

## 1 Trust Deed

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The Trust Deed is dated 30 August 2012. The Trust Deed is between the Issuer and the Trustee and provides for the following:

### 1.1 Issue of PERLS VI

The Issuer may issue PERLS VI to any person on and subject to the terms of the Trust Deed and the Terms by causing the entry of that person in the Register.

PERLS VI are subordinated, unsecured notes of the Issuer and rank equally without any preference among themselves.

The Trustee directs the Issuer to pay any monies owing to the Holders directly to the Holders in accordance with their rights and entitlements, unless the winding up of the Issuer has commenced, in which case the payment must be made to the Trustee.

The Issuer, must in accordance with the Trust Deed and the Terms, repay any money owing and payable on PERLS VI to each Holder or exchange PERLS VI for Ordinary Shares.

### 1.2 Entry into Share Register

The Issuer must procure entry into the share register details in respect of Ordinary Shares as is necessary to record the issue or transfer of Ordinary Shares in accordance with the Terms and the Trust Deed. If clause 4.7 of the Trust Deed applies, the Issuer must procure entry into the share register of the name of the Trustee (or its nominee) in respect of a number of the Ordinary Shares.

### 1.3 Cleared Funds

If the Issuer issues PERLS VI and the Issuer has not received any moneys due on application for that PERLS VI in accordance with the Terms or any payment for PERLS VI is not cleared, PERLS VI are void as from their date of issue or such other date as the Issuer determines.

### 1.4 Undertakings of the Issuer

The Issuer undertakes to the Trustee that it will:

- (a) comply with the terms of the Trust Deed and the Terms;
- (b) comply with all applicable laws;
- (c) use all reasonable endeavours in order to procure that PERLS VI are quoted and maintained on the Official List of the ASX;
- (d) do all things which are reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under the Trust Deed (or any other laws binding on the Trustee with respect to the trust or PERLS VI), the ASX Listing Rules or the ASX Settlement Operating Rules;
- (e) provide to the Trustee all information and documents provided to the ASX and/or Holders;
- (f) provide to the Trustee:

- (1) all other information which is reasonably required within any reasonable specified timeframe for the purposes of discharging the duties, trusts, and Powers vested in the Trustee under the Trust Deed or imposed upon it by law;
  - (2) prior to the proposed issue of Ordinary Shares to the Trustee, information as to the Exchange Number of Ordinary Shares proposed to be issued to the Trustee under clause 4.7 of the Trust Deed;
  - (3) an opinion of reputable legal counsel of recognised standing in Australia that is open to the Trustee to determine that the Exchange Number of Ordinary Shares may be issued to it under clause 4.7(c) of the Trust Deed and that the Trustee is not in breach of any laws imposed upon it in discharging its duties, trusts and Powers vested in the Trustee; and
  - (4) an original of any instrument in writing that amends the Trust Deed under clause 14.2.
- (g) promptly, after becoming aware of any breach of any term or condition binding on the Issuer under the Trust Deed or the Terms that is continuing, notify the Trustee, including if a waiver of such breach would require APRA's prior written approval under clause 7.3(k)(2) of the Trust Deed; and
  - (h) promptly, after cancelling any PERLS VI, confirm details of that cancellation to the Trustee (including, if applicable, of any exchange or redemption).

## 1.5 Trustee's Powers

The Trustee must act honestly and in good faith and comply with all laws in performing its duties and in the exercise of its Powers under the Trust Deed.

The Trustee may delegate to its related body corporate or any other person (including, without limitation, the Issuer and persons associated with the Issuer), to do anything which the Trustee may lawfully do (on such terms and conditions as the Trustee may think fit) including, without limitation, holding any trust property and executing documents on its behalf.

The Trustee may determine as between itself and the Holders, all questions and matters of doubt arising in relation to the Trust Deed or the Terms.

The Trustee may hold PERLS VI and may contract with Holders and deal in any capacity with the Issuer. The Trustee may act in any capacity in relation to any other trusts.

The Trustee is not required to:

- (a) provide to any person any information concerning the business, financial condition, status or affairs of the Issuer;
- (b) investigate the adequacy, accuracy or completeness of any information, confirmation or certificate provided by the Issuer;
- (c) assess, investigate or keep under review the business, financial condition, status or affairs of the Issuer;
- (d) monitor compliance by the Issuer of its obligations under the Trust Deed or the Terms, including whether a Capital Trigger Event or Non-Viability Trigger Event has occurred; or
- (e) investigate or consider whether any issue of a PERLS VI or any payment in respect of a PERLS VI will be an unfair preference or other similar voidable transaction for the purposes of Chapter 5 of the Corporations Act.

## 1.6 Automatic Exchange upon the occurrence of a Capital Trigger Event or Non-Viability Trigger Event

If a Capital Trigger Event or Non-Viability Trigger Event has occurred and all or some PERLS VI (or percentage of the Face Value of each PERLS VI) are required to be Exchanged in accordance with clauses 4.1 or 4.2 of the Terms, then:

- (a) Exchange of the relevant PERLS VI or percentage of the Face Value of each PERLS VI will be taken to have occurred in accordance with clause 7 of the Terms immediately upon the date of occurrence of the Capital Trigger Event or Non-Viability Trigger Event; and
- (b) the entry of the corresponding PERLS VI in each relevant Holder's holding in the Register will constitute an entitlement of that Holder (or, if applicable, of the Trustee) to the relevant number of Ordinary Shares (and, if applicable, also to any remaining balance of PERLS VI or remaining percentage of the Face Value of each PERLS VI), and the Issuer will recognise the Holder (or, if applicable, the Trustee) as having been issued the relevant Ordinary Shares for all purposes,

in each case without the need for any further act or step by the Issuer, the Holder or any other person (and the Issuer will, as soon as possible thereafter and without delay on the part of the Issuer, take any appropriate procedural steps to record such Exchange, including updating the Register and the Share Register.

## 1.7 No further rights if Exchange cannot occur

If for any reason Exchange of any PERLS VI (or a percentage of the Face Value of any PERLS VI) required to be Exchanged under clause 4.1 or 4.2 of the Terms fails to take effect under clause 4.5(a) and (b) of the Terms and the Issuer is not otherwise able to issue the Ordinary Shares required to be issued in respect of such Exchange within five Business Days of the date of occurrence of the Capital Trigger Event or Non-Viability Trigger Event, then the relevant Holders' rights (including to payment of Distributions) in relation to such PERLS VI or percentage of the Face Value of PERLS VI are immediately and irrevocably terminated.

## 1.8 Delivery of Ordinary Shares to the Trustee where the Holder does not wish to receive Ordinary Shares or is an Ineligible Holder

If PERLS VI 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 Exchange, at any time on or after the Issue Date and prior to the Exchange Date; or
- (b) the Holder is an Ineligible Holder,,

then the Terms require that on the Exchange Date the relevant Holders' rights (including to payment of Distributions) in relation to each PERLS VI being Exchanged are immediately and irrevocably terminated and the Issuer will at that time issue the Exchange Number of Ordinary Shares to the Trustee for no additional consideration to be held by the Trustee on trust for sale for the benefit of the relevant Holder (unless, because the Holder is an Ineligible Holder, the Trustee is deemed to be an Ineligible Holder, in which case such issue shall occur as soon as practicable after the Trustee ceases to be an Ineligible Holder).

At the first reasonable opportunity to sell the Ordinary Shares the Trustee will arrange for their sale in accordance with clause 4.7 of the Trust Deed and must cause the proceeds of such sale less selling costs to be paid to the relevant Holder in proportion to the total number of Ordinary Shares that would otherwise have been issued to the relevant Holder.

If Exchange is occurring because of the occurrence of a Capital Trigger Event or Non-Viability Trigger Event and the Exchange fails to take effect and the Issuer is not otherwise able to issue Ordinary Shares to the Trustee within five Business Days, then Holders' rights will be immediately and irrevocably terminated under clause 4.6 of the Terms.

## 1.9 Fees and expenses

The Issuer must pay to the Trustee a fee or such other remuneration as agreed from time to time in respect of the Trustee's services under the Trust Deed.

If the Trustee is required to appoint a sale agent or deal with unclaimed money in accordance with clause 4.7 of the Trust Deed, then its reasonable out of pocket costs properly incurred by or on behalf of the Trustee will be taken out of the proceeds of sale of the Ordinary Shares or paid in accordance with any other provision or arrangement providing for payment of amounts to the Trustee or any replacement arrangements put in place between a Successor and the Trustee, if applicable.

If the Trustee takes any enforcement action in relation to the Trust Deed, otherwise participates in legal proceedings to which it has been joined as a party or is required to appoint a sale agent under clause 4.7 of the Trust Deed, then the Issuer must pay to the Trustee on demand such additional remuneration as is commensurate with any additional duties and responsibilities performed by the Trustee. Unless otherwise agreed, payment will be made for reasonable time and attendance costs at the prevailing hourly rates for any legal work or executive time of the Trustee's employees required in respect of such activities to the extent outside the normal day-to-day scope of the Trustee's duties. The Issuer must pay all costs and expenses reasonably incurred by the Trustee in connection with the negotiation, preparation and performance of the Trust Deed.

## 1.10 Liability of the Trustee and Indemnity

The Trustee is indemnified by the Issuer in respects of all costs, liabilities, expenses and against all actions and proceedings except in circumstances where the Trustee has been negligent, fraudulent, has breached the terms of the Trust or as a result of the Trustee's wilful default.

The Issuer and the Holders waive their rights and release the Trustee from any personal liability in respect of any loss suffered as a consequence of the Trustee's failure to perform its obligations under the Trust Deed, which cannot be paid or satisfied out of any property held by the Trustee. These provisions do not apply to any obligation or liability arising as a result of the Trustee's fraud, negligence or wilful default.

## 1.11 Substitution of Issuer

The Issuer may, subject to APRA approval, without the approval of the Holders or the Trustee, substitute for itself a non-operating holding company (a **NOHC**, the **Successor**) in place of the Issuer as the principal debtor under the Trust Deed provided that:

- (a) the Successor or another entity subscribes for Ordinary Shares or other capital instruments acceptable to APRA in such amount as may be necessary, or takes other steps acceptable to APRA, to ensure that the capital position of the Issuer Level 1 Group will not be adversely affected;
- (b) the Issuer is satisfied that the interest of Holders as a whole will not be materially prejudiced by the substitution for itself of a NOHC;
- (c) the Successor will expressly assume the Issuer's obligations under the Terms and the Trust Deed by entering into a deed poll for the benefit of the Holders (a **Deed Poll**), providing that, among other things, it agrees:
  - (1) to comply with the restrictions in clause 2.7 of the Terms;

- (2) to deliver fully paid ordinary shares in its capital under all circumstances when the Issuer would otherwise have been required to deliver Ordinary Shares, subject to the Terms; and
- (3) all other requirements of the Trust Deed are met;
- (d) to use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of ordinary shares issued under the Terms on the securities exchange on which the Successor's ordinary shares are quoted at the time of delivery;
- (e) if the Successor is not an ADI, the Trustee and the Issuer may jointly by an instrument in writing and without the consent or approval of Holders, amend the Trust Deed to the extent such amendment is, necessary or expedient to comply with the provisions of Chapter 2L of the Corporations Act; and
- (f) compliance with certain other applicable conditions set out in the Trust Deed.

Upon the Issuer satisfying the Trustee that the requirements set out in clause 18 of the Trust Deed have been completed (**date of substitution**):

- (a) the Successor will assume all of the obligations of the Issuer under Trust Deed and the Terms with the same effect as if the Successor had been named as the Issuer in the Terms and the Trust Deed; and
- (b) the Issuer will be released from its liability as the Issuer under the Trust Deed and the Terms,

and, from that date of substitution:

- (g) references to the Issuer in any other provisions of the Trust Deed or the Terms will be taken to be references to the Successor only; and
- (h) upon the Issuer giving a notice to Holders under the Trust Deed, the amended Terms will have the effect on and from the date specified in such notice.

## 1.12 Amendment to Trust Deed

Subject to compliance with all applicable laws, the Issuer may by deed poll and without the consent or approval of Holders or the Trustee amend the Terms or the Trust Deed from the date specified by the Issuer if the amendment is of formal, minor or technical nature, made to cure any ambiguity or correct a manifest error or supplement any defective provisions of the Terms or amend any provision of the Trust Deed.

The Issuer may also amend the Terms or the Trust Deed without the consent or approval of Holders and the Trustee if the amendment is:

- (a) necessary or expedient for the purpose of:
  - (1) enabling PERLS VI to be listed or quoted on any securities exchange;
  - (2) complying with any law, the ASX Listing Rules or the listing or quotation requirements on any other securities exchange;
  - (3) enabling a substitution of the Issuer for a NOHC in accordance with clause 18 of the Trust Deed;
- (b) amending any date or time period in connection with any exchange or redemption of the PERLS VI under the Terms; or
- (c) not materially prejudicial to the interests of Holders as a whole.

Prior to any amendment under the Terms being effective, where required the Issuer must obtain APRA's written approval (only where the amendment affects the capital treatment of PERLS VI under APRA's prudential standards at the relevant time) and any consent or approval required under any applicable law, regulation or ASX Listing Rules.

### 1.13 Retirement of Trustee

The Trustee may retire at any time by giving 60 days notice to the Issuer. The power to appoint a new Trustee is vested in the Issuer. If the Issuer has not appointed a new Trustee within 60 days of the Trustee having given notice, the retiring Trustee may appoint a new trustee.

### 1.14 Replacement of Trustee

The Issuer may by written notice remove the Trustee if:

- (a) the Trustee is in material breach of the Trust Deed and has not rectified the breach within 10 Business Days of receiving written notice from the Issuer;
- (b) the Trustee has ceased or refused to act as trustee;
- (c) the Trustee ceases to carry on business;
- (d) the Trustee has not been validly appointed;
- (e) the Trustee is placed in liquidation or wound up or dissolved or an insolvency official is appointed to the Trustee;
- (f) any licence, consent or authorisation of the Trustee is revoked or not renewed;  
or
- (g) the Issuer is authorised or requested to do so by a Meeting of Holders in accordance with clause 11 of the Trust Deed.

### 1.15 Register

The Issuer will establish and maintain a register in respect of PERLS VI.

### 1.16 Meetings of Holders

Meetings of Holders must be carried out in accordance with the provisions of the Trust Deed. A meeting of Holders may be called at any time by the Trustee or the Issuer, and must be convened by the Issuer where a request has been made by the Holders who together hold 10% or more of PERLS VI.

At least 15 Business Days notice must be given to the Trustee, the Issuer and the Holders, by the party convening the meeting.

The quorum for any meeting is at least 5 persons holding or represented by attorney or proxy at least 10% of PERLS VI. If a quorum is not present within half an hour from the time appointed for the meeting, the meeting will be adjourned to such day and time as the chairperson directs. At an adjourned meeting the Holders with at least 5% of PERLS VI who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

At any meeting a resolution put to the vote of the meeting shall be decided by a show of hands unless a poll is demanded by the chairperson, the Trustee, the Issuer or at least at least 5 persons holding or represented by attorney or proxy at least 5% of PERLS VI.

On a show of hands each Holder who is present shall have one vote and on a poll each Holder who is present shall have one vote for each PERLS VI. In the case of equality of votes, the chairperson of a meeting has a casting vote in addition to their votes (if any) as a Holder both on a show of hands and on a poll.

A resolution passed at a meeting shall be binding on all the Holders.

## 1.17 Discharge and Release

The Trust Deed terminates on the date when the last of the following occur:

- (a) the redemption or exchange of all PERLS VI or the date on which the sale proceeds (less selling costs) of the Ordinary Shares are distributed to the relevant Holders in accordance with clause 4.7 of the Trust Deed;
- (b) payment of all amounts due and payable on PERLS VI under the Terms;
- (c) payment of all costs reasonably and properly incurred by the Trustee; and
- (d) payment of all other amounts payable by the Issuer to the Trustee or Holders.

The Trust Deed will also terminate on the date on which Holders unanimously determine that the Trust be wound up or the date required by law.

The Trustee must, if required by the Issuer, execute a confirmation of release in favour of the Issuer. If the Trust Deed is terminated in this manner, the Trustee will distribute the balance of the capital and income (if any) of the Trust in accordance with the provisions set out in the Trust Deed.