monies (and in default of notification, to the physical or postal address shown in the Register as the address of the joint Holder first named in that Register); or
- (c) by cheque sent through the post directed to such other physical or postal address as the Holder or joint Holders in writing direct.

A cheque sent through the post on or before the date for payment is taken to have been received on the payment date.

10.6 Unpresented cheques

- (a) Cheques issued by the Issuer that are not presented within six months of being issued, or such lesser period as determined by the Issuer, may be cancelled.
- (b) Where a cheque which is cancelled was drawn in favour of a Holder, the moneys are to be held by the Issuer for the Holder as a non-interest bearing deposit until the Holder or any legal personal representative of the Holder claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

10.7 Unsuccessful attempts to pay

Subject to applicable law, where the Issuer:

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

the amount of the unsuccessful payment will be held by the Issuer for the Holder as a non-interest bearing deposit with a bank selected by the Issuer until the Holder or any legal personal representative of the Holder claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

Holders will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due.

10.8 Payment to joint Holders

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

10.9 Time limit for claims

A claim against the Issuer for a payment under a MCN is void unless made within five years from the date on which payment first became due.

11 Title and transfer of MCN

11.1 Title

Title to a MCN passes when details of the transfer are recorded in the Register.

11.2 Effect of entries in the Register

Each entry in the Register for a MCN constitutes an entitlement to the benefits given to the Holder under these Terms and the MCN Trust Deed in respect of the MCN.

11.3 Register conclusive as to ownership

An entry in the Register in relation to a MCN constitutes conclusive evidence that the person so entered is the absolute owner of that MCN, subject to correction for fraud or error.

11.4 Non-recognition of interests

- (a) Except as required by law, and save as provided below, the Issuer and the Registrar must treat the person entered in the Register in respect of a MCN as the absolute owner of that MCN.
- (b) No notice of any trust, encumbrance or other interest in, or claim to, any MCN will be entered in the Register. None of the Issuer or the Registrar need take notice of any trust, encumbrance or other interest in, or claim

to, any MCN, except as ordered by a court of competent jurisdiction or required by law.

- (c) This clause 11.4 applies whether or not a payment has been made when scheduled on a MCN and despite any notice of ownership, trust, encumbrance or other interest in the MCN.

11.5 Joint holders

Where two or more persons are entered in the Register as joint Holders then they are taken to hold the MCN jointly, but the Registrar is not bound to register more than four persons as joint holders of a MCN.

11.6 Transfers

A Holder may transfer a MCN:

- (a) in accordance with the rules and regulations of CHESSE; or
- (b) by a proper transfer under any other applicable computerised or electronic system recognised by the Corporations Act (or as the Issuer may otherwise accept); or
- (c) subject to clause 1.4 by any proper or sufficient instrument of transfer of marketable securities under applicable law, provided such instrument is delivered to the Registrar with any evidence the Registrar requires to prove title to or the right to transfer the MCN.

The Holder is responsible for any stamp duty or other similar taxes which are payable in any jurisdiction in connection with a transfer, assignment or other dealing with MCN.

11.7 Transferee takes subject to terms

A transferee of, or any person claiming, an interest in a MCN takes subject to these Terms and the MCN Trust Deed.

11.8 Other transfers void

A purported transfer otherwise than in accordance with these Terms and the MCN Trust Deed or grant of an interest in a MCN otherwise than by way of transfer is, to the fullest extent permitted by law, void.

11.9 Issuer may request holding lock or refuse to register transfer

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

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

11.10 Issuer must request holding lock or refuse to register transfer

- (a) The Issuer must request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of MCN approved by and registered on the CS Facility's electronic subregister or MCN registered on an issuer-sponsored subregister, as the case may be,

if the Corporations Act or the ASX Listing Rules require the Issuer to do so.

- (b) The Issuer must refuse to register any transfer of MCN if the Corporations Act or the ASX Listing Rules require the Issuer to do so.

11.11 Notice of holding locks and refusal to register transfer

If, in the exercise of its rights under clauses 11.9 and 11.10, the Issuer requests application of a holding lock to prevent a transfer of MCN or refuses to register a transfer of MCN, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to the Holder, to the transferee and the broker lodging the transfer, if any. Failure to give such notice does not, however, invalidate the decision of the Issuer.

11.12 Delivery of instrument

If an instrument is used to transfer MCN according to clause 11.6, it must be delivered to the Registrar, together with such evidence (if any) as the Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the MCN.

11.13 Refusal to register

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

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

11.14 No liability to persons other than Holders

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

12 Notices and other communications

12.1 Notices to Holders

All notices and other communications to Holders must be in writing and must be:

- (a) left at the address of or sent by prepaid post (airmail, if appropriate) to the address of the Holder (as shown in the Register at the close of business on the day which is five Business Days before the date of the notice or communication);
- (b) (if available) issued to Holders through CHESS in accordance with any applicable rules and regulations of CHESS;
- (c) so long as the MCN are quoted on ASX, by publication of an announcement on ASX;

- (d) given by an advertisement published in the Australian Financial Review, The Australian or in any other newspaper nationally circulated within Australia;
- (e) sent by email or electronic message to the electronic address (if any) of the Holder (as shown in the Register at the close of business on the day which is five Business Days before the date of the notice or communication); or
- (f) given in any other way agreed between the Issuer and the Holders (and in agreeing in such way, the Issuer and the Holders may have regard to the dates by which notice is to be given under these Terms).

12.2 Notices to the Issuer or the Trustee

All notices and other communications to the Issuer or the Trustee must be in writing and must be:

- (a) if to the Issuer, sent by fax to the fax number, or left at the address, or sent by prepaid post (airmail, if appropriate) to the address, set out below:

Name:	Macquarie Group Limited
Address:	Level 15, 1 Martin Place, Sydney NSW 2000
Attention:	Company Secretary
Fax:	+61 2 8232 4330
- (b) if to the Trustee, addressed as specified from time to time in accordance with the MCN Trust Deed; and
- (c) given in any other way reasonably determined by the Issuer or, in the case of clause 12.2(b), the Trustee and notified to Holders.

For the purposes of this clause 12.2, the Issuer's address for notices and other communications is the address set out above or as otherwise notified by the Issuer to Holders.

12.3 When effective

Communications take effect from the time they are received or taken to be received under clause 12.4 (whichever happens first) unless a later time is specified.

12.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, the day immediately following the day on which the notice was posted (or four days after posting if sent from one country to another);
- (b) if addressed and transmitted to the person and fax number specified in accordance with clause 12.2, on the Business Day following its transmission;
- (c) if sent by e-mail to the electronic address in respect of the Holder as specified in accordance with clause 12.1, on the day following its transmission to that electronic address;

- (d) if issued to Holders through CHESS, on the date of the issuance unless the sender receives an automated message that the e-mail has not been delivered;
- (e) if announced on the ASX, on the date of the announcement; or
- (f) if published in a newspaper, on the first date that publication has been made in the required newspaper.

12.5 Receipt outside business hours

Despite clauses 12.3 and 12.4, if communications are received or taken to be received under clause 12.4 after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am in the place of receipt on the next Business Day and take effect from that time unless a later time is specified.

12.6 Effect of failure to give notice

If the Issuer is required to give a notice in relation to any act, matter or determination, the accidental omission to give that notice to a Holder does not invalidate the notice in relation to Holders generally, or affect the validity of that act, matter or determination.

13 Amendment of Terms

13.1 Amendment without consent

Subject to complying with the Corporations Act and all other applicable laws and directives, the Issuer may amend these Terms and the MCN Trust Deed, with the prior written approval of APRA (to the extent any such amendment may affect the eligibility of the MCN as Eligible Capital) but without the consent of the Holders or the Trustee:

- (a) if the Issuer is of the opinion that the amendment is:
 - (i) of a formal, minor or technical nature;
 - (ii) made to correct any ambiguity or any manifest error;
 - (iii) expedient for the purpose of enabling the MCN to be listed for quotation or to retain a listing on any Stock Exchange, to be cleared or settled through any clearing system or to retain clearance and settlement through any clearing system or to be offered for sale, or subscribed for, under the laws for the time being in force in any place and, in each case, it is otherwise not considered by the Issuer to be materially adverse to the interests of Holders as a whole;
 - (iv) necessary to comply with the provisions of any statute or the requirements of any statutory authority; or
 - (v) in respect of any time or notice period stated, required or permitted in respect of any Exchange on account of any Acquisition Event, as is necessary or appropriate to give effect to such Exchange; and
- (b) if the Issuer is of the opinion that the amendment does not, taken as a whole and in conjunction with all other amendments, if any, made

contemporaneously with the amendments, materially adversely affect the interests of Holders as a whole,

provided that, notwithstanding anything else in this clause 13.1, any amendments which may have an adverse effect on the Trustee's rights and obligations under the Transaction Documents must first be approved by the Trustee in writing (such approval not to be unreasonably withheld or delayed).

13.2 Amendment without consent where Approved Acquirer

Without limiting clause 13.1, subject to complying with the Corporations Act and all other applicable laws and directives, the Issuer may make amendments to these Terms and the MCN Trust Deed, with the prior written approval of APRA but without the consent of the Holders or the Trustee which are necessary and appropriate to effect the substitution of the Approved Acquirer as the issuer of the Ordinary Shares whenever MCN are required to be Exchanged in the manner contemplated by these Terms, including without limitation:

- (a) amendments to the definition of "Exchange" such that, unless APRA otherwise agrees, on the Exchange Date:
 - (i) each MCN that is to be Exchanged will be automatically transferred by each Holder free from Encumbrance to the Approved Acquirer (or another subsidiary of the Approved Acquirer which is a holding company of the Issuer on the Exchange Date) (the "**Transferee**");
 - (ii) each Holder will be issued a number of ordinary shares in the capital of the Approved Acquirer equal to the Exchange Number; and
 - (iii) as between the Issuer and the Transferee, the MCN held by the Transferee as a result of the transfer will be exchanged for a number (rounded down to the nearest whole number) of Ordinary Shares the aggregate value of which equals the aggregate Issue Price of the transferred MCN;
- (b) amendments and additions to the definitions of "Acquisition Event", "Macquarie Group", "Regulatory Event" and "Tax Event"; and
- (c) amendments and additions to any term defining the rights of Holders if the Exchange is not effected which is appropriate for the MCN to remain as Eligible Capital,

provided that, notwithstanding anything else in this clause 13.2, any amendments which may have an adverse effect on the Trustee's rights and obligations under the Transaction Documents must first be approved by the Trustee in writing (such approval not to be unreasonably withheld or delayed).

13.3 Amendment with consent

Without limiting clause 13.1 and clause 13.2, the Issuer may, with APRA's prior written approval (to the extent any such amendment may affect the eligibility of the MCN as Eligible Capital), amend these Terms or the MCN Trust Deed, if the amendment has been approved by a Special Resolution and by the Trustee in writing.

13.4 Meanings

In this clause 13, "**amend**" includes modify, cancel, alter, adjust or add to and "**amendment**" has a corresponding meaning.

13.5 Notice of amendments

Any amendment of these Terms or the MCN Trust Deed made in accordance with this clause 13 must be promptly notified by the Issuer to Holders.

14 General provisions

14.1 Enforcement of the MCN Trust Deed and the Terms

Only the Trustee may enforce the provisions of the MCN Trust Deed or these Terms and only in accordance with their terms and subject to the limitations and to the protections afforded to the Trustee set out in the MCN Trust Deed. No Holder shall be entitled to proceed directly against the Issuer to enforce the performance of any of the provisions of the MCN Trust Deed or these Terms unless the Trustee, being entitled and having become bound to take proceedings in accordance with the MCN Trust Deed, fails to do so within 14 days and such failure is continuing and then only in accordance with their terms and subject to the limitations set out in the MCN Trust Deed.

14.2 Voting

- (a) The MCN Trust Deed contains provisions for convening meetings of the Holders to consider any matter affecting their interests, including any variation of these Terms which requires the consent of Holders.
- (b) Holders will have no voting rights in respect of any member of the Macquarie Group.
- (c) Subject to applicable law, Holders are not entitled to be provided with copies of:
 - (i) any notices of general meeting of the Issuer; or
 - (ii) other documents (including annual reports and financial statements) sent by the Issuer to holders of Ordinary Shares or other securities (if any) in the Issuer.

14.3 Listing

The Issuer must use its best endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure, at its own expense, quotation of the MCN on ASX on or as soon as possible after the Issue Date and maintain quotation on ASX until all MCN have been Exchanged, Redeemed or Written-Off.

14.4 Purchases

Subject to APRA's prior written approval and applicable law, any member of the Macquarie Group may purchase MCN at any time and at any price. Such MCN may, at the option of the acquirer, be held or resold.

15 Winding Up

15.1 Ranking in Winding Up

- (a) If an order of a court of competent jurisdiction is made (other than an order successfully appealed or permanently stayed within 30 days), or an effective resolution passed, for the Winding Up of the Issuer, the Issuer

is liable to redeem each MCN for its Liquidation Amount in accordance with, and subject to, this clause 15.

- (b) In the Winding Up of the Issuer, a Holder is entitled, subject to the terms of the MCN Trust Deed and to this clause 15, to claim on a subordinated basis in accordance with clause 1.5 and clause 15.1(c) for payment in cash of an amount equal to the Liquidation Amount but has no further or other right to participate in the assets of the Issuer.
- (c) On a Winding Up of the Issuer:
 - (i) Holders shall be entitled to prove only for any sums payable in respect of the MCN as a debt which are subject to, and contingent upon the prior payment in full of, the Senior Creditors;
 - (ii) Holders shall be entitled to claim for payment in cash of an amount equal to the Issue Price and that claim ranks equally with all Equal Ranking Obligations; and
 - (iii) Holders waive, to the fullest extent permitted by law, any right to prove in any such Winding Up as a creditor ranking for payment in any other manner.

15.2 Agreements of Holders as to subordination

Each Holder irrevocably agrees:

- (a) that clause 15.2 is a debt subordination for the purposes of section 563C of the Corporations Act;
- (b) that it does not have, and waives to the maximum extent permitted by law, any entitlement to interest under section 563B of the Corporations Act to the extent that a holder of a preference share which is an Equal Ranking Obligation would not be entitled to such interest;
- (c) not to exercise any voting rights as a creditor in the Winding Up or administration of the Issuer:
 - (i) until after all Senior Creditors have been paid in full; or
 - (ii) otherwise in a manner inconsistent with the ranking and subordination contemplated by clause 1.5 and clause 15.1;
- (d) that it must pay or deliver to the liquidator or administrator any amount or asset received on account of its claim in the Winding Up or administration of the Issuer in respect of the MCN in excess of its entitlement under clause 1.5 and clause 15.1;
- (e) that it must pay in full all liabilities it owes the Issuer before it may receive any amount or asset on account of its claim in the winding up or administration in respect of a MCN; and
- (f) that the debt subordination effected by clause 1.5 and clause 15.1 is not affected by any act or omission of the Issuer or a Senior Creditor which might otherwise affect it at law or in equity.

15.3 No charge

Nothing in clause 1.5 or this clause 15 shall be taken to:

- (a) create a charge or security interest on or over any right of the Holder; or

- (b) require the consent of any Senior Creditor to any amendment of these Terms.

16 Governing law, jurisdiction and service of documents

16.1 Governing law

The MCN, including these Terms, are governed by, and shall be construed in accordance with, the laws of New South Wales, Australia.

16.2 Jurisdiction

- (a) The Issuer has irrevocably agreed for the benefit of the Holders that the courts of New South Wales, Australia are to have non-exclusive jurisdiction to settle any disputes which may arise out of or in connection with the MCN and accordingly has submitted to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) The Holders may take any suit, action or proceeding arising out of or in connection with the MCN ("**Proceedings**") against the Issuer in any other court of competent jurisdiction and may take concurrent Proceedings in any number of jurisdictions.

16.3 Service of process

Without preventing any other method of service, any document in any action may be served on the Issuer by being delivered or left at its registered office or principal place of business.

17 Interpretation and definitions

17.1 Interpretation

Unless otherwise specified or the contrary intention appears:

- (a) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms;
- (b) if a calculation is required under these Terms, the calculation will be rounded to four decimal places (with 0.00005 being rounded to 0.0001);
- (c) headings and bold typeface are for convenience only and do not affect the interpretation of these Terms;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a statute, ordinance, directive, code or law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them and references to law includes statutes, ordinances, codes, directives or common law and principles of equity having general application;
- (f) if an event under these Terms must occur on a stipulated day which is not a Business Day, then, except where the event is an Exchange on account of a Non-Viability Event, the stipulated day will be taken to be the next Business Day;
- (g) a reference to "**Australian Dollars**", "**AUD**" or "**A\$**" is a reference to the lawful currency of Australia;

- (h) calculations, elections and determinations made by or on behalf of the Issuer or the Directors under these Terms are binding on Holders in the absence of manifest error or fraud;
- (i) a reference to a party to an agreement, deed, authority or other instrument includes a reference to any successor, replacement, assignee, substitute or addition of the party according to that agreement, deed, authority or instrument;
- (j) any references to the requirements of APRA or any other prudential regulatory requirements will apply to the Issuer only if the Issuer is an entity, or the holding company of an entity, subject to regulation and supervision by APRA at the relevant time;
- (k) any requirement for APRA's consent or approval will apply only if APRA requires that such consent or approval be given at the relevant time;
- (l) any requirements for the prior approval or consent of APRA for a particular course of action to be taken by the Issuer do not imply that APRA has given its consent or approval to the particular action as of the Issue Date;
- (m) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (n) a reference to an agreement, deed or other instrument includes a reference to that agreement, deed or instrument as amended, modified, added to or restated from time to time;
- (o) the terms "**takeover bid**", "**relevant interest**", "**scheme of arrangement**", "**buy-back**", "**subsidiary**" and "**holding company**" when used in these Terms have the meaning given in the Corporations Act;
- (p) a reference to the "interests of Holders as a whole" will, if MCN are held beneficially by a Nominated Party, be a reference to the interests of Holders other than the Nominated Party;
- (q) the words "**includes**" or "**including**", "**for example**" or "**such as**" do not exclude a reference to other items, whether of the same class or genus or not;
- (r) if the principal securities exchange on which the Ordinary Shares are quoted is other than ASX, unless the context otherwise requires a reference to ASX shall be read as a reference to that principal securities exchange and a reference to the ASX Listing Rules, ASX Operating Rules or any term defined in any such rules, shall be read as a reference to the corresponding rules of that exchange or corresponding defined term in such rules (as the case may be);
- (s) a reference to any term defined by APRA shall, if that term is replaced or suspended in any of APRA's applicable prudential regulatory requirements or standards, be taken to be a reference to the replacement or equivalent term; and
- (t) where these Terms refer to a person's opinion or to a person's regard or consideration or being satisfied with respect to any step, act, matter or thing, that opinion, regard, consideration or satisfaction may be held, formed or made by the person in the person's absolute discretion.

17.2 Definitions

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

Acquisition Event means:

- (a) a takeover bid is made to acquire all or some of the Ordinary Shares and the offer is, or becomes, unconditional and as a result of the bid the bidder (and its associates as defined in section 12 of the Corporations Act) has a relevant interest in more than 50% of the Ordinary Shares on issue;
- (b) a court approves a scheme of arrangement which, when implemented, will result in a person (and its associates as defined in section 12 of the Corporations Act) having a relevant interest in more than 50% of the Ordinary Shares on issue; or
- (c) a person together with its associates as defined in section 12 of the Corporations Act;
 - (i) acquires or comes to hold beneficially more than 50% of the voting shares (as defined in the Corporations Act) in the capital of the Issuer; or
 - (ii) enters into an agreement to beneficially acquire more than 50% of the voting shares (as defined in the Corporations Act) in the capital of the Issuer and the agreement to acquire is, or becomes, unconditional,

(for the purposes of this definition, each an “**event**”), other than as part of a solvent reorganisation of the relevant entity where the persons holding relevant interests in the ordinary equity capital (being listed on the ASX) of the bidder or other person (“**Approved Acquirer**”) acquiring a relevant interest in more than 50% of the Ordinary Shares on issue or beneficially acquiring more than 50% of the voting shares in the capital of the Issuer are, or will be, substantially the same, and in substantially the same proportions, as the persons who held relevant interests in the Ordinary Shares or who held beneficially voting shares in the capital of the Issuer immediately prior to the event where:

- (i) the event is initiated by the Directors or would not, in the Issuer’s reasonable opinion, otherwise be materially adverse to the interests of Holders as a whole; and
- (ii) the Approved Acquirer agrees for the benefit of Holders to:
 - (A) issue listed ordinary share capital in all circumstances where the Issuer would have otherwise been obliged to issue the Ordinary Shares as contemplated by these Terms;
 - (B) use all reasonable endeavours to ensure continued quotation of the MCN on a Stock Exchange; and
 - (C) comply with the obligations and restrictions as apply to the Issuer in connection with the MCN (with all necessary and appropriate modifications);

Acquisition Exchange Date has the meaning given in clause 5.7;

Acquisition Exchange Notice has the meaning given in clause 5.7;

Adjustment Notice has the meaning given in clause 8.9;

Applicable Shareholding Law means each of:

- (a) Chapter 6 of the Corporations Act;
- (b) the Foreign Acquisitions and Takeovers Act 1975 (Cth);
- (c) the Financial Sector (Shareholdings) Act 1998 (Cth);
- (d) Part IV of the Competition and Consumer Act 2010 (Cth); and
- (e) any other law in force in Australia or any relevant foreign jurisdiction which limits or restricts the number of shares in the Issuer in which a person may have an interest or over which it may have a right or power;

Appointed Person has the meaning given in clause 9.2;

Approved Acquirer has the meaning given in the definition of Acquisition Event;

APRA means the Australian Prudential Regulation Authority or any authority succeeding to its powers and responsibilities;

ASX means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires;

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

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

ASX Settlement Operating Rules means the settlement operating rules of ASX from time to time with any applicable modifications or waivers granted by ASX;

ASX Trading Day means a business day within the meaning of the ASX Listing Rules on which trading in Ordinary Shares takes place;

Attributable Proceeds means, in respect of a Holder to whom clause 8.14(f) applies, an amount equal to the Proceeds per Share multiplied by the number of Ordinary Shares issued and sold in accordance with clause 8.14(f) in respect of that Holder.

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

Banking Act means the Banking Act 1959 (Cth);

Bills has the meaning given in clause 2.1;

Business Day means a day which is (i) a business day within the meaning of the ASX Listing Rules; and (ii) for the purpose of determining an Exchange Date (except where the Exchange is on account of a Non-Viability Event) or the calculation or payment of a Distribution or of any other sum, a day on which banks are open for general business in Sydney, Australia;

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

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

Change in Law has the meaning given to it in the definition of Regulatory Event;

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd (ABN 49 008 504 532);

Control has the meaning given in the Corporations Act;

Corporations Act means the Corporations Act 2001 (Cth);

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

CS Facility Operator means the operator of a CS Facility;

Cum Value has the meaning given in clause 8.3;

Daily VWAP means the volume weighted average sale price (rounded to the nearest full cent) of Ordinary Shares sold on ASX on a day but does not include any “Crossing” transacted outside the “Open Session State”, or any “Special Crossing” transacted at any time, each as defined in the ASX Operating Rules, or any overseas trades or trades pursuant to the exercise of options over Ordinary Shares;

Deferred Exchange Date has the meaning given in clause 5.5;

Deferred Exchange Notice has the meaning given in clause 5.5;

Deferred Mandatory Exchange Date has the meaning given in clause 3.2;

Delisted means, in respect of the Issuer and an Exchange Date,

- (a) that Ordinary Shares have ceased to be listed or admitted to trading on ASX (and continue not to be listed or admitted to trading on that date); or
- (b) an Inability Event applies on the relevant date preventing the Issuer from Exchanging MCN of Holders generally;

Directors means some or all of the Voting Directors (as defined in the Issuer’s constitution) of the Issuer acting as a board;

Distribution has the meaning given in clause 2.1;

Distribution Payment Date has the meaning given in clause 2.1;

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

- (a) the first Distribution Period commences on (and includes) the Issue Date; and
- (b) the final Distribution Period ends on (and excludes) the Exchange Date, Redemption Date or Resale Date, as applicable;

Distribution Rate has the meaning given in clause 2.1;

Dividend Restriction has the meaning given in clause 2.5;

Eligible Capital has the same meaning as “eligible capital” in the conditions in the schedule to the NOHC Authority or the equivalent concept in any subsequent or replacement authority given by APRA in favour of the Issuer or in any prudential standard determined by APRA relevant to the definition of the capital of the Issuer;

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

Equal Ranking Obligations means any obligation of, or claim against, the Issuer that exists or may arise in connection with:

- (a) the instruments described as the “A\$600,000,000 Macquarie Convertible Preference Securities” issued on 8 July 2008;
- (b) the instruments described as the “US400,000,000 Macquarie Preferred Membership Interests” issued on 2 December 2010; and
- (c) any other:
 - (i) preference share, security or capital instrument issued by the Issuer; or
 - (ii) obligation of, or claim against, the Issuer in respect of a preference share, security or capital instrument issued by a member of the Macquarie Group,

which preference share, security, capital instrument of, or obligation or claim against the Issuer ranks, or is expressed to rank, equally with the MCN or any other Equal Ranking Obligation;

Exchange means, in respect of a MCN, the allotment and issue of Ordinary Shares in respect of that MCN in accordance with and subject to clause 8, and **Exchangeable**, **Exchanged** and **Exchanging** have corresponding meanings;

Exchange Conditions has the meaning given in clause 3.3;

Exchange Date means a Mandatory Exchange Date, Non-Viability Exchange Date, Optional Exchange Date or Acquisition Exchange Date on which the MCN must be Exchanged (any relevant Exchange Conditions applicable to that date having been met);

Exchange Date VWAP has the meaning given in clause 8.1;

Exchange Floor Price has the meaning given in clause 8.1;

Exchange Number has the meaning in clause 8.1;

FATCA means the Foreign Account Tax Compliance Act provisions set out in sections 1471 through to 1474 of the US Internal Revenue Code (“**Code**”) (and including any current or future regulations or official interpretations thereof issued in respect of these provisions, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices or similar laws implementing an inter-governmental approach on such provisions

and any agreement entered into by the Issuer pursuant to or in connection with any of the foregoing);

First Exchange Condition has the meaning given in clause 3.3;

First Optional Exchange Restriction has the meaning given in clause 5.4;

First Scheduled Optional Exchange Date has the meaning given in clause 5.2;

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

Fourth Exchange Condition has the meaning given in clause 3.3;

Franking Adjustment Factor has the meaning given in clause 2.1;

Franking Rate means the franking percentage, as defined under Part 3-6 of the Tax Act, for a Distribution as at the relevant Distribution Payment Date (expressed as a decimal);

Holder means a person Registered as the holder of a MCN;

Inability Event means any of the Issuer or any of its Related Bodies Corporate is prevented by applicable law, an order of any court, an action of any government authority (including regarding the insolvency, Winding Up or other external administration of the Issuer) or any other reason from observing and performing their obligations in respect of an Exchange;

Ineligible Holder has the meaning given in clause 8.14;

IRS means the Internal Revenue Service of the United States of America;

Issue Date means the date the MCN are issued, expected to be 7 June 2013;

Issue Date VWAP has the meaning given in clause 8.1;

Issue Price has the meaning given in clause 1.1;

Issuer means Macquarie Group Limited (ABN 94 122 169 279), a company incorporated under the laws of Australia;

Level 3 Group means the Issuer and those of its controlled entities included by APRA from time to time in the calculation of the Issuer's minimum capital requirement on a Level 3 basis (as that term is defined by APRA from time to time);

Liquidation Amount means an amount equal to the Issue Price;

Macquarie Group means the Issuer and each entity it Controls;

Mandatory Exchange Date has the meaning given in clause 3.2;

Margin has the meaning given in clause 2.1;

Maximum Exchange Number has the meaning given in clause 8.1;

MCN has the meaning given in clause 1.1;

MCN Trust Deed means the trust deed in respect of MCN dated on or about 14 May 2013 as amended from time to time;

NOHC Authority means the authority to be a non-operating holding company of an authorised deposit taking institution given by APRA in favour of the Issuer on 5 September 2007 (as amended from time to time) under the Banking Act;

Nominated Party means, subject to clause 7.2, one or more third parties selected by the Issuer in its absolute discretion;

Nominee has the meaning given in clause 8.14;

Non-Completing Nominated Party has the meaning given in clause 7.6;

Non-Exchange Test Date has the meaning given in clause 5.4;

Non-Viability Event means APRA has provided a written determination to the Issuer that the conversion into Ordinary Shares or write-off of Relevant Tier 1 Securities in accordance with their terms or by operation of law is necessary because:

- (a) without such conversion or write-off, APRA considers the Issuer would become non-viable; or
- (b) a public sector injection of capital, or equivalent support, is to occur into the Issuer, as without such support the Issuer would become non-viable;

Non-Viability Exchange Date means the date of occurrence of the Non-Viability Event;

Non-Viability Exchange Notice has the meaning given in clause 4.6;

Offer means the invitation made under the Prospectus by the Issuer for persons to subscribe for MCN;

Optional Exchange Date has the meaning given in clause 5.3;

Optional Exchange Notice has the meaning given in clause 5.1;

Optional Exchange Restrictions has the meaning given in clause 5.4;

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

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

Proceedings has the meaning given in clause 16.2;

Proceeds per Share means, in respect of Ordinary Shares issued and sold in accordance with clause 8.14(f), an amount equal to the net proceeds of the sale of such Ordinary Shares, actually received after deducting any applicable brokerage, stamp duty and other taxes, charges and expenses, divided by the number of such Ordinary Shares issued and sold;

Prospectus means the prospectus for the Offer including these Terms;

Reclassification means a division, consolidation or reclassification of the Issuer's share capital (not involving any cash payment or other distribution to or by holders of Ordinary Shares or to any entity in the Macquarie Group);

Record Date has the meaning given in clause 2.1;

Redemption means, in respect of a MCN, the MCN is redeemed by payment of cash in accordance with and subject to clause 6 and “**Redeem**”, “**Redeemable**” and “**Redeemed**” have the corresponding meanings;

Redemption Date has the meaning given in clause 6.3;

Redemption Notice has the meaning given in clause 6.1;

Redemption Price has the meaning given to it in clause 6.4;

Reference Rate has the meaning given in clause 2.1;

Register means the register, including any branch register, of Holders established and maintained by, or on behalf of, the Issuer;

Registered means recorded in the Register;

Registrar means a person appointed by the Issuer to maintain the Register;

Regulatory Event means:

- (a) a law or regulation applicable in the Commonwealth of Australia or any State or Territory of Australia or any directive, order, standard, requirement, guideline or statement of APRA (whether or not having the force of law) which applies to the Issuer or any other member of the Macquarie Group (a “**Regulation**”) is introduced, amended, clarified or changed or its application changed; or
- (b) an announcement is made that a Regulation will be introduced, amended, clarified or changed or its application changed; or
- (c) a decision is made by any court or other authority interpreting, applying or administering any Regulation,

in each case, which event occurs on or at any time after the Issue Date and was not expected by the Issuer as at the Issue Date (each such event a “**Change in Law**”) and the Directors determine that, as a result of that Change in Law:

- (i) any of the MCN are not eligible for inclusion as Eligible Capital;
- (ii) additional requirements (including regulatory, capital, financial, operational or administrative requirements) in connection with the MCN would be imposed on the Issuer or the Macquarie Group which the Directors determine, in their absolute discretion, might have a material adverse effect on the Issuer or otherwise be unacceptable; or
- (iii) to have any of the MCN outstanding would be unlawful or impractical or that the Issuer or the Macquarie Group would be exposed to a more than *de minimis* increase in its costs in connection with those MCN;

Related Bodies Corporate has the meaning given in the Corporations Act;

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

Relevant Mandatory Exchange Date has the meaning given in clause 3.2;

Relevant Percentage has the meaning given in clause 8.1;

Relevant Tier 1 Security means a security forming part of the Eligible Capital of the Issuer that, in accordance with its terms or by operation of law, is capable of being converted into Ordinary Shares or written-off when a Non-Viability Event occurs (including the MCN);

Resale has the meaning given in clause 7.1 and “Resell” and “Resold” have the corresponding meanings;

Resale Date has the meaning given in clause 7.1;

Resale Notice has the meaning given in clause 7.1;

Resale Price has the meaning given in clause 7.3;

Scheduled Mandatory Exchange and **Scheduled Mandatory Exchange Date** each have the meaning given in clause 3.2;

Scheduled Optional Exchange Date has the meaning given in clause 5.2;

Second Exchange Condition has the meaning given in clause 3.3;

Second Optional Exchange Restriction has the meaning given in clause 5.4;

Second Scheduled Optional Exchange Date has the meaning given in clause 5.2;

Senior Creditors means all present and future creditors of the Issuer whose claims are:

- (a) entitled to be admitted in the winding up of the Issuer; and
- (b) not expressed to rank equally with, or subordinate to, the claims of the Holders under these Terms;

Special Resolution means:

- (a) the approval of a resolution passed at a meeting of Holders duly convened and held in accordance with the MCN Trust Deed by the affirmative vote of at least 75% of the votes cast by Holders at such meeting; or
- (b) the consent in writing of Holders holding at least 75% of the MCN then on issue;

Stock Exchange means the ASX or such other stock or securities exchange on which the MCN may be listed from time to time;

Suspension Event means, in respect of a date, trading of Ordinary Shares on ASX is suspended for a period of consecutive days which includes:

- (a) at least five consecutive Business Days prior to that date; and
- (b) that date;

Tax Act means the Income Tax Assessment Act 1936 (Cth) or the Income Tax Assessment Act 1997 (Cth), as the context requires;

Tax Event means that, on or after the Issue Date, the Issuer receives an opinion of nationally recognised legal counsel or other nationally recognised tax adviser in Australia, experienced in such matters, that there is more than an insubstantial risk which the Issuer determines, at its absolute discretion, to be unacceptable that, as a result of a Tax Event Trigger and in connection with MCN:

- (a) a franking debit will arise in the franking account of the Issuer in respect of any Distribution (the terms “franking debit” and “franking account” being within the meaning of Division 205 of the Tax Act) in addition to any franking debit that would, or is expected to, arise from the relevant Distribution in the absence of the Tax Event Trigger; or
- (b) the Issuer or another member of the Macquarie Group is or will become exposed to more than a *de minimis* amount of other taxes, assessments, costs or other governmental charges;

Tax Event Trigger means:

- (a) an amendment to, change in or announced prospective change in, any laws or regulations in Australia;
- (b) a judicial decision interpreting, applying or clarifying any laws or regulations in Australia;
- (c) an administrative pronouncement, ruling, confirmation, advice or action that represents an official position, including a clarification of an official position of the governmental authority or regulatory body making the administrative pronouncement or taking any action; or
- (d) a challenge asserted or threatened in writing in connection with an audit or investigation by the Australian Taxation Office of the Issuer in connection with MCN,

which amendment, change or prospective change is announced, or which action or clarification or challenge occurs, on or after the Issue Date and was not expected by the Issuer as at the Issue Date;

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

Terms means these terms and conditions;

Third Exchange Condition has the meaning given in clause 3.3;

Third Scheduled Optional Exchange Date has the meaning given in clause 5.2;

Transaction Documents means:

- (a) the MCN Trust Deed (including these Terms);
- (b) any other document agreed by the parties to be a Transaction Document for the purposes of the MCN Trust Deed (and provided that no such agreement will be made if the document may affect the eligibility of the MCN as Eligible Capital unless the written approval of APRA to the agreement has been obtained);

Transferee has the meaning given in clause 13.2;

Trustee means The Trust Company (Australia) Limited (ABN 21 000 000 993) or any replacement trustee under the MCN Trust Deed from time to time;

VWAP has the meaning given in clause 8.1;

VWAP Period has the meaning given in clause 8.1;

Winding Up means, with respect to an entity, the winding up, termination or dissolution of the entity, but does not include any winding up, termination or dissolution for the purposes of a consolidation, amalgamation, merger or reconstruction (the terms of which have been approved by the shareholders of the entity or by a court of competent jurisdiction) under which the continuing or resulting entity effectively assumes the entire obligations of the entity in respect of the MCN; and

Written-Off means, in respect of a MCN, that the relevant Holder's rights and the obligations of the Issuer (including in respect of payment of Distributions and any Exchange) in relation to such MCN are immediately and irrevocably terminated and written off and "**Write-Off**" has a corresponding meaning.

- 17.3 Inconsistency with ASX Listing Rules and ASX Settlement Operating Rules**
So long as the MCN are quoted on ASX and in CHESS, these Terms as they relate to those MCN are to be interpreted in a manner consistent with applicable ASX Listing Rules and ASX Settlement Operating Rules (the "**Rules**"), except to the extent that an interpretation consistent with those Rules would affect the eligibility of the MCN as Eligible Capital).

MCN Trust Deed

Schedule 3 - Rules relating to Meetings of Holders

1 Power to call meetings

1.1 Application

These Meeting Provisions apply equally to each MCN and a reference in these Meeting Provisions to “Holders” or “MCN” are to the Holders of MCN in respect of which the meeting is being held or that particular MCN as the case may be unless specified or the context requires otherwise.

1.2 Ability to convene meetings

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

1.3 Issuer’s duty to call meeting

On request in writing of the Holders who together hold 10% or more of the outstanding principal amount of MCN, the Issuer must call a meeting of Holders (or the relevant Holders as the case may be):

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

or both, as so requested by the Holders (or the relevant Holders as the case may be).

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

1.4 Meeting under Corporations Act

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

2 How to call meeting and period of notice

At least 28 days’ notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given) of every meeting is to be given to the Issuer and the Trustee and the Holders of the MCN. If the meeting is called under paragraph 1 of these Meeting Provisions, or the Trustee or the Issuer otherwise desires their presence at the meeting, notice of the meeting must also be given to the auditor of the Issuer.

2.1 Contents of notice

The notice must specify the place, day and hour of meeting and the general nature of the business to be transacted but it is not necessary to specify in the notice the precise terms of the resolutions to be proposed. The convenor of the meeting may amend or supplement the notice of meeting by any further

information or materials it considers appropriate by further notice given in accordance with this paragraph at least 7 days prior to the time fixed for the meeting. A copy of the notice must be sent by post to the Trustee unless the meeting is called by the Trustee and to the Issuer unless called by the Issuer.

The notice must provide that the Holders may attend personally or through a proxy. If the Issuer is required to call a meeting under paragraph 1.2 of these Meeting Provisions, then it must also give prior notice of the meeting to the Issuer's auditor.

2.2 Omission to give notice

- (a) A meeting is duly convened and proceedings at it are valid notwithstanding:
 - (i) accidental omission to give notice to, or the non-receipt of notice by, a Holder or any amending or supplementary notice; or
 - (ii) the omission to give notice (or any amending or supplementary notice) to a Holder whose country of residence (as shown in the Register) is outside Australia and where the giving of notice to such Holder is not permitted by applicable law, or permitted only after compliance with conditions which the Issuer in its discretion considers unduly onerous.
- (b) An omission to give notice to, or the non-receipt of notice by, the Trustee or the Issuer under paragraph 2 of these Meeting Provisions, within the period specified in that clause, invalidates a meeting unless:
 - (i) the Trustee or the Issuer (as the case may be) refuses to accept delivery of that notice; or
 - (ii) the Trustee or the Issuer (as the case may be), by notice to the other, waives its right to compliance with to be provided with such notice.

2.3 Meeting in more than one place

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

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

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

2.4 Location of meetings

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

3 Proceedings at meeting and quorum

The quorum for any meeting is two Holders or proxies (or one of each) and holding or representing Holders holding (in aggregate) MCN representing at least 10% of the outstanding principal amount of the MCN when the meeting begins. No business may be transacted at any meeting unless the requisite quorum is present at the commencement of business.

3.1 No quorum

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

3.2 Adjournment

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

3.3 Chairperson

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

3.4 Attendees

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

3.5 Minutes

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

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

4 Voting show of hands

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

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

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

4.1 Poll

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

4.2 Conduct of poll

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

4.3 Number of votes

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

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

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

4.4 Joint Holders

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

4.5 Casting vote

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

5 Proxies

5.1 Instrument appointing proxy

An instrument appointing a proxy must be in writing under the hand of the appointor or of its attorney duly authorised in writing or if the appointor is a corporation either under its common seal or under the hand of an officer or attorney so authorised.

5.2 Proxy need not be Holder

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

5.3 Deposit of proxy

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

5.4 Form of proxy

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

5.5 Validity of vote

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

6 Passing of resolutions by instrument in writing

Notwithstanding any other provision of this document, a resolution of Holders (including a Special Resolution) may be passed, without any meeting or previous notice being required, by an instrument or instruments in writing signed by Holders holding the relevant proportion of the outstanding principal amount of MCN to pass the relevant resolution and any such instrument is effective upon presentation to the Trustee for entry into the records referred to in paragraph 3.5 of these Meeting Provisions.

7 Holders bound

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

The Issuer must give notice to the Holders, in the manner provided in clause 19 ("*Notices*") of this deed, of the result of the voting on a resolution within 14 days of such result being known but failure to do so will not invalidate the resolution.

Except where this deed, a Transaction Document or any applicable law provides otherwise, a resolution of Holders is to be passed as an Ordinary Resolution.

8 Interpretation

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