

Form 604

Corporations Act 2001
Section 671B

Notice of change of interests of substantial holder

To: Company Name/Scheme Hills Limited (**Hills**)

ACN/ARSN 007 573 417

1. Details of substantial holder (1)

Name Historical Holdings Pty Ltd ACN 057 726 235 (**Historical Holdings**) for itself and on behalf of each company listed in Part 1 of Annexure B (**Historical Holdings Group**)

Gabor Holdings Pty Ltd ACN 009 143 364 (**Gabor**) for itself and on behalf of each company listed in Part 2 of Annexure B (**Gabor Group**)

Ian Norman Trahar (**Trahar**)

ACN/ARSN (if applicable) See above.

There was a change in the interests of the substantial holder on: 20/04/2023

The previous notice was given to the company on 27/03/2023

The previous notice was dated 27/03/2023

2. Previous and present voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

Class of securities (4)	Previous notice		Present notice	
	Person's votes	Voting power (5)	Person's votes	Voting power (5)
Fully paid ordinary shares (Shares)	30,897,772	11.75%	205,897,772	38.50%

3. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (6)	Consideration given in relation to change (7)	Class and number of securities affected	Person's votes affected
20/04/2023	Historical Holdings	An acquisition of 41,711,993 Shares by taking up Historical Holdings' entitlement under Hills' pro-rata renounceable entitlement offer announced to ASX on 23 March 2023. In addition, an acquisition of a further 133,288,007 Shares pursuant to an underwriting agreement between Historical Holdings and Hills dated 22 March 2023 attached at Annexure A.	Aggregate consideration of \$2,665,760.14 (equating to \$0.02 per Share)	205,897,772 Shares	205,897,772
20/04/2023	Gabor	An acquisition of 41,711,993 Shares by virtue of Historical Holdings taking up its entitlement under Hills' pro-rata renounceable entitlement offer announced to ASX on 23 March 2023.	Aggregate consideration of \$2,665,760.14 (equating to \$0.02 per Share)	205,897,772 Shares	205,897,772

		In addition, an acquisition by Historical Holdings of a further 133,288,007 Shares pursuant to an underwriting agreement between Historical Holdings and Hills dated 22 March 2023 attached at Annexure A.			
20/04/2023	Trahar	An acquisition of 41,711,993 Shares by virtue of Historical Holdings taking up its entitlement under Hills' pro-rata renounceable entitlement offer announced to ASX on 23 March 2023. In addition, an acquisition by Historical Holdings of a further 133,288,007 Shares pursuant to an underwriting agreement between Historical Holdings and Hills dated 22 March 2023 attached at Annexure A.	Aggregate consideration of \$2,665,760.14 (equating to \$0.02 per Share)	205,897,772 Shares	205,897,772

4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Nature of relevant interest (6)	Class and number of securities	Person's votes
Historical Holdings	Historical Holdings	Historical Holdings	Relevant interest pursuant to section 608(1)(a) of the <i>Corporations Act 2001</i> (Cth) (Corporations Act) as it is the registered holder of the Shares.	205,897,772 Shares	205,897,772
Gabor	Historical Holdings	Historical Holdings	Relevant interest pursuant to section 608(3)(a) of the <i>Corporations Act</i> as the controlling shareholder of Historical Holdings.	205,897,772 Shares	205,897,772
Trahar	Historical Holdings	Historical Holdings	Relevant interest pursuant to section 608(3)(a) of the <i>Corporations Act</i> as the controlling shareholder of Gabor.	205,897,772 Shares	205,897,772

5. Changes in association

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	N/A

6. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Historical Holdings, Gabor, Trahar, each entity listed in Part 1 and Part 2 of Annexure B	PO Box 7312 Cloisters Square Perth WA 6850

Signature

print name Harley Whitcombe capacity Authorised person

sign here  date 21/04/2023

DIRECTIONS

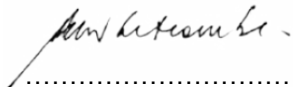
- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 6 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (6) Include details of:
 - (a) any relevant agreement or other circumstances because of which the change in relevant interest occurred. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

- (7) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
- (9) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

Annexure A

This is Annexure A of 40 pages (including this page) referred to in Form 604 – Notice of change of interest in substantial holder signed by me and dated 21 April 2023



.....
Harley Whitcombe

Underwriting Agreement

between

Hills Limited
ACN 007 573 417
(**Company**)

Historical Holdings Pty Ltd
ACN 057 726 235
(the **Underwriter**)

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This agreement is made on

22 March 2023

between **Hills Limited** ACN 007 573 417 of Unit 1, Building F, 3-29 Birnie Ave, Lidcombe, NSW 2141 (**Company**)

and **Historical Holdings Pty Ltd** ACN 057 726 235 of Unit 2, 11 Ventnor Avenue, West Perth WA 6005 (the **Underwriter**)

Recitals

- A The Company is a public company admitted to the Official List.
- B The Company proposes to conduct the Entitlement Offer to raise approximately \$7 million.
- C The Underwriter has agreed to partially underwrite the Entitlement Offer upon the terms and conditions contained in this agreement.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears.

Acceptance Shares means the Offer Shares for which Valid Applications are received by the Company.

Allotment Date means the allotment date specified in the Timetable, as it may be varied under clause 4.1(b).

Announcement Date means the announcement date specified in the Timetable, as it may be varied under clause 4.1(b).

ASIC means the Australian Securities and Investments Commission.

ASIC Modification means any waivers, exemptions and modifications required to be obtained by the Company, or agreed by the Company to be obtained by the Company, from ASIC to enable it to conduct the Entitlement Offer in accordance with this agreement and the Offer Materials in compliance with the Corporations Act.

Associate has the same meaning as that term has for the purpose of Chapter 6 the Corporations Act.

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

BPAY means the bill payment service provided by Australian banks, building societies and credit unions registered with the BPAY scheme.

Board means the board of Directors of the Company.

Business Day has the meaning given in the Listing Rules.

Causeway means Amal Security Services Pty Limited ACN 609 790 758 as trustee for Causeway Wholesale Private Debt Master Fund.

Causeway Deed means the deed between the Company, Causeway and others, under which Causeway provides the Company with certain waivers in respect of the Causeway Loan Agreement.

Causeway Loan Agreement means the loan agreement between the Company, Causeway and others.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Cleansing Notice means the notice prepared by the Company for the Entitlement Offer pursuant to section 708AA of the Corporations Act.

Closing Certificate means a certificate in the form set out in Schedule 2 signed by two Directors or a Director and a Company Secretary of the Company.

Closing Date means the date referred to as the closing date in the Timetable, as it may be varied under clause 4.1(b).

Company means Hills Limited ACN 007 573 417.

Completion will occur on the earlier to occur of:

- (a) the Allotment Date; or
- (b) termination of this agreement in accordance with its terms.

Constitution means the constitution of the Company.

Corporations Act means the *Corporations Act 2001* (Cth) as modified by *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84*, *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* and any other ASIC Modification.

Costs means any costs, charges or expenses.

Defect means where the Company becomes aware:

- (a) of a material statement in the Offer Materials which is a misleading or deceptive statement in a material respect; or
- (b) that the Cleansing Notice is defective (as that term is defined in section 708AA(11) of the Corporations Act).

Despatch Date means the despatch date specified in the Timetable, as it may be varied under clause 4.1(b).

Director means a director of the Company.

Eligible Shareholders means a Shareholder who:

- (a) is registered as a holder of Shares as at the Record Date;

- (b) has a registered address in Australia or New Zealand or is a Shareholder that the Company has otherwise determined is eligible to participate;
- (c) is not in the United States and is not a person (including a nominee or custodian) acting for the account or benefit of a person in the United States; and
- (d) is eligible under all applicable securities laws to receive an offer under the Entitlement Offer without any requirement for a prospectus or disclosure document to be lodged or registered.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement, security interest as defined in sections 12(1) and (2) of the *Personal Property Securities Act 2009* (Cth) or any other security arrangement or any other arrangement having the same effect, or agreement to create any of them or allow any of them to exist.

Entitlement and Acceptance Form means the personalised entitlement and acceptance form to subscribe for Offer Shares in the form accompanying the Offer Booklet or any document supplementing or replacing the Offer Booklet in relation to the Entitlement Offer.

Entitlement Offer means the renounceable pro-rata entitlement offer to Eligible Shareholders to subscribe for Offer Shares at the Offer Price and at the Offer Ratio, each part thereof (including the Shortfall Offer) and related matters including the conduct and marketing of the Entitlement Offer (whether before or after the date of this agreement), the grant of Entitlements and the issue of Offer Shares and the Shortfall Shares.

Entitlements means the rights of certain Shareholders to subscribe for Shares under the Entitlement Offer.

Event of Insolvency means:

- (a) a receiver, manager, receiver and manager, trustee, administrator, controller or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision;
- (e) a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable Act to be, insolvent or unable to pay its debts; or

- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

Excluded Information means excluded information as defined in section 708AA(8) of the Corporations Act, in relation to the Company.

Excluded Shareholders means Shareholders as at the Record Date that are not Eligible Shareholders.

Excluded Shares means the Shares which would have been offered to Excluded Shareholders under the Entitlement Offer had they been entitled to participate in the Entitlement Offer.

FIRB means the Foreign Investment Review Board.

Government Agency means any government or any government department, governmental, semi-governmental, administrative, fiscal, judicial, investigative, review or regulatory body, department, commission, authority, tribunal, agency, stock exchange or entity in any jurisdiction relevant to the Entitlement Offer, including ASX, ASIC and the Takeovers Panel.

Group means the Company and each of its subsidiaries.

Hill-Ling Underwriting Agreement means the underwriting agreement dated 13 March 2023 between the Company and Greybox Holdings Pty Ltd ACN 140 348 527, Magnolia (SA) Pty Ltd ACN 660 371 586 and Juniper (SA) Pty Ltd ACN 660 372 207.

Indemnified Parties means the Underwriter and its respective directors, officers, employees, agents and advisers (except to the extent that any of them is, or becomes, a director or other officer of the Company).

Insolvency Provision means any applicable law relating to insolvency, sequestration, liquidation or bankruptcy, including any applicable laws regulating an Event of Insolvency.

Listing Rules means the listing rules of ASX, as varied or modified by ASX.

Losses means all Claims, demands, damages, losses, costs, expenses and liabilities.

Material Adverse Effect means:

- (a) a material adverse effect on the outcome of the Entitlement Offer or on the subsequent market for the Offer Shares (including, without limitation, matters likely to have a material adverse effect on a decision of an investor to invest in Offer Shares); or
- (b) a material adverse effect on the assets, condition, trading or financial position, performance, profits and losses, results, prospects, business or operations of the Company either individually or taken as a whole.

Nominated Director has the same meaning as defined in the Subscription Agreement.

Nominee means Taylor Collison Limited ACN 008 172 450.

Offer Booklet means the offer booklet and accompanying materials, including the Entitlement and Acceptance Form, sent to Eligible Shareholders containing terms of the Entitlement Offer.

Offer Materials means:

- (a) the Cleansing Notice;
- (b) all announcements released to the ASX by the Company in connection with the Entitlement Offer, including the investor presentation in connection with the Entitlement Offer;

- (c) the Offer Booklet and any supplementary or replacement disclosure document;
- (d) all correspondence delivered to Eligible Shareholders or Excluded Shareholders in respect of the Entitlement Offer and approved by the Company (or on their behalf with their consent); and
- (e) Public Information.

Offer Price means \$0.02 for each Offer Share.

Offer Ratio means a ratio of 1.35 new Shares for every existing Share.

Offer Shares means the aggregate number of Shares to be offered under the Entitlement Offer.

Official List means the Official List of ASX.

Opening Date means the opening date of the Entitlement Offer specified in the Timetable, as it may be varied under clause 4.1(b).

Placement means a private placement of 30,897,772 Shares at an issue price of \$0.03 per Share to the Underwriter pursuant to the Subscription Agreement.

Prescribed Occurrence means:

- (a) the Company converting all or any of its Shares into a larger or smaller number of Shares;
- (b) the Company resolving to reduce its share capital in any way;
- (c) the Company:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under section 257C or 257D of the Corporations Act;
- (d) the Company disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (e) the Company charging, agreeing to charge, the whole, or a substantial part, of its business or property;
- (f) the Company resolving that it be wound up;
- (g) the appointment of a liquidator or provisional liquidator to the Company;
- (h) the making of an order by a court for the winding up of the Company;
- (i) an administrator of the Company, being appointed under section 436A, 436B or 436C of the Corporations Act;
- (j) the Company executing a deed of company arrangement; or
- (k) the appointment of a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of the Company.

Public Information means announcements to ASX, presentation materials, public and other media statements made by or on behalf of the Company on or after the Announcement Date and up to and including the Allotment Date in relation to the affairs of the Company or the Entitlement Offer, including amendments or updates to any Offer Materials, or in relation to bids or applications received for Offer Shares or the progress or results of the Offer, in each case by the Company (or on its behalf with its consent).

Quotation Approval means approval by ASX to the official quotation of all the Offer Shares on ASX.

Record Date means 7.00pm on the date specified as the record date in the Timetable, as it may be varied under clause 4.1(b).

Registry means the Company's share registry.

Related Body Corporate means a 'related body corporate' as that expression is defined in the Corporations Act.

Remaining Shortfall Shares means the number of Shortfall Shares remaining after the allocation in clause 4.4(a).

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

Shareholder means a person who is registered as the holder of Shares.

Shortfall Notice means a notice from the Company to the Underwriter specifying the number of Remaining Shortfall Shares.

Shortfall Notification Date means the shortfall notification date specified in the Timetable, as it may be varied under clause 4.1(b).

Shortfall Offer means the offer of Shortfall Shares at the Offer Price.

Shortfall Shares means:

- (a) the Offer Shares for which Valid Applications have not been received by 5.00pm on the Closing Date; and
- (b) the Excluded Shares for which Valid Applications have not been received by 5.00pm on the Closing Date.

Shortfall Subscription Date means the shortfall subscription date specified in the Timetable, as it may be varied under clause 4.1(b).

Subscription Agreement means the subscription agreement entered into, or to be entered into at the same time as this agreement is entered into, between the Company and the Underwriter in relation to the Placement.

Terminate or Termination means the lawful termination by the Underwriter of this agreement, as permitted under clause 8.1 (including the obligation of the Underwriter to underwrite the Remaining Shortfall Shares under clause 2.1 and to subscribe for Remaining Shortfall Shares under clause 4.7).

Timetable means the Timetable set out in Schedule 1, as it may be varied under clause 4.1(b).

Top-Up Shares means Shares applied for by an Eligible Shareholder in excess of their Entitlement.

Trading Day has the meaning given to 'Trading Day' as defined in the Listing Rules.

Underwriter Subscription Amount means any amount payable to the Company in respect of any Acceptance Shares that the Underwriter and any of its Associates subscribes for under the Entitlement Offer (if any).

Underwritten Amount means \$3.5 million minus the Underwriter Subscription Amount.

United States has the meaning given to that term in Rule 902(l) under the U.S. Securities Act.

Voting Power has the same meaning as defined in section 9 of the Corporations Act.

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

Valid Application means in respect of the Entitlement Offer:

- (a) a duly completed Entitlement and Acceptance Form received by the Company or the Registry with payment for the Offer Price (in cleared funds) for each Share applied for; or
- (a) payment of the Offer Price for each Share applied for by BPAY (and completion of an Entitlement and Acceptance Form is therefore not required),

by 5.00pm on the Closing Date.

1.2 Interpretation

Unless expressed to the contrary, in this agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) other grammatical forms of a defined term have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party drafted or would benefit from the clause;
- (f) a reference to:
 - (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them severally;
 - (ii) an agreement, representation or warranty by two or more persons binds them jointly and each of them severally;
 - (iii) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (v) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (vi) a right includes a benefit, remedy, discretion and power;
 - (vii) time, unless otherwise indicated, is to local time in Sydney;
 - (viii) '\$' or 'dollars' is a reference to Australian currency;
 - (ix) this or any other document includes the document as novated, varied or replaced and despite any change to the parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission and e-mail transmission; and
 - (xi) this agreement includes all schedules and annexures to it;
- (g) if the date on or by which any act must be done under this agreement is not a Business Day, the act must be done on or by the next Business Day;

- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (i) a reference to the Company will be taken to include a reference to each subsidiary of the Company from time to time and all obligations of the Company will apply to each subsidiary of its as if a reference to the Company is also a reference to that subsidiary.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this agreement.

2 Appointment of Underwriter

2.1 Underwriting

The Company appoints the Underwriter to underwrite subscriptions for the Remaining Shortfall Shares up to the Underwritten Amount, and the Underwriter accepts that appointment on the terms and conditions of this agreement.

2.2 Nominee

The Underwriter acknowledges that:

- (a) the Company will appoint the Nominee to act as sales nominee for the purposes of section 615 of the Corporations Act; and
- (b) the appointment of the Nominee is conditional upon the Nominee being approved by ASIC pursuant to section 615 of the Corporations Act.

3 Conditions precedent

3.1 Conditions precedent

The obligations of the Underwriter under clauses 2.1 and 4.7 are conditional on satisfaction (or waiver under clause 3.3) of each of the following by the time specified in each case:

- (a) **(Announcement, Cleansing Notice and Appendix 3B)** the Company releasing to ASX, in a form and substance acceptable to the Underwriter, the following documents by 10:30am on the Announcement Date:
 - (i) an ASX announcement and investor presentation relating to the Entitlement Offer;
 - (ii) the Cleansing Notice; and
 - (iii) Appendix 3B;
- (b) **(section 615 nominee)** prior to 9.00am on the fifth Business Day prior to the Closing Date, ASIC giving its approval to the appointment of the Nominee to act as nominee in respect of the Entitlement Offer under section 615 of the Corporations Act;
- (c) **(Termination of Hill-Ling Underwriting Agreement)** prior to 10.30am on the Announcement Date (or on an earlier date), the Hill-Ling Underwriting Agreement is terminated;
- (d) **(Withdrawal of entitlement offer)** prior to 10.30am on the Announcement Date (or on an earlier date), the Company has withdrawn the renounceable pro-rata 3 for 2 entitlement offer to raise up to approximately \$7 million (which entitlement offer the Company announced to the ASX on 13 March 2023);

- (e) **(Causeway Deed)** the Causeway Deed not being terminated, as at 9.00am on the Shortfall Subscription Date or on such other date as the Company and the Underwriter agree;
- (f) **(official quotation)** ASX not having indicated on or before 8.00am on the Allotment Date that it will not provide Quotation Approval;
- (g) **(Shortfall Notice)** receipt by the Underwriter of the Shortfall Notice pursuant to clause 4.6; and
- (h) **(Certificate and sign-offs)** the Closing Certificate being delivered in accordance with clause 4.5.

3.2 Conditions not satisfied

- (a) The Company must use its best endeavours to ensure or procure that the conditions precedent in clause 3.1 are satisfied. The conditions precedent in clause 3.1 are for the benefit of the Underwriter only.
- (b) The Company must promptly notify the Underwriter if it becomes aware that any condition precedent in clause 3.1 has failed to be satisfied or is not reasonably capable of being satisfied.
- (c) Without limiting Clause 8, if any of the conditions precedent in clause 3.1 are not satisfied or waived by the time specified in that condition (or such later time as agreed by the Underwriter in its absolute and unfettered discretion), the Underwriter (in its absolute and unfettered discretion) may Terminate this agreement at any time by written notice to the Company.

3.3 Waiver

- (a) The conditions precedent in clause 3.1 are for the benefit of the Underwriter only and may only be waived by the Underwriter in its absolute discretion.
- (b) If the condition precedent in clause 3.1(b) is waived by the Underwriter, such waiver will only apply to the extent that the Underwriter's obligations under this agreement comply with the Corporations Act and other applicable laws.

4 Entitlement Offer

4.1 Conduct of the Entitlement Offer

- (a) The Company must despatch the Offer Booklet and Entitlement and Acceptance Forms to Eligible Shareholders on the Despatch Date and open the Entitlement Offer on the Opening Date.
- (b) The Company may only amend the Timetable with the consent of the Underwriter (such consent not to be unreasonably withheld or delayed), unless necessarily required by the Listing Rules, the Corporations Act or ASX.
- (c) Until Completion, the Company must keep the Underwriter promptly and fully informed of all strategies, developments and discussions relevant to the Entitlement Offer and ensure that no initiative relevant to the Entitlement Offer is undertaken without prior consent of the Underwriter (such consent not to be unreasonably withheld or delayed).
- (d) The Company must ensure that the Registry:
 - (i) is instructed and enabled to receive Entitlement and Acceptance Forms and application monies for Offer Shares and Top-Up Shares from Eligible Shareholders;

- (ii) credits the designated bank account on a daily basis during the Entitlement Offer with the application monies received, in accordance with any requirements of the Corporations Act; and
- (iii) keeps adequate records of all Entitlement and Acceptance Forms and application monies received (regardless of whether they are Valid Applications) during the Entitlement Offer period.
- (e) The Company must ensure that the Registry promptly delivers a computerised list of the accepting Eligible Shareholders under the Entitlement Offer to the Underwriter each time the Underwriter reasonably requests, which requests may be made at any time from the date of this agreement to the Closing Date.
- (f) The Company acknowledges that the Underwriter will not be in breach of this agreement by reason of failing to perform or performing later than the time specified in this agreement any obligation under this agreement the performance of which is dependent on the provision of information within the specified time limits, to the extent that the breach is caused or contributed to by a failure on the part of the Company to procure the provision of, or of the Registry to provide, the information as soon as reasonably practicable following a reasonable request.

4.2 Applications

- (a) The Company must:
 - (i) accept all Valid Applications for Offer Shares; and
 - (ii) conduct the Entitlement Offer in accordance with this agreement, the Offer Booklet, the Corporations Act, the Timetable and the Listing Rules.
- (b) As soon as reasonably practicable after the Closing Date, the Company must:
 - (i) inform the Underwriter of the number of Entitlement and Acceptance Forms received by the Company or the Registry which are not Valid Applications and the grounds on which the Company believes they are not valid and permit the Underwriter to review those applications; and
 - (ii) in respect of any such applications which are not valid only because the application money has been paid by cheque which has not yet cleared, use reasonable efforts to maximise the clearance of such cheques by 10.00am on the Shortfall Notification Date, and include the Offer Shares the subject of those applications in the Shortfall Shares only if those applications have not become Valid Applications after so doing.

4.3 Over-subscriptions

The Company and the Underwriter agree that where an Eligible Shareholder has submitted a Valid Application for its full Entitlement to Offer Shares that Eligible Shareholder may apply for Top-Up Shares in excess of their Entitlements, at the Offer Price, under the Shortfall Offer on the following basis:

- (a) the Top-Up Shares will only be issued to the extent there are Shortfall Shares;
- (b) the Top-Up Shares will only be issued to an Eligible Shareholder to the extent permitted by the Corporations Act;
- (c) applications may be scaled back in accordance with the policy set out in the Offer Booklet; and
- (d) the Top-Up Shares will be issued at the Offer Price.

4.4 Allocation of Shortfall Shares

The Company and the Underwriter agree that, provided this agreement is not validly terminated in accordance with clauses 3.2 or 8, Shortfall Shares will be allocated in the following priority:

- (a) firstly, Eligible Shareholders who have subscribed with Valid Applications for their full Entitlement of Offer Shares under the Entitlement Offer and subscribed for Top-Up Shares under the Shortfall Offer will be allocated Shortfall Shares in accordance with a policy determined by the Board, provided that no Eligible Shareholder will increase their Voting Power in the Company above 20% through the allocation of the Top-Up Shares;
- (b) then, the Underwriter will be allocated the Remaining Shortfall Shares up to the Underwritten Amount; and
- (c) lastly, any outstanding Remaining Shortfall Shares not allocated under clause 4.4(b) will be allocated to any other investors in accordance with a policy determined by the Board (including as may be introduced to the Company by one or more stockbrokers), provided again that no investor will increase their Voting Power in the Company above 20% through the allocation of those Remaining Shortfall Shares.

4.5 Settlement – Closing Certificate

Not later than 12.00pm on the Shortfall Subscription Date, the Company must deliver to the Underwriter a Closing Certificate stated to be effective as at the Shortfall Subscription Date.

4.6 Remaining Shortfall Notification

The Company must provide to the Underwriter the Shortfall Notice, executed by two Directors or a Director and Company Secretary of the Company, by 4.00pm on the Shortfall Notification Date.

4.7 Subscription for Remaining Shortfall Shares

Subject to clause 4.4 and provided that this agreement is not validly terminated in accordance with clauses 3.2 or 8, the Underwriter must by 5.00pm on the Shortfall Subscription Date:

- (a) subscribe for the Remaining Shortfall Shares (at the Offer Price), if any, in aggregate up to the Underwritten Amount, by providing a Valid Application for those Remaining Shortfall Shares to the Company; and
- (b) pay to the Company, in immediately available funds the amount calculated by multiplying the Offer Price by the aggregate number of those Remaining Shortfall Shares.

4.8 Undertaking by Underwriter

The Underwriter undertakes to the Company that:

- (a) the Underwriter will not subscribe for any Top-Up Shares under the Shortfall Offer, nor purchase any Entitlements from other Shareholders; and
- (b) the Underwriter will use reasonable endeavours to procure that each of its Associates do not subscribe for any Top-Up Shares under the Shortfall Offer, nor purchase any Entitlements from other Shareholders.

For the avoidance of doubt, this clause does not relieve the Underwriter from its other obligations under this agreement including pursuant to clauses 2.1 and 4.7.

4.9 Settlement procedures

- (a) Settlement of the subscription of the Remaining Shortfall Shares by the Underwriter, will take place in accordance with the Listing Rules.
- (b) The Company must do, or cause the Registry to do, anything reasonably required on its own part, or the Registry's part to facilitate settlement on the Allotment Date.

4.10 Issue and allotment

The Company must take all necessary and appropriate steps on the Allotment Date to issue and allot:

- (a) the Acceptance Shares to the Eligible Shareholders; and
- (b) the Shortfall Shares to those Eligible Shareholders, third party investors and the Underwriter (as the case may be) who subscribed for those Shortfall Shares.

4.11 Quotation Approval

The Company must:

- (a) within the time required by the Listing Rules, apply for the Offer Shares to be granted official quotation on ASX; and
- (b) use its reasonable endeavours to procure that official quotation is granted for the Offer Shares on ASX as soon as practicable after the Allotment Date.

4.12 Holding statements

The Company must despatch or procure the despatch of holding statements in accordance with the Timetable, the Constitution, Corporations Act, Listing Rules and any other applicable law in respect of the Acceptance Shares and the Shortfall Shares issued under the Shortfall Offer as soon as practicable after the Allotment Date.

4.13 Liability extinguished

Upon clause 4.7 being complied with by the Underwriter, the liability of the Underwriter under this agreement to underwrite the Remaining Shortfall Shares, up to the Underwritten Amount, ceases and is extinguished.

4.14 Default by Underwriter

If the Underwriter does not, in accordance with clause 4.7, lodge with the Company an application for the Remaining Shortfall Shares, the Company is irrevocably authorised as agent and attorney of the Underwriter to apply for such Remaining Shortfall Shares on behalf of, and in the name of, the Underwriter and to instruct the Directors to issue those Remaining Shortfall Shares (up to the Underwritten Amount) to the Underwriter. The Offer Price for those Remaining Shortfall Shares will be a debt due and immediately recoverable by the Company from the Underwriter.

5 Representations and warranties

5.1 Representations and warranties by the Company

The Company represents and warrants to the Underwriter, that each of the statements set out below is as at the date of this agreement, and will be at all times on and until the Allotment Date, true and correct and not misleading by reference to the facts and circumstances existing at such times:

- (a) the Company is a company limited by shares and registered under the Corporations Act;
- (b) the Company has full power to enter into this agreement and to authorise, issue and allot the Offer Shares on the terms set out in this agreement and otherwise to comply with and perform its obligations pursuant to this agreement and has obtained (and continues to have in place) all necessary corporate authorisations and other necessary consents and authorities to enable it to do so;
- (c) Shareholder approval is not required for the Entitlement Offer and approvals from ASX have been obtained for the Entitlement Offer;
- (d) the execution, delivery and performance of this agreement by the Company, the offer and issue of the Offer Shares and the consummation of the transactions contemplated by the Entitlement Offer do not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under any indenture, mortgage, deed of trust, loan agreement or other agreement material to the Company or instrument, decree, regulation or law to which the Company (or any of its Related Bodies Corporate) is a party or by which the Company (or any of its Related Bodies Corporate) is bound or to which any of the property or assets of the Company (or any of its Related Bodies Corporate) is subject in any material respect, or any of the provisions of the Constitution (or similar instrument) of the Company (or any of its Related Bodies Corporate) or any statute or any order, law, rule or regulation, judgment, order or decree of any court, Government Agency or body having jurisdiction over the Company (or any of its Related Bodies Corporate) or the property or assets of the Company (or any of its Related Bodies Corporate);
- (e) the Company is admitted to the official list of a financial market operated by ASX;
- (f) this agreement is a valid and binding obligation of the Company enforceable against it in accordance with its terms;
- (g) the Company is not in material breach of, and neither the entry into nor performance by it of its obligations under this agreement (including the dissemination of the Offer Materials) nor any transaction contemplated under this agreement constitutes or will constitute a material breach of:
 - (i) the Constitution;
 - (ii) the Corporations Act;
 - (iii) the Listing Rules (except where compliance has been waived, or as modified, by ASX);
 - (iv) any authorisation or other applicable laws or regulations or orders of any Government Agency that are binding on it, in any material respect;
 - (v) any Encumbrance, instrument or agreement which is binding on it or any of its assets, in any material respect;
 - (vi) any legally binding requirement of ASIC or ASX; or
 - (vii) any material contracts, agreements, and arrangements of the Company;
- (h) in relation to the Entitlement Offer:
 - (i) the Entitlement Offer does not require the issue of a prospectus to investors under Part 6D.2 of the Corporations Act;
 - (ii) the Company is entitled to conduct the Entitlement Offer in reliance on section 708AA of the Corporations Act;

- (iii) the Company is able to provide, and there is nothing preventing it from providing a Cleansing Notice as required by section 708AA(7) of the Corporations Act in respect of the Offer;
- (iv) the Company has made all enquiries as are reasonable and exercised due diligence to ensure that:
 - (A) there is no Excluded Information other than to the extent disclosed in, or prior to, the Cleansing Notice;
 - (B) all statements in the ASX Announcement, the Cleansing Notice and the Offer Booklet are true and accurate and not misleading or deceptive (including by omission);
- (i) in relation to the Offer Materials:
 - (i) the Offer Materials released to ASX on the Announcement Date will not omit any information which is Excluded Information at the time of their release to ASX and the Company is not aware of anything that will result in there being any Excluded Information at any time before the Allotment Date;
 - (ii) the Entitlement Offer will comprise a rights issue within the meaning given in section 9A of the Corporations Act, or a related issue within the meaning of section 708AA(13) of the Corporations Act;
 - (iii) the Offer Shares will be in a class of securities that are quoted securities (as defined in the Corporations Act) at all times in the 3 months before the date of issue of the Offer Shares and which have not been suspended from trading for more than a total of 5 Trading Days during the 12 months before the Entitlement Offer is made;
 - (iv) no:
 - (A) exemption under sections 111AS or 111AT of the Corporations Act; or
 - (B) order under sections 340 or 341 of the Corporations Act (other than any technical relief instrument),

has been made in respect of the Company, or any person, as a Director or auditor of the Company at any time in the 12 month period before the Entitlement Offer is made;
- (j) the Offer Materials do not contain:
 - (i) any statements which are misleading or deceptive or likely to mislead or deceive (including, without limitation, false or misleading statements within the meaning of section 1041E of the Corporations Act) and do not, omit information required by the Corporations Act or any other applicable law; or
 - (ii) any forecasts, expressions of opinion, intention or expectation for which the Company does not have reasonable grounds or that were not made in good faith or using assumptions believed by the management and directors of the Company to be reasonable,

and the issue and distribution of the Offer Materials by the Company and its conduct in connection with the Offer Materials or the making of the Entitlement Offer does not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive;
- (k) any statement of opinion or belief contained in any Offer Materials is truly and honestly held by the person making the statement and the maker of the statement has reasonable grounds for holding the opinion or belief;

- (l) the financial information in the Offer Materials is fairly and accurately presented and has been prepared after due and careful enquiry in good faith using assumptions believed by management and directors of the Company to be reasonable in light of the applicable law and applicable accounting standards;
- (m) the Company has not engaged in, and will not engage in, conduct that is misleading or deceptive, or which is likely to mislead or deceive, in connection with the Entitlement Offer or the making of the offer of Offer Shares;
- (n) other than as disclosed in the Offer Materials, there is no litigation, arbitration, industrial or administrative proceedings pending or to the best of the Company's knowledge, threatened, or any judgments, orders or awards of any court or tribunal which could reasonably be expected to have a Material Adverse Effect or question or prohibit the Company's power or authority to enter into or perform its obligations under this agreement or to make the Entitlement Offer or issue the Offer Materials;
- (o) no Event of Insolvency has occurred in relation to the Company nor is there any act which has occurred or any omission made which may result in an Event of Insolvency occurring in respect of the Company;
- (p) no Prescribed Occurrence exists in respect of the Company between the date of this agreement and the Allotment Date, and the Company will not within the same period have agreed to acquire a business or company other than as disclosed in the Offer Materials;
- (q) the contents of the Closing Certificate will be true and correct as at the date on which it is given;
- (r) all information provided to the Underwriter (including any announcements, advertisements and publicity made or published by the Company in relation to the Entitlement Offer) by or on behalf of the Company is true and correct and is not misleading or deceptive or likely to mislead or deceive and there is no information of which it is aware that has not been disclosed to the Underwriter which has or is likely to have a Material Adverse Effect;
- (s) the Constitution complies with the Listing Rules and the requirements of ASX for the purpose of the Company being admitted to the Official List and the Entitlement Offer will comply with the Constitution in all material respects;
- (t) no amount is unpaid in relation to any Shares issued by the Company;
- (u) the register of members kept by the Company has been diligently and properly kept by it and so far as the Company is aware accurately records the share holdings of its members and their respective last known addresses;
- (v) ASIC has not made a determination for contravention by the Company within the previous 12 months of any of the provisions listed in section 708AA(3) of the Corporations Act; and
- (w) the Offer Shares will be fully paid, will rank *pari passu* with existing Shares and will be freely tradeable (subject to any restrictions required or imposed under any applicable laws or regulations) and the investors in the Offer Shares will acquire good marketable title to the Offer Shares, free and clear of any pledge, lien, Encumbrance, Share interest, claim or equity and will not be subject to any pre-emptive or similar rights.

5.2 Notice of breach

The Company must comply with the terms and conditions of this agreement and shall immediately give notice in writing to the Underwriter of any breach by the Company of this agreement including any breach of any of the representations, warranties and undertakings of the Company contained in this agreement. Such notification does not limit or affect the liability of the Company for any such breach.

5.3 Acknowledgments

The Company acknowledges that the Underwriter has entered into this agreement in reliance on the representations, warranties and undertakings given by the Company in this agreement.

5.4 Representations and warranties by the Underwriter

The Underwriter represents and warrants to the Company and acknowledges and undertakes that:

- (a) **(power)** it has the power to enter into and comply with all of the terms and conditions of this agreement;
- (b) **(authorisations)** it has obtained all approvals and authorisations that may be required to permit it to enter into this agreement and to perform this agreement in accordance with its terms and all such approvals and authorisations remain valid and subsisting;
- (c) **(professional or sophisticated investor)** it is a professional or sophisticated investor for the purposes of Part 6D.2 of the Corporations Act;
- (d) **(FIRB approval)** it does not require approval from FIRB to permit it to participate in the Entitlement Offer, to enter into this agreement and to perform this agreement in accordance with its terms;
- (e) **(substantial shareholder notice)**: the Underwriter and its Associates are in compliance with their substantial holder notice requirements under the Corporations Act in respect of the Company;
- (f) **(no Event of Insolvency)** no Event of Insolvency has occurred in relation to it nor is there any act which has occurred or any omission made which may result in an Event of Insolvency occurring in respect of it;
- (g) **(validity of obligations)** the obligations of it under this document are valid and binding;
- (h) **(no breach)** the execution, delivery and performance of this agreement by it will not breach any provision of the Corporations Act, its constitution or the Listing Rules or any other applicable law; and
- (i) **(U.S. Securities Act)** it understands that the Offer Shares have not been, and will not be, registered under the U.S. Securities Act.

5.5 Independent construction

Each of the paragraphs in clauses 5.1 and 5.4 will be construed independently and no paragraph will be limited by implications arising from any other paragraph.

5.6 True and correct

The Underwriter further warrants that each of the warranties given by it as set out in this clause 5 is true and correct in every respect as at the date of this agreement and will be so at all times before and on Completion.

5.7 Reliance

The Underwriter acknowledges that the Company has entered into this agreement in reliance on the representations and warranties in this clause 5.

6 Undertakings by the Company

6.1 General undertakings

The Company must:

- (a) **(breach)** immediately notify the Underwriter upon becoming aware of any breach of any warranty or undertaking given by it under this agreement or the occurrence of any event as set out in clause 8.1;
- (b) **(compliance)** not commit, be involved in or acquiesce in any activity which breaches:
 - (i) the Constitution;
 - (ii) the Corporations Act;
 - (iii) any other applicable laws in any material respect;
 - (iv) the Listing Rules;
 - (v) any legally binding requirement of ASIC or ASX; or
 - (vi) any other material undertaking or authorisation binding on it;
- (c) **(moratorium)** not during the period starting on the date of this agreement and ending 90 days after Completion, issue, agree to issue, offer for subscription, grant any option over, or indicate in any way that it may or will issue, agree to issue, offer for subscription or grant any option over, any shares, units, options or other securities of the Company (or securities convertible or exchangeable into equity of the Company), or do anything economically equivalent to any of the foregoing, without the prior written consent of the Underwriter (which must not be unreasonably withheld or delayed), other than any one or more of the following:
 - (i) the issue of the Offer Shares;
 - (ii) the issue of Excluded Shares;
 - (iii) an issue of securities pursuant to a non-underwritten dividend or distribution plan or employee incentive scheme (as those terms are defined in the Listing Rules) or otherwise to employees or officers of the Company or as a result of the conversion or exercise of any such securities or otherwise on issue at the date of this agreement;
 - (iv) an issue of securities that is necessary to ensure an Event of Insolvency does not occur in respect of the Company; or
 - (v) the issue of Shares pursuant to the Placement;
- (d) **(conduct of business)** ensure that it carries on its business from the date of this agreement to the date 90 days after Completion in the ordinary course, and not:
 - (i) dispose, or agree to dispose, of the whole or any material part of its business or its property or acquire, or agree to acquire any business or property (except in the ordinary course of business); or
 - (ii) enter into, or vary, any agreement or commitment which is material in the context of the Company or the Entitlement Offer or which contains a substantial or onerous obligation for the Company,

without the prior written consent of the Underwriter (such consent not to be unreasonably withheld or delayed), other than the Placement;

- (e) **(no changes)** not, from the date of this agreement until 90 days following Completion:
 - (i) amend the Company's constitution; or
 - (ii) dispose of the Company's business or property in whole or substantial part,
 except with the prior written consent of the Underwriter (such consent not to be unreasonably withheld or delayed);
- (f) **(prescribed occurrences)** from the date of this agreement until 90 days after Completion, ensure that (other than to the extent, if any, required to discharge what any of the Directors reasonably consider to be their fiduciary or statutory duties, after receiving written legal advice from external legal advisers) none of the events set out in sections 652C(1)(a) to (c), 652C(1)(f), 652C(1)(h) or 652C(2) of the Corporations Act occurs in relation to the Company except as disclosed to the Underwriter prior to the date of this agreement;
- (g) **(keep informed)** from the date of this agreement until Completion, keep the Underwriter reasonably informed of any Material Adverse Effect on the financial position or prospects of the Company; and
- (h) **(correspondence with ASIC or ASX)** provide the Underwriter with copies of all material correspondence from ASIC or ASX (or any of their respective advisers) to it (or any of its advisers), and give the Underwriter a reasonable opportunity to comment on any such correspondence from the Company (or any of its advisers) to ASIC or ASX (or any of their respective advisers) in connection with the Offer Materials and any supplementary or replacement document from the date of this agreement until Completion to the extent reasonably practicable.

6.2 Due Diligence Investigations

- (a) Prior to the Announcement Date, the Company must make such enquiries as are reasonable and exercise due diligence to ensure that there is no Excluded Information or, if there is any Excluded Information, that all such information is included in the Offer Materials.
- (b) Until Completion, the Company must continue to make such enquiries as are reasonable and exercise due diligence to ensure that:
 - (i) there are no omissions from the Offer Materials of information required by the Corporations Act to be included, including that the Cleansing Notice is not, and does not become, defective (as that term is defined in section 708AA(11) of the Corporations Act) and that the statements included in the Offer Materials are not misleading or deceptive, and do not become misleading or deceptive, including (in each case) by omission; and
 - (ii) if the Cleansing Notice is defective, the Company promptly takes all such steps as are necessary to correct the defect in accordance with section 708AA(10) of the Corporations Act.
- (c) The Company must maintain complete records of all enquiries made by it pursuant to clauses 6.2(a) and 6.2(b) and the results of all such enquiries, including all supporting documents and working papers, (collectively, **Due Diligence Records**) and make the Due Diligence Records available to the Underwriter and the Indemnified Parties on reasonable request from the Underwriter (including for the purpose of taking copies).

7 Costs

7.1 Costs

The Company will reimburse the Underwriter for its reasonable legal fees incurred in relation to the preparation, negotiation and execution of this agreement, provided the quantum does not exceed A\$30,000 for the Underwriter.

7.2 Costs on Termination

If the obligations of the Underwriter under this agreement are Terminated or the Entitlement Offer does not proceed or is not completed for any reason, the Company will be obliged to reimburse the Underwriter within 14 days of Termination (to the extent that it has not already done so) the legal fees referred to in clause 7.1.

7.3 Continuing obligations

For avoidance of doubt, the obligations of the Company under this clause 7 survive Termination or completion of this agreement.

8 Relief of Underwriter's obligations

8.1 Termination events

Subject to clause 8.5, the Underwriter may give notice of Termination to the Company at any time before Completion if it becomes aware or is notified by the Company of the happening of any one or more of the following events:

- (a) **(restriction on allotment)**: the Company is prevented from issuing and allotting all Shares required to be issued and allotted pursuant to the Entitlement Offer and this agreement within the time required by this agreement, the Corporations Act, the Listing Rules, any statute, regulation or order of a court of competent jurisdiction by ASIC, ASX or any court of competent jurisdiction or any governmental or semi-governmental agency or authority;
- (b) **(Offer Materials)**: the Company does not lodge the Offer Materials in accordance with the Timetable;
- (c) **(Defect)**: there is a Defect or circumstances arise that gives rise to a Defect;
- (d) **(change of law)** there is introduced, or there is a public announcement of a proposal to introduce, into any Federal, State or Territory Parliament in Australia a new law, or the Reserve Bank of Australia, or any Commonwealth or State authority or ASIC, adopts or announces a proposal to adopt a new policy (other than a law or policy which has been announced prior to the date of this agreement) any of which does or is likely to prohibit or regulate the Entitlement Offer, capital markets or stock markets;
- (e) **(delisting or ASX suspension)** the Company is removed from the official list of ASX or ASX suspends the Company's shares from quotation (which for the avoidance of doubt, does not include a trading halt or voluntary suspension in connection with the Entitlement Offer, nor the voluntary suspension which applies to the Company as at the date of this agreement, provided that voluntary suspension is lifted within five Business Days after the commencement of that voluntary suspension) and that suspension is not lifted within five Business Days following such suspension;
- (f) **(Default)** there is any other material breach by the Company of its obligations under this agreement;
- (g) **(failure to comply)** the Company fails to comply, in a material respect, with its Constitution, the Corporations Act or any other applicable law or regulation, including

any policy, guideline, order or request made or issued by ASIC or any Government Agency;

- (h) **(financial assistance)** the Company passes or takes any steps to pass a resolution under section 260B of the Corporations Act or engages in any conduct which would require such a resolution, without the prior written consent of the Underwriter;
- (i) **(business)** without the prior written consent of the Underwriter, the Company:
 - (i) disposes or agrees to dispose of the whole or a substantial part of its business or assets; or
 - (ii) ceases or threatens to cease to carry on its business in its normal and usual manner;
- (j) **(new circumstance)**: any materially adverse new circumstance arises since the Offer Materials were issued that would have been required to be included in the Offer Materials if it had arisen before the Offer Materials were issued;
- (k) **(disclosures in Offer Materials)**: a statement contained in the Offer Materials is misleading or deceptive in a material respect;
- (l) **(incorrect or untrue representation)**: any representation, warranty or undertaking given by the Company in this agreement is or becomes untrue or incorrect;
- (m) **(adverse change)** an event occurs which is, or is likely to give rise to:
 - (i) an adverse change in the assets, liabilities, financial position or performance, profits, losses or prospects of the Company from those disclosed in the Offer Materials lodged with ASX on the Announcement Date; or
 - (ii) an adverse change in the nature of the business conducted by the Group as disclosed in the Offer Materials lodged with ASX on the Announcement Date;
- (n) **(certificate)** the Company does not provide a Closing Certificate as and when required by this agreement or a statement in any Closing Certificate is false, misleading, inaccurate or untrue or incorrect, as at the date it is given;
- (o) **(hostilities)** in respect of Australia or New Zealand:
 - (i) hostilities not presently existing commence;
 - (ii) a major escalation in existing hostilities occurs (whether war is declared or not);
 - (iii) a declaration is made of a national emergency or war (but other than a declaration made in relation to pandemics or other health emergencies, but for the avoidance of doubt does not exclude COVID-19 where it results in a material shut-down of business in any of these jurisdictions); or
 - (iv) a major terrorist act is perpetrated; or
- (p) **(misleading information)**: any material information supplied at any time by the Company or any person on its behalf to the Underwriter in respect of any aspect of the Entitlement Offer or the affairs of the Company is misleading or deceptive or likely to mislead or deceive;
- (q) **(authorisation)**: any authorisation which is material to anything referred to in the Offer Materials is repealed, revoked or terminated or expires, or is modified or amended in a manner unacceptable to the Underwriter;
- (r) **(Prescribed Occurrence)**: a Prescribed Occurrence occurs;

- (s) **(Event of Insolvency)**: an Event of Insolvency occurs in respect of the Company;
- (t) **(Shares to be fully paid)**: all Shares issued pursuant to the Entitlement Offer and in accordance with the terms of this agreement do not, from the date of allotment, rank equally in all respects with other fully paid ordinary shares in the Company or if they are not issued free of all Encumbrances;
- (u) **(withdrawal of Entitlement Offer)** the Company withdraws the Entitlement Offer or indicates that it does not intend to or is unable to proceed with the Entitlement Offer;
- (v) **(change to Company)** the Company:
 - (i) alters the issued capital of the Company or a member of the Group, other than any one or more of the following:
 - (A) the issue of the Offer Shares;
 - (B) the issue of Excluded Shares;
 - (C) the issue of other securities by the Company as disclosed fully and fairly in the Offer materials;
 - (D) an issue of securities in the circumstances set out in clause 6.1(c)(i) to 6.1(c)(v); or
 - (E) the issue of Shares pursuant to the Placement;
 - (ii) disposes or attempts to dispose of a substantial part of the business or property of the Group,

without the prior written consent of the Underwriter (not to be unreasonably withheld or delayed);
- (w) **(Timetable)** an event specified in the Timetable up to and including the Allotment Date is delayed by more than two (2) Business Days (other than any delay caused solely by the Underwriter or any delay agreed between the Company and the Underwriter in accordance with clause 4.1(b));
- (x) **(change in management)** a change in the chief executive officer or chief financial officer of the Company occurs, or (other than as contemplated by the Subscription Agreement) there is a change in the board of directors of the Company without the prior written consent of the Underwriter (which must not be unreasonably withheld or delayed);
- (y) **(legal proceedings and offence by Directors)** any of the following occurs (other than in relation to any Nominated Director):
 - (i) a Director is charged with an indictable offence;
 - (ii) the commencement or threatening of legal proceedings which has a Material Adverse Effect against the Company or any Director; or
 - (iii) any Director is disqualified from managing a corporation under section 206A of the Corporations Act.

8.2 Independent construction

Each of the paragraphs in clause 8.1 will be construed independently and no paragraph will be limited by implications arising from any other paragraph.

8.3 Notice

A notice given under clause 8.1 must specify the event or events in relation to which the notice is given.

8.4 Notification

The Company will immediately give notice to the Underwriter of the occurrence of any event which will, or which with the giving of notice or lapse of time will, give the Underwriter a right to terminate this agreement.

8.5 Reasonableness

If an event referred to in clauses 8.1(f) to 8.1(h), 8.1(n) and 8.1(o) occurs, the Underwriter may not Terminate unless it reasonably believes that the event has or is likely to have (or two or more events together have or are likely to have) a Material Adverse Effect or could result in the Underwriter becoming liable under any law or regulation.

8.6 Reservation of rights or waiver

- (a) Without prejudice to the rights under this clause 8, the Underwriter may, at any time after becoming aware of the happening of any one or more of the events specified in clause 8.1, by written notice to the Company:
 - (i) inform the Company that the Underwriter has become aware of the occurrence of the event and whether, in its view, it is entitled to Terminate as a consequence of the event; and
 - (ii) set out the grounds which has led the Underwriter to form that view; and
 - (iii) that as a consequence, the Underwriter either reserves its right to Terminate or that it is prepared to waive its rights in relation to that event.
- (b) Unless the Underwriter determines that it is prepared to waive its rights in relation to that event, the Underwriter may by notice in writing to the Company, Terminate without cost or liability to the Underwriter in accordance with the terms of this clause 8. Nothing in this clause affects the validity of the grounds upon which the Underwriter may seek to Terminate. If the Underwriter Terminates under clause 8.1, the parties are relieved of all obligations under this agreement other than in respect of any prior breach.

8.7 Claims

Nothing contained in this clause 8 will prejudice or nullify any claim for damages or other right which the Underwriter or any other Indemnified Party may have against the Company, or which the Company may have against the Underwriter, for any breach of covenant or failure to observe or perform any obligation under this agreement, prior to termination of this agreement.

8.8 Effect of termination

- (a) Any rights or entitlements of a party and any other Indemnified Party accrued up to the date of termination survive termination.
- (b) Termination of this agreement by a party will discharge the parties only from any of their obligations that remain to be performed under this agreement, but the termination of this agreement will not limit or prevent the exercise of any other rights and remedies which any of the parties may otherwise have under this agreement prior to such termination.

9 Indemnities

9.1 Underwriter not responsible

The Company acknowledges that, other than for potential statutory liability, the Company and not the Underwriter is solely responsible and liable for the form, contents and correctness of the Offer Materials and all advertising, publicity, announcements, statements and reports made by the Company in relation to the Entitlement Offer.

9.2 Indemnity

To the maximum extent permitted by law, the Company unconditionally and irrevocably undertakes to indemnify and keep indemnified the Indemnified Parties against, and hold them harmless from, all Losses suffered or incurred directly or indirectly by the Indemnified Parties in connection with the Entitlement Offer or this agreement (including Losses arising out of or in connection with the preparation for or involvement in investigations or examinations conducted by ASIC), as a result of or in connection with:

- (a) any statement in the Offer Materials or the Public Information being misleading or deceptive or likely to mislead or deceive;
- (b) the Offer Materials or the Public Information omitting any information required to be included under applicable law;
- (c) the publication or distribution of the Offer Materials and the making of the Entitlement Offer;
- (d) the content of any advertising or publicity of the Entitlement Offer issued with the knowledge and consent of the Company, including any announcement in the form reviewed and approved by the Company;
- (e) the making of the Entitlement Offer and the issue and allotment of Offer Shares;
- (f) any breach of or failure to perform this agreement by the Company or the Company failing to perform any of its other obligations relating to the Entitlement Offer;
- (g) any representation or warranty made or given under this agreement or deemed to have been made or given by the Company under this agreement proving to have been untrue or incorrect;
- (h) any review, inquiry or investigation undertaken by ASIC, ASX, the Australian Tax Office, or any other regulatory office or Government Agency in relation to the Entitlement Offer or the Offer Materials;
- (i) any statement made or issued by an Indemnified Party to the extent the statement is made or issued in good faith and in reliance on and consistent with the Offer Materials or any material or information provided by or on behalf of the Company; and
- (j) any claim that an Indemnified Party has a liability under the Corporations Act (including without limitation sections 1041H and 1041I) or any other applicable law in relation to the Offer Materials or the Entitlement Offer.

9.3 Limited indemnity

The indemnity in clause 9.2 does not extend to and is not to be taken to be an indemnity against, any Losses of an Indemnified Party to the extent that those Losses are finally judicially determined by a court of competent jurisdiction to:

- (a) to be attributable to any amount in respect of which the indemnity in clause 9.2 would be illegal, void or unenforceable under any applicable law; or

- (b) to result from the wilful misconduct, fraud, gross negligence or material breach of contract of the person claiming the indemnity, except to the extent that the Loss is caused, induced or contributed to by any third party or by the Company, its Related Bodies Corporate or any of their respective directors, officers, employees, advisers, representatives or agents or is caused or contributed to by an Indemnified Party's reliance on any information contained in the Offer Materials or provided by or on behalf of the Company.

9.4 Release

- (a) Subject to clause 9.4(b), the Company agrees that no Claim may be made by it against any Indemnified Party in relation to, and the Company unconditionally and irrevocably releases and discharges each Indemnified Party from any Claim that may be made by it to recover from any Indemnified Party, any Losses suffered or incurred by the Company arising directly or indirectly as a result of the participation of that Indemnified Party in the preparation of the Offer Materials or in relation to the making of the Entitlement Offer, except in relation to matters where those Losses are finally judicially determined to result primarily from any fraud, wilful misconduct, gross negligence or material breach of contract of that Indemnified Party.
- (b) The exception in clause 9.4(a) does not apply to the extent that the Loss is caused, induced or contributed to by any third party or by the Company, its Related Bodies Corporate or any of their respective directors, officers, employees, advisers, representatives or agents or is caused or contributed to by an Indemnified Party's reliance on any information contained in the Offer Materials or provided by or on behalf of the Company.

9.5 Notice of potential action

If an Indemnified Party proposes to make a Claim in respect of which it would be entitled to be indemnified under this clause 9, then that Indemnified Party must notify the Company giving full details so far as is practicable within 15 Business Days of becoming actually aware of the circumstances giving rise to the right to make a Claim (and to the extent the Underwriter is aware, the Underwriter must take reasonable steps to cause that Indemnified Party to do so). Failure on the part of an Indemnified Party to notify the Company in accordance with this Clause 9.5 does not affect the right of that Indemnified Party to be indemnified under this Clause 9 except that such right will be reduced to the extent that the amount the subject of the indemnity has materially increased as a result of the failure to so notify.

9.6 Conduct of proceedings

- (a) **(assumption of Claims)** Subject to paragraph (e) below, the Company is entitled to defend any Claim notified to them under Clause 9.5, and in so doing, institute any legal or other proceedings (together, **Proceedings**) in the name of the Indemnified Party under the sole management and control and at the sole cost of the Company, provided that:
 - (i) the Company consults with both the Indemnified Party and the Underwriter regarding the appointment of legal counsel;
 - (ii) the Company diligently defends the Claim and the Indemnified Party and the Underwriter are kept fully informed throughout the Proceedings;
 - (iii) neither the Indemnified Party nor the Underwriter has any liability for any costs or expenses associated with the Claim or the Proceedings;
 - (iv) the Company has a reasonable regard to preserving the Underwriter's reputation in conducting the defence of the Claim;
 - (v) the Indemnified Party and the Underwriter have the right to information, consultation and independent legal representation concerning or with respect to the Proceedings; and

- (vi) no admission of liability or compromise or consent to judgment whatsoever in connection with the Proceedings may take place without the prior written consent of the Indemnified Party and the Underwriter, unless the admission or compromise:
 - (A) includes an unconditional release of the Indemnified Parties from all liability arising out of the Proceedings and Claim; and
 - (B) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of the Indemnified Parties.
- (b) **(separate indemnity)** Without in any way limiting clause 9.2, if the Company initiates, defends or takes any Proceedings as described in paragraph 9.6(a) above, it must indemnify the Indemnified Parties who are parties to, or the subject of, the Proceedings, in respect of all Losses incurred by those Indemnified Parties in relation to the Claim the subject of the Proceedings or to any Loss resulting from those Proceedings.
- (c) **(obligations of Indemnified Parties)** Each Indemnified Party, subject only to paragraphs 9.6(e) and 9.6(f) below, is required, and the Underwriter must take reasonable steps to cause the Indemnified Parties to:
 - (i) promptly take any reasonable action as the Company requests to avoid, dispute, resist, appeal, compromise or defend the Proceedings;
 - (ii) not settle any Claim without the prior written consent of the Company (this consent not to be unreasonably withheld or delayed);
 - (iii) subject to legal professional privilege, promptly give all reasonable assistance and co-operation to the Company in the conduct of the Proceedings, including providing the Company with any documents in its possession and signing all documents, authorities and directions which the Company may reasonably require; and
 - (iv) subject to the rights of any insurer, do anything reasonably necessary or desirable to ensure that the Company is subrogated to and enjoy the benefit of the rights of the Indemnified Parties in relation to the Proceedings and to render any assistance as may be reasonably requested by the Company for that purpose.
- (d) **(Indemnified Party - separate representation)** The Indemnified Party will be entitled at its election (without prejudice to its right of indemnity under this clause 9) to be separately represented in relation to any Proceedings if:
 - (i) the Company has not chosen legal counsel satisfactory to the Indemnified Party;
 - (ii) a conflict for legal counsel chosen by the Company or between the interests of the Company and the interests of the Indemnified Party arises or could arise;
 - (iii) there may be legal defences available to the Indemnified Party that are different from or additional to those available to the Company or another Indemnified Party represented by that legal counsel; or
 - (iv) the Indemnified Party believes it is desirable to do so in order to protect the Indemnified Party's reputation or standing,

in which case the cost of such representation will be borne by the Company. An Indemnified Party may otherwise elect to be separately represented at any time not related to sub-paragraphs (i) to (iv) above, in which case the cost of such representation will be borne by that Indemnified Party.

- (e) **(Indemnified Party – assumption and settlement)** If the Company elects, by written notice to the Underwriter, not to assume the defence or conduct of any Proceedings under clause 9.6(a), an Indemnified Person (without prejudice to its right of indemnity under clause 9.2) may assume the defence of conduct of any Proceedings and:
 - (i) it will have sole management and control of the Proceedings, and absolute discretion with respect to the progress, negotiation or settlement of any Proceedings, but in doing so will consult with and take account of the views of the Company so far as is reasonably possible;
 - (ii) the indemnities given by the Company under clause 9.2 will continue to apply in respect of the Indemnified Party in relation to the Claim the subject of the Proceedings or to any Loss resulting from those Proceedings.
- (f) **(conditions to Indemnified Parties' obligations):**
 - (i) The Indemnified Parties are under no obligation under this clause 9.6 unless, at the time at which the Company requests any of the Indemnified Parties to take any action, the Company irrevocably and unconditionally agrees in a form and substance acceptable to that Indemnified Party to indemnify that Indemnified Party against all Losses incurred by or awarded against that Indemnified Party in taking the action required, as and when they fall due, including legal costs and disbursements of their lawyers on a full indemnity basis and the cost of any involvement of any officers of the Underwriter at normal commercial rates.
 - (ii) Any Indemnified Party is under no obligation to take or refrain from taking action under clause 9.6 if to do so would in the reasonable opinion of the Indemnified Party, lead to a significant risk of damage to its reputation or standing.

9.7 **Contractual contribution**

If, for any reason the indemnities, contained in this clause 9 are unavailable or insufficient to fully indemnify any Indemnified Party against any Loss against which the Indemnified Party is stated to be indemnified under this clause 9 (**Relevant Loss**) (other than as a result of the operation of clause 9.3), then the Company agrees to contribute to the Relevant Loss in accordance with this clause 9.7 to clause 9.11, in all cases to the maximum extent permitted by law.

9.8 **Proportional contribution**

The respective proportional contribution of the Company, on the one hand, and the Indemnified Parties (and the Underwriter), on the other, in relation to the Relevant Loss will be as agreed by the Company and the Indemnified Parties. Failing agreement within a reasonable time, the contributions will be determined by a court of competent jurisdiction. The matters to be considered in deciding the contributions are:

- (a) the participation in, instigation of or other involvement of the Company, on the one hand, and the Indemnified Parties, on the other hand, in the act complained of; and
- (b) the relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission and benefits received of the Indemnified Parties and the Company.

9.9 **Reimbursement by Company**

If an Indemnified Party pays an amount in relation to a Relevant Loss where it is entitled to contribution from the Company under this clause 9, the Company must promptly reimburse the Indemnified Party for that amount.

9.10 Reimbursement by Indemnified Party

If the Company pays an amount in relation to a Relevant Loss where it is entitled to contribution from the Indemnified Parties under this clause 9, the Indemnified Parties must promptly reimburse, or the Underwriter must procure the Indemnified Parties promptly reimburse, the Company for that amount.

9.11 Benefit of indemnity

Each Indemnified Party, whether or not a party to this agreement, will be entitled to the benefit of this clause 9, and this clause 9 is entered into, and may be enforced on that Indemnified Party's behalf by, the Underwriter.

9.12 Responsibility

The Company acknowledges that the Company, and not the Underwriter, is responsible for the form and content of the Offer Materials and all advertising, publicity, announcements, statements and reports made in relation to the Entitlement Offer issued with the knowledge or prior consent of the Company or its respective directors, officers, employees or of the legal advisers acting on their behalf.

9.13 Underwriter services

The Company agrees that, subject to compliance with applicable law, in any event, no proceedings may be taken against any director, officer, employee, agent, shareholder, trustee, beneficiary or adviser of the Underwriter or of its Related Bodies Corporate arising out of or in connection with the Offer Materials or the Entitlement Offer.

9.14 Limited indemnity

The indemnity under this clause 9 does not affect, extend or include any indemnity, limitation or exclusion which is unlawful or which would render any provision of this agreement unlawful, void or unenforceable but, operates to the fullest extent that the law permits in its application to the Company and each Indemnified Party.

9.15 Preservation of rights

The rights of an Indemnified Party under this agreement will not in any way be prejudiced or affected by any approval given by that party in relation to:

- (a) any involvement by that party in the in the preparation of the Offer Materials;
- (b) any knowledge (actual or constructive) of any failure by the Company to perform or observe any obligations under this agreement;
- (c) any inaccuracy in or breach or default of any representation, warranty or undertaking made or deemed to have been made by the Company under this agreement; or
- (d) any other fact, matter or thing which might otherwise constitute a waiver of or in any way prejudice or affect any right of an Indemnified Party.

10 Goods and services tax

10.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10.
- (c) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 10.

10.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a Cost, expense, or other amount paid or incurred will be limited to the total Cost, expense or amount less the amount of any input tax credit to which an entity, or the representative member of a GST group of which that entity is a member, is entitled for the acquisition to which the Cost, expense or amount relates.

10.3 GST payable

- (a) If GST is payable in relation to a supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST and any interest and penalties at the same time as any other consideration is to be first provided for that supply.
- (b) The Supplier must provide a valid tax invoice to the Recipient prior to the day on which any consideration is to be first provided for that supply.

10.4 No merger

This clause will not merge on completion of this agreement.

11 Notices

11.1 General

A notice, consent, approval, demand, certification, process or other communication relating to this agreement must be in writing in English and may be given by an agent of the sender.

11.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the party's particulars set out below.

11.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

the Underwriter

Address: Unit 2, 11 Ventnor Avenue, West Perth WA 6005

Attention: Balu Jega; and
Harley Whitcombe

Email: bjega@arlec.com.au; and
harley@avatarindustries.com.au

Company

Address: Unit 1, Building F, 3-29 Birnie Ave, Lidcombe NSW 2141

Attention: David Clarke

Email: david.clarke@hills.com.au

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

11.4 Communications by post

Subject to clause 11.7, a communication is given if posted:

- (a) within Australia to an Australian address, five Business Days after posting; or
(b) in any other case, ten Business Days after posting.

11.5 Communications by email

Subject to clause 11.6, a communication is given if sent by email on the day the transmission was sent if the sender does not receive an automated notice generated by the sender's or recipient's email server that the email was not delivered.

11.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
(b) on a day which is not a Business Day in the place of receipt,

it is taken as having been given on the next Business Day.

11.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this agreement may be served by any method contemplated by this clause 11 or in accordance with any applicable law.

12 Confidentiality

12.1 General obligation

- (a) Subject to clauses 12.1(b) and 12.1(c), each party must keep confidential:

- (i) the existence and terms of this agreement (and any draft of this agreement); and
 - (ii) all negotiations in connection with it and the transactions contemplated by it, and must ensure that their respective personnel do likewise.
- (b) A party may disclose information:
- (i) on a confidential basis to its advisers (including bankers) to enable them to advise in connection with this agreement if the party uses reasonable endeavours to ensure that the matters disclosed are kept confidential;
 - (ii) if that information is in the public domain (other than because the party has disclosed it in breach of this clause);
 - (iii) in connection with legal or other proceedings relating to this agreement; and
 - (iv) if compelled by law or by an authority such as a Government Agency, court, tribunal or stock exchange.
- (c) An accurate summary of this agreement may appear in the Offer Booklet and in any other ASX announcements by the Company.
- (d) A party disclosing under clauses 12.1(b) and 12.1(c) must, as far as reasonably practical, consult with each other party beforehand as to the content and timing of the disclosure.

12.2 Continuing obligation

This clause 12 continues to bind the parties after Completion and after the parties' other obligations under this agreement terminate.

13 General

13.1 Amendment

This agreement may only be varied or replaced by a document executed by the parties.

13.2 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

13.3 Rights cumulative

Except as expressly stated otherwise in this agreement, the rights of a party under this agreement are cumulative and are in addition to any other rights of that party.

13.4 Consents

Except as expressly stated otherwise in this agreement, a party may conditionally or unconditionally give or withhold any consent to be given under this agreement and is not obliged to give its reasons for doing so.

13.5 Further steps

Each party must promptly do whatever the other party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

13.6 Governing law and jurisdiction

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

13.7 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other party.
- (b) Any purported dealing in breach of this clause is of no effect.

13.8 Counterparts

This agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

13.9 Entire understanding

- (a) This agreement constitutes the entire understanding between the parties as to the subject matter of this agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect (but, for the avoidance of doubt, the parties acknowledge that the Subscription Agreement is not replaced or terminated by this agreement). No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to the other party;
 - (i) affects the meaning or interpretation of this agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the parties.

13.10 Survival of indemnities, representations, warranties and undertakings

- (a) The indemnities in this agreement are continuing obligations, independent from the other obligations of the Company under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.
- (b) The representations, warranties and undertakings in this agreement are continuing obligations, independent from the other obligations of the Company under this agreement and continue after this agreement ends.

13.11 Causeway Deed

Notwithstanding the other clauses in this agreement, the Underwriter agrees in favour of the Company that any breach or non-compliance with any representation, warranty, undertaking or other term in this agreement, which may arise from the breaches of the Causeway Loan Agreement detailed in the Causeway Deed, are hereby waived and that any right to terminate this agreement arising from any such breach or non-compliance will not be exercised by the Underwriter.

13.12 Placement

Notwithstanding the other clauses in this agreement, the Underwriter acknowledges that the parties intend to complete the Placement prior to or by the Record Date for the Entitlement Offer and the Underwriter agrees in favour of the Company that any breach or non-compliance with any representation, warranty, undertaking or other term in this agreement, which may arise as a result of or in connection with the Placement or any term or condition of the Subscription Agreement, is hereby waived and that any right to terminate this agreement arising from any such breach or non-compliance will not be exercised by the Underwriter.

13.13 Nominated Directors

Notwithstanding the other clauses in this agreement, the Underwriter agrees in favour of the Company that any breach or non-compliance by the Company with any representation, warranty, undertaking or other term in this agreement, which is or may be caused by, or arises from any act or omission of, any Nominated Director, is hereby waived and that any right to terminate this agreement arising from any such breach or non-compliance will not be exercised by the Underwriter.

13.14 Enforceability

For the purpose of this agreement, the Underwriter is taken to be acting as agent and trustee on behalf of and for the benefit of all Indemnified Parties and all of those persons are to this extent taken to be parties to this agreement.

13.15 No partnerships

Other than as expressly stated in this agreement, nothing contained or implied in this agreement constitutes a party the partner, agent, or legal representative of the other party for any purpose or creates any partnership, agency or trust, and neither party has any authority to bind the other party in any way.

13.16 Time is of the essence

Time is of the essence of this agreement.

13.17 Severability

- (a) Subject to paragraph 13.17(b), if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.
- (b) Paragraph 13.17(a) does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this agreement; or
 - (B) the relative commercial or financial positions of the parties; or
 - (ii) would be contrary to public policy.

Schedule 1

Timetable

Event	Date
Announcement Date – announcement of the Entitlement Offer and Placement	23 March 2023
Completion of the Placement – issue and allotment of the Shares under the Placement	23 March 2023
'Ex' Date – rights are quoted on a deferred settlement basis from market open	27 March 2023
Record Date	28 March 2023
Despatch Date – despatch Offer Booklet to Eligible Shareholders Opening Date - last day for Entitlement Offer to commence	31 March 2023
Rights trading ends at close of trading	4 April 2023
Closing Date - date on which the Entitlement Offer closes	13 April 2023
Shortfall Notification Date - last date on which a Shortfall Notice is to be given.	17 April 2023
Shortfall Subscription Date – date by which the Underwriter must lodge applications for the Remaining Shortfall Shares, up to the Underwritten Amount.	18 April 2023
Allotment Date - last day for allotment of Offer Shares	20 April 2023

Note: The dates referred to above can be varied under clause 4.1(b).

Schedule 2

Closing Certificate

TO: Historical Holdings Pty Ltd

ATTENTION: [insert]

This is the Closing Certificate pursuant to clause 4.5 of the Underwriting Agreement between Historical Holdings Pty Ltd (“**Underwriter**”) and Hills Limited (“**Company**”) dated [] 2023 (“**Underwriting Agreement**”).

CERTIFICATION

We the undersigned hereby certify to the Underwriter that as at the date of this Closing Certificate to the best of our knowledge and information after due enquiry:

1. The Company has complied with all of its obligations in respect of the Entitlement Offer whether arising:
 - (a) under the Offer Materials or Underwriting Agreement; or
 - (b) the Corporations Act, the Listing Rules, or other applicable legal provisions.
2. The Company is not in default under the Underwriting Agreement and there has not been any breach by the Company of any of the terms and conditions in that document.
3. The Offer Materials are not misleading or deceptive and do not omit any required information except as previously disclosed in writing to the Underwriter.
4. None of the events set out in clause 8.1 of the Underwriting Agreement has occurred or is threatened to occur.
5. The warranties set out in clause 5 (“Representations and warranties”) of the Underwriting Agreement that relate to the Company are true and correct.
6. For the purposes of this Closing Certificate words and expressions used in this certificate shall have the meanings given to them in the Underwriting Agreement.

Dated:

EXECUTED by **HILLS LIMITED** in
accordance with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director

.....
Name of director (block letters)

Executed as an agreement

Executed by Hills Limited ACN 007 573 417
in accordance with section 127 of the
Corporations Act 2001 (Cth):



*Director/*Company Secretary

David Chambers

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate

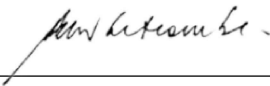


Director

David Clarke

Name of Director
(BLOCK LETTERS)

Executed by Historical Holdings Pty Ltd ACN
057 726 235 in accordance with section 127 of
the *Corporations Act 2001* (Cth):



*Director/*Company Secretary

Harley Whitcombe

Name of *Director/*Company Secretary
(BLOCK LETTERS)
*please delete as appropriate



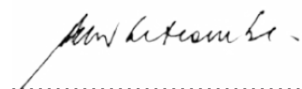
Director

Ian Trahar

Name of Director
(BLOCK LETTERS)

Annexure B

This is Annexure B of 1 page (including this page) referred to in Form 604 – Notice of change of interest in substantial holder signed by me and dated 21 April 2023



Harley Whitcombe

Part 1 – Historical Holdings Group

Name	ACN	Association	Address
Project Keon Pty Ltd	665 160 814	Related body corporate	Suite 2, 11 Ventnor Avenue West Perth WA 6005

Part 2 – Gabor Group

Name	ACN	Association	Address
Revesco Aviation Pty Ltd	097 420 089	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Arlec Australia Pty Ltd	009 322 105	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Gersor Pty Ltd	009 323 102	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Gabor Investments Pty Ltd	060 676 520	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Antenna Signal Pty Ltd	128 705 466	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Callisto Investment Company Pty Ltd	624 605 330	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Prospective Holdings Pty Ltd	624 830 753	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Avatar Industries Pty Ltd	008 742 390	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Green Line Partners Pty Ltd	650 672 861	Related body corporate	Level 11, St Georges Terrace Perth WA 6000
Revesco Marine Pty Ltd	655 256 821	Related body corporate	Level 11, St Georges Terrace Perth WA 6000