

Rule 2.7, 3.10.3, 3.10.4, 3.10.5

# Appendix 3B

## New issue announcement, application for quotation of additional securities and agreement

*Information or documents not available now must be given to ASX as soon as available. Information and documents given to ASX become ASX's property and may be made public.*

Introduced 1/7/96. Origin: Appendix 5. Amended 1/7/98, 1/9/99, 1/7/2000, 30/9/2001, 11/3/2002, 1/1/2003.

Name of entity

AUSTRALIAN FOOD & FIBRE LIMITED

ABN

88 077 983 370

We (the entity) give ASX the following information.

### Part 1 - All issues

*You must complete the relevant sections (attach sheets if there is not enough space).*

- |   |  |  |
|---|--|--|
| 1 | +Class of +securities issued or to be issued   | Convertible Notes                        |
| 2 | Number of +securities issued or to be issued (if known) or maximum number which may be issued  | 1,556,387 (maximum number)               |
| 3 | Principal terms of the +securities (eg, if options, exercise price and expiry date; if partly paid +securities, the amount outstanding and due dates for payment; if +convertible securities, the conversion price and dates for conversion) | See section 4 of the attached prospectus |

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+ See chapter 19 for defined terms.

**Appendix 3B**  
**New issue announcement**

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<p>4 Do the <sup>+</sup>securities rank equally in all respects from the date of allotment with an existing <sup>+</sup>class of quoted <sup>+</sup>securities?</p> <p>If the additional securities do not rank equally, please state:</p> <ul style="list-style-type: none"> <li>• <b>the date from which they do</b></li> <li>• <b>the extent to which they participate for the next dividend, (in the case of a trust, distribution) or interest payment</b></li> <li>• <b>the extent to which they do not rank equally, other than in relation to the next dividend, distribution or interest payment</b></li> </ul>	<p>No</p> <ul style="list-style-type: none"> <li>• on conversion to ordinary shares except that they will not be entitled to any dividend that has been declared or determined but not paid as at the conversion date.</li> <li>• interest at the rate of 4% pa is payable half yearly in arrears on the interest payment date with 30 June 2004 being the first interest payment date (and for this date interest will accrue from the date of issue to the payment date)</li> <li>• no participation in dividends before conversion</li> <li>• In a winding up, the notes will rank ahead of ordinary shares for the repayment of capital.</li> <li>• Not entitled to attend general meetings</li> <li>• Refer section 4 of prospectus</li> </ul>										
<p>5 Issue price or consideration</p>	<p>\$10.00 per convertible note</p>										
<p>6 Purpose of the issue (If issued as consideration for the acquisition of assets, clearly identify those assets)</p>	<p>Fund the acquisition of "The Glen", a cotton growing property near Moree, NSW</p>										
<p>7 Dates of entering <sup>+</sup>securities into uncertificated holdings or despatch of certificates</p>	<p>Wednesday 3 December 2003</p>										
<p>8 Number and <sup>+</sup>class of all <sup>+</sup>securities quoted on ASX (including the securities in clause 2 if applicable)</p>	<table> <tr> <th data-bbox="686 1720 997 1760">Number</th><th data-bbox="997 1720 1291 1760"><sup>+</sup>Class</th></tr> <tr> <td data-bbox="686 1760 997 1800">154,069,827</td><td data-bbox="997 1760 1291 1800">Ordinary shares</td></tr> <tr> <td data-bbox="686 1800 997 1841">5,280,265</td><td data-bbox="997 1800 1291 1841">Options expiring –</td></tr> <tr> <td data-bbox="686 1841 997 1881"></td><td data-bbox="997 1841 1291 1881">June 2006</td></tr> <tr> <td data-bbox="686 1881 997 1921">1,556,387</td><td data-bbox="997 1881 1291 1921">Convertible notes</td></tr> </table>	Number	<sup>+</sup> Class	154,069,827	Ordinary shares	5,280,265	Options expiring –		June 2006	1,556,387	Convertible notes
Number	<sup>+</sup> Class										
154,069,827	Ordinary shares										
5,280,265	Options expiring –										
	June 2006										
1,556,387	Convertible notes										

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<sup>+</sup> See chapter 19 for defined terms.

	Number	+Class
9	Number and +class of all +securities not quoted on ASX (including the securities in clause 2 if applicable)	N/A
10	Dividend policy (in the case of a trust, distribution policy) on the increased capital (interests)	N/A – subject to interest until conversion of notes to ordinary shares, and payment of dividends on ordinary shares will depend upon capacity to pay

## Part 2 - Bonus issue or pro rata issue

11	Is security holder approval required?	No
12	Is the issue renounceable or non-renounceable?	Non-renounceable
13	Ratio in which the +securities will be offered	One note for every 100 shares held
14	+Class of +securities to which the offer relates	Convertible notes
15	+Record date to determine entitlements	3 November 2003
16	Will holdings on different registers (or subregisters) be aggregated for calculating entitlements?	N/A
17	Policy for deciding entitlements in relation to fractions	Subject to a minimum entitlement of \$500 shares and entitlements to be rounded up
18	Names of countries in which the entity has +security holders who will not be sent new issue documents  <small>Note: Security holders must be told how their entitlements are to be dealt with. Cross reference: rule 7.7.</small>	Zimbabwe USA Thailand Singapore Hong Kong
19	Closing date for receipt of acceptances or renunciations	1 December 2003

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20	Names of any underwriters	None
21	Amount of any underwriting fee or commission	N/A
22	Names of any brokers to the issue	None
23	Fee or commission payable to the broker to the issue	N/A
24	Amount of any handling fee payable to brokers who lodge acceptances or renunciations on behalf of <sup>+</sup> security holders	N/A
25	If the issue is contingent on <sup>+</sup> security holders' approval, the date of the meeting	No
26	Date entitlement and acceptance form and prospectus or Product Disclosure Statement will be sent to persons entitled	5 November 2003
27	If the entity has issued options, and the terms entitle option holders to participate on exercise, the date on which notices will be sent to option holders	Terms specifically exclude offer being made to option holders
28	Date rights trading will begin (if applicable)	N/A
29	Date rights trading will end (if applicable)	N/A
30	How do <sup>+</sup> security holders sell their entitlements <i>in full</i> through a broker?	N/A
31	How do <sup>+</sup> security holders sell <i>part</i> of their entitlements through a broker and accept for the balance?	N/A

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<sup>+</sup> See chapter 19 for defined terms.

- |    |   |                 |
|----|---|-----------------|
| 32 | How do <sup>+</sup> security holders dispose of their entitlements (except by sale through a broker)? | N/A             |
| 33 | <sup>+</sup> Despatch date  | 3 December 2003 |

### Part 3 - Quotation of securities

*You need only complete this section if you are applying for quotation of securities*

- 34 Type of securities  
(tick one)
- (a) ☒ Securities described in Part 1
- (b) ☐ All other securities
- Example: restricted securities at the end of the escrowed period, partly paid securities that become fully paid, employee incentive share securities when restriction ends, securities issued on expiry or conversion of convertible securities

#### Entities that have ticked box 34(a)

#### Additional securities forming a new class of securities

*Tick to indicate you are providing the information or documents*

- 35 ☐ If the <sup>+</sup>securities are <sup>+</sup>equity securities, the names of the 20 largest holders of the additional <sup>+</sup>securities, and the number and percentage of additional <sup>+</sup>securities held by those holders
- 36 ☐ If the <sup>+</sup>securities are <sup>+</sup>equity securities, a distribution schedule of the additional <sup>+</sup>securities setting out the number of holders in the categories
- 1 - 1,000  
1,001 - 5,000  
5,001 - 10,000  
10,001 - 100,000  
100,001 and over
- 37 ☒ A copy of any trust deed for the additional <sup>+</sup>securities

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<sup>+</sup> See chapter 19 for defined terms.

**Entities that have ticked box 34(b)**

38	Number of securities for which +quotation is sought					
39	Class of +securities for which quotation is sought					
40	Do the +securities rank equally in all respects from the date of allotment with an existing +class of quoted +securities?  If the additional securities do not rank equally, please state: <ul style="list-style-type: none"><li>• the date from which they do</li><li>• the extent to which they participate for the next dividend, (in the case of a trust, distribution) or interest payment</li><li>• the extent to which they do not rank equally, other than in relation to the next dividend, distribution or interest payment</li></ul>					
41	Reason for request for quotation now  Example: In the case of restricted securities, end of restriction period  (if issued upon conversion of another security, clearly identify that other security)					
42	Number and +class of all +securities quoted on ASX ( <i>including</i> the securities in clause 38)	<table border="1"><thead><tr><th>Number</th><th>+Class</th></tr></thead><tbody><tr><td></td><td></td></tr></tbody></table>	Number	+Class		
Number	+Class					

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+ See chapter 19 for defined terms.

### **Quotation agreement**

1       <sup>+</sup>Quotation of our additional <sup>+</sup>securities is in ASX's absolute discretion. ASX may quote the <sup>+</sup>securities on any conditions it decides.

2       We warrant the following to ASX.

- The issue of the <sup>+</sup>securities to be quoted complies with the law and is not for an illegal purpose.
- There is no reason why those <sup>+</sup>securities should not be granted <sup>+</sup>quotation.
- An offer of the <sup>+</sup>securities for sale within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act.

Note: An entity may need to obtain appropriate warranties from subscribers for the securities in order to be able to give this warranty

- Section 724 or section 1016E of the Corporations Act does not apply to any applications received by us in relation to any <sup>+</sup>securities to be quoted and that no-one has any right to return any <sup>+</sup>securities to be quoted under sections 737, 738 or 1016F of the Corporations Act at the time that we request that the <sup>+</sup>securities be quoted.
- We warrant that if confirmation is required under section 1017F of the Corporations Act in relation to the <sup>+</sup>securities to be quoted, it has been provided at the time that we request that the <sup>+</sup>securities be quoted.
- If we are a trust, we warrant that no person has the right to return the <sup>+</sup>securities to be quoted under section 1019B of the Corporations Act at the time that we request that the <sup>+</sup>securities be quoted.

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<sup>+</sup> See chapter 19 for defined terms.

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- 3 We will indemnify ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from or connected with any breach of the warranties in this agreement.
- 4 We give ASX the information and documents required by this form. If any information or document not available now, will give it to ASX before <sup>+</sup>quotation of the <sup>+</sup>securities begins. We acknowledge that ASX is relying on the information and documents. We warrant that they are (will be) true and complete.

Sign here: DC Mackenzie

Date: 22 October 2003

Print name: D C Mackenzie  
Company Secretary.

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<sup>+</sup> See chapter 19 for defined terms.



# **AUSTRALIAN FOOD & FIBRE LIMITED**

**ABN 88 077 983 370**

## ***Prospectus for Non-Renounceable Offer of Convertible Notes on the basis of one Note for every 100 Shares held (subject to a minimum entitlement of \$500 as per section 1.7 of the Prospectus)***

This Offer is not underwritten. This Prospectus is an important document and should be read in its entirety.  
Shareholders may wish to consult their professional adviser about its contents.

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## CORPORATE DIRECTORY

### Company

AUSTRALIAN FOOD & FIBRE LIMITED

ABN 88 077 983 370

#### *Registered Office*

Level 4 National Bank House

255 Adelaide Street

Brisbane QLD 4000

Tel 07 3303 2502

Fax 07 3303 2525

### Directors

DW Robinson

MJ Millner

SC Gregory

### Company Secretary

DC Mackenzie

### Trustee

The Public Trustee of Queensland

444 Queen Street

Brisbane QLD 4000

### Share Registry

Computershare Investor Services Pty Ltd

Level 27 Central Plaza One

345 Queen Street

Brisbane QLD 4000

Tel 07 3237 2100

Fax 07 3229 9860

### Lawyers for the Company and the Issue

McCullough Robertson

Level 12

Central Plaza Two

66 Eagle Street

Brisbane QLD 4000

### Auditor for the Company

Ernst & Young

Level 5, 1 Eagle Street

Brisbane QLD 4000

## IMPORTANT NOTICE

This Prospectus is dated 22 October 2003 and a copy of this Prospectus was lodged with ASIC on that date. ASIC and ASX and their respective officers take no responsibility for the contents of this Prospectus. The expiry date of this Prospectus is 22 October 2004. No Notes will be allotted or transferred on the basis of this Prospectus later than the expiry date.

The Prospectus does not constitute an offer in any place where, or to any person to whom, it would not be lawful to make such an offer. The distribution of this Prospectus in jurisdictions outside the Commonwealth of Australia may be restricted by law and persons who come into possession of it should seek advice on and observe any such restrictions. Any failure to comply with such restrictions may constitute a violation of applicable securities law.

**This Prospectus provides information for Shareholders to decide if they wish to apply for Notes and should be read in its entirety. If, after reading this Prospectus, you have any questions about the desirability of, or procedure for, applying for Notes, please contact your professional adviser.**

Defined terms and abbreviations used in this Prospectus are explained in the Glossary in section 7. All financial amounts shown in this Prospectus are expressed in Australian dollars.

The Corporations Act prohibits AFF from processing Entitlement & Acceptance Forms in the 7 day period after the date of lodgement of the Prospectus with ASIC. The period may be extended by ASIC by up to a further 7 days. This period is an exposure period to enable the Prospectus to be examined by market participants prior to the raising of funds. Entitlement & Acceptance Forms received during the exposure period will not be processed until after the expiry of that period.

**THIS DOCUMENT IS IMPORTANT AND SHOULD BE READ IN ITS ENTIRETY**

## LETTER FROM THE CHAIRMAN

# AFF

**AUSTRALIAN  
FOOD & FIBRE  
LIMITED** ACN 077 983 370

Level 4 National Bank House  
255 Adelaide Street, Brisbane Qld 4000, Australia  
PO Box 7122 Riverside, Brisbane Qld 4001, Australia  
Telephone 07 3303 2502 Fax 07 3303 2525

22 October 2003

Dear Shareholder

I am pleased to offer you the opportunity to participate in the Offer of Convertible Notes in Australian Food & Fibre Limited.

As is disclosed in the Company's Annual Report, the Company has continued to expand its core businesses through acquisitions in line with the Company's strategy.

In July 2003, the Company entered into a contract to purchase "The Glen", a cotton farm adjoining "Milo" and "Newport" in the Moree area of North Western NSW. Because of the quality, location and water rights of this property, I am confident it will prove to be a profitable addition to the Company's aggregation of cotton farms. Settlement of the acquisition is scheduled for 31 December 2003.

The purpose of the Offer is to fund the acquisition of "The Glen" and the Directors consider that the Convertible Notes to be issued in accordance with the Offer are the most appropriate method of funding available to the Company. To the extent the Offer is not fully subscribed, the Directors intend to use existing bank facilities to complete the acquisition of "The Glen".

Under the Offer, Shareholders are being given the opportunity to subscribe for Convertible Notes in the Company on the basis of 1 Convertible Note for every 100 Shares held. The issue price for the Convertible Notes will be \$10 per Note and the Company is seeking to raise up to \$15.6 million.

The Offer is not underwritten and is non-renounceable. I believe that the Offer will significantly improve the Company's financial position and provide it with a sound basis for future growth and prosperity.

Shareholders are encouraged to participate in the Offer. It is the intention of the Directors and my family's interests as Shareholders to support the success of the Offer by taking up their entitlements. In addition, the other 2 largest Shareholders have indicated that they will also accept their entitlements under the Offer.

I am therefore confident that the strategies we have adopted will move the Company forward and that additional opportunities will be presented by having a strong balance sheet. Further, although the drought is continuing to have a significant effect on agricultural production in Eastern Australia, recent rains have been encouraging.

While the interest payable is below market rate, the Directors consider that the option available via conversion at 37 cents during the next 5 years is attractive in the context of the net asset backing of approximately 53 cents per share.

I encourage you to read this Prospectus carefully before making your investment decision as it contains detailed information about the Offer.

Yours faithfully



**David Robinson**  
Chairman

## 1. DETAILS OF THE OFFER

### Key Issue Highlights

The Issue Price per Note is \$10.00.

Shares on issue at the date of this Prospectus	154,069,827
Options on issue at the date of this Prospectus	5,280,265
Notes offered under this Prospectus*	1,556,387
Amount to be raised under the Offer if all Notes taken up*	\$15,563,870
Number of Shares issued if all Notes converted into Shares*	42,064,600
Total Shares on issue if all Notes and Options are converted*	201,414,692

*\*Approximations only. Actual numbers are dependent on the number of Shareholders on the Record Date, the number of Notes taken up by Shareholders, and the number of Notes converted by Shareholders and Options exercised for Shares.*

Refer to section 1.2 for further details.

### Important Dates

	Date
Record Date	3 November 2003
Offer opens	5 November 2003
Last day for acceptance and payment in full	1 December 2003
Allotment and dispatch of holding statements for Notes	3 December 2003

*These dates are indicative only. AFF reserves the right to vary the dates and times of the Offer without prior notice. Shareholders are encouraged to submit their Entitlement & Acceptance Forms as soon as possible.*

### 1.1 The Offer

The Company is offering Notes to Shareholders who are registered on the Record Date. The Notes are being offered on the basis of 1 Note for every 100 Shares held at the Record Date at an Issue Price of \$10 per Note. Fractional entitlements will be rounded up.

The Company estimates that up to 1,556,387 Notes will be offered.

The number of Notes to which you are entitled is shown on the accompanying Entitlement & Acceptance Form. Entitlements are not transferable. Any portion of your entitlement that you do not accept will lapse. If you do not accept your entitlement to Notes, your proportional shareholding will be reduced by the issue of any Shares by the Company on conversion of Notes.

Up to \$15,563,870 will be raised under the Offer (before expenses).

The terms of the Convertible Notes are set out in full at section 4 and summarised below:

<b>Issuer</b>	Australian Food & Fibre Limited
<b>Trustee</b>	The Public Trustee of Queensland
<b>Number of Notes to be Issued</b>	1,556,387 Convertible Notes (assuming all entitlements taken up)
<b>Issue Price</b>	\$10.00 for each Convertible Note
<b>Amount to be Raised</b>	\$15,563,870 (assuming all entitlements taken up)
<b>Term</b>	The Convertible Notes will have a term of 5 years from the Issue Date unless previously redeemed or converted into Shares.

<b>Interest Rate</b>	The Convertible Notes will bear interest at a fixed rate of 4% per annum until the earlier of Conversion or Redemption.
<b>Interest Payment</b>	Interest is payable half-yearly in arrears on each Interest Payment Date. The first Interest Payment Date is 30 June 2004 with the first payment being accrued interest from the Issue Date to that date. The final interest payment will be adjusted pro-rata on the Maturity Date. Accrued interest will be paid to the date of early Conversion or Redemption.
<b>Maximum shares to be issued on Conversion</b>	Up to 42,064,600 Shares (approximately 27% of the current issued capital of AFF).
<b>Conversion rights</b>	<p>Each Convertible Note may be converted by the Noteholder into Shares (approximately 27.027 Shares for each Convertible Note on the Issue Date, but subject to any adjustment for rights issues, bonus shares and capital reconstructions as provided below).</p> <p>Any accrued and unpaid interest up to the Conversion Date will be paid to the Noteholder.</p> <p>Noteholders may elect to convert their Convertible Notes on any Interest Payment Date or on the Maturity Date, or at other times in certain limited circumstances (such as following a Takeover Event or Tax Event).</p> <p>On receipt by AFF of a Conversion Notice, AFF must issue the number of Shares equal to the Issue Price divided by \$0.37 (subject to adjustment) for each Convertible Note the subject of the Conversion Notice.</p> <p>Convertible Notes must be converted in multiples of 100 (or if the total number of Convertible Notes held is less than 100, that number). Noteholders wishing to convert all of their Convertible Notes may do so regardless of the number of Convertible Notes held.</p> <p>Each Share issued on Conversion will rank equally with all existing Shares then on issue, except that they will not be entitled to any dividend that has been declared or determined but not paid as at the Conversion Date.</p>
<b>Redemption</b>	<p>Any Convertible Notes not converted by the Maturity Date must be redeemed by AFF on the Maturity Date at the Issue Price.</p> <p>AFF has the option to redeem some or all of the Convertible Notes prior to the Maturity Date in the event of a Takeover Event or Tax Event, subject in each case to the right of the Noteholder to convert the Convertible Notes.</p> <p>Early redemption will be at the Issue Price or the volume weighted average price of the Convertible Notes, whichever is greater.</p>

<b>Ranking</b>	<p>Until Conversion or Redemption, the Convertible Notes will be unsecured debt obligations of AFF and rank in relation to repayment of principal and interest, equally with other ordinary unsecured creditors of AFF. The Convertible Notes will rank behind any secured creditors of AFF but will rank ahead of Shares.</p> <p>Each Share issued on Conversion of Convertible Notes will rank equally with all existing Shares then on issue, except that they will not be entitled to any dividend that has been declared or determined but not paid as at the Conversion Date.</p>
<b>Participation Rights (including future capital raisings)</b>	<p>Prior to Conversion and subject to the adjustments specified below, the Convertible Notes will not carry any entitlement to participate in offers, any returns of capital, bonus issues or capital reconstructions.</p> <p>The Conversion rights of the Convertible Notes will be adjusted in the case of a rights issue by AFF prior to the Conversion Date, on the basis that the number of Shares issued on Conversion shall be increased in proportion to the discount of the weighted average Share price to the price of the Shares issued under the rights issue. This adjustment to the Conversion rights will be effected in a manner which will not result in any additional benefits being conferred on the Noteholder which are not conferred on the Shareholders (subject to the provisions with respect to rounding of entitlements as specified in the conditions of issue of the Convertible Notes). In all other respects the terms for Conversion of the Convertible Notes shall remain unchanged.</p> <p>The Conversion rights of the Convertible Notes will be adjusted in the case of a return of capital or a bonus issue or for any capital reconstruction prior to the Conversion Date, in the manner specified below.</p>
<b>Voting</b>	<p>Except in the circumstances required by the Listing Rules or the Corporations Act, Noteholders will not be entitled to receive notice of or to vote at general meetings of AFF.</p>
<b>Adjustments for reorganisation of capital</b>	<p>Subject to the Listing Rules the following apply:</p> <p>(a) If there is a reorganisation (including consolidation, subdivision, reduction or return) of the issued capital of AFF prior to the Conversion Date, the number of Shares issued on Conversion shall be adjusted in the same proportion as the issued capital of AFF is reorganised. The adjustment will be effected in a manner which will not result in any additional benefits being conferred on the Noteholder which are not conferred on the Shareholders (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of Shareholders approving the reconstruction of capital). In all other respects the terms for Conversion of the Convertible Notes shall remain unchanged.</p> <p>(b) The adjustments in this section shall be determined by the Auditor acting as an expert and not as an arbitrator.</p>

<b>Bonus Issues</b>	<p>If AFF makes a pro rata bonus issue to Shareholders during the issue period of the Convertible Notes and prior to the Conversion Date and the Noteholder subsequently Converts the Convertible Notes, then at the time of Conversion, AFF must issue to the Noteholder (on terms and conditions that are the same as or are not more favourable to the Noteholder than the terms and conditions on which the bonus shares were allotted to the Shareholders) that number of bonus shares to which the Noteholder would have been entitled if the Convertible Notes had been converted immediately prior to the making of each bonus issue by AFF.</p> <p>If a proportion of the Convertible Notes are converted by a Noteholder, then that proportion of the relevant number of bonus shares will be issued.</p> <p>In respect of any reorganisation of capital which would have applied to Shares issued under a pro rata bonus issue to which this section applies, the provisions relating to the reorganisation shall apply with necessary changes to any Shares issued as bonus shares pursuant to this section.</p>
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This is a summary only of the terms of the Notes, and is qualified in all respects by the terms of the Convertible Note Trust Deed, a more detailed summary of which is set out in section 4.

## 1.2 Impact of the Offer on Capital Structure

AFF currently has 154,069,827 Shares on issue.

The Company will issue up to 1,556,387 Convertible Notes, at the Issue Price of \$10.00 to raise a maximum of \$15,563,870 under this Prospectus.

The number of Shares that will be issued on Conversion of Convertible Notes depends on the number of Convertible Notes sought to be converted by Noteholders before the Maturity Date. The maximum number of Shares that will be issued by the Company on Conversion of Convertible Notes is 42,064,600, unless the conversion rights are adjusted as provided in the terms of issue.

The Company has issued 5,280,265 options, each exercisable for one Share at an exercise price of 32 cents at any time up to 30 June 2006. The exercise of the Options and the issue of Shares will not result in an adjustment to the conversion rights of the Convertible Notes.

Noteholders will only be entitled to Convert their Convertible Notes in accordance with the Corporations Act. For example, any Noteholder with a substantial relevant interest in the Company must ensure that they comply with Chapter 6 of the Corporations Act on Conversion of Notes.

## 1.3 Financial summary

Section 2.4 of this Prospectus contains summary financial information for the Company, including:

- (a) the historical consolidated statement of financial position as at 30 June 2003 extracted from the audited financial statements; and
- (b) a pro forma consolidated statement of financial position that reflects the impact of the Offer together with:
  - (i) the issue of Shares to Namoi Cotton as consideration for the half share in the Ashley Gin;
  - (ii) the purchase of "The Glen"; and
  - (iii) other relevant events as specified in section 2.4,

had these transactions taken place at 30 June 2003.

## **1.4 Application for Convertible Notes**

An application for Convertible Notes can only be made by completing and lodging an Entitlement & Acceptance Form.

All applications must be for a minimum of 50 Convertible Notes and must be accompanied by payment in full of \$10.00 for each Convertible Note. Payments must be made in Australian dollars by cheque drawn and payable at any Australian bank. A guide for Shareholders on how to apply for Convertible Notes is set out in the instructions on the Entitlement & Acceptance Form.

Cheques should be made payable to 'Australian Food & Fibre Limited Notes Offer' and crossed 'Not Negotiable'. Brokerage or stamp duty is not payable by Shareholders. **AFF will not accept oversubscriptions.**

All completed Entitlement & Acceptance Forms and accompanying cheques should be sent in the reply paid envelope provided to:

**Computershare Investor Services  
Pty Limited**  
GPO Box 523  
Brisbane QLD 4001

**Telephone: 1300 552 270**

**no later than 5.00pm Brisbane time on Monday 1 December 2003.**

Lodgement of an Entitlement & Acceptance Form constitutes an irrevocable offer made in accordance with the provisions of this Prospectus.

If in any doubt as to how to deal with this Prospectus or to apply for Convertible Notes, Shareholders should consult their professional adviser.

## **1.5 Withdrawal**

The Directors may at any time decide to withdraw this Prospectus and the Offer.

If this Prospectus and the Offer are withdrawn for any reason, AFF will return all application money in accordance with the Corporations Act. Any interest earned on application money will belong to AFF.

## **1.6 Risks**

Shareholders should read this Prospectus in its entirety and, in particular, consider the risk factors that could affect the financial performance of AFF before deciding to apply. A summary of certain risks applying to an investment in the Convertible Notes is set out in section 2.5 of this Prospectus.

Shareholders should consider the risks in light of their personal circumstances (including financial and taxation issues) and seek professional advice.

## **1.7 Minimum entitlement**

To ensure that Shareholders have the opportunity to invest in a marketable parcel of Notes, the Directors have established a minimum entitlement of 50 Notes, reflecting an investment of \$500, irrespective of the number of Shares held at the Record Date.

To accept an entitlement and apply for Notes, Shareholders are required to apply for at least 50 Notes.

## **1.8 Acceptance of the Offer**

Eligible Shareholders may accept all or part of their entitlement, provided the acceptance is for at least 50 Notes (\$500).



Should you wish to only accept part of your entitlement, simply insert on the Entitlement & Acceptance Form the number of Notes you wish to accept and make payment at the rate of \$10 per Note applied for. The maximum number of Notes which you may apply for is set out on the Entitlement & Acceptance Form.

Cheques should be made payable to 'Australian Food & Fibre Limited Notes Offer' and crossed 'Not Negotiable'.

Further instructions on how to accept your entitlement are set out on the Entitlement & Acceptance Form.

## **1.9 Closing Dates**

A completed Entitlement & Acceptance Form, together with appropriate application moneys, must be lodged in the manner described on the Entitlement & Acceptance Form prior to 5.00pm Brisbane time on 1 December 2003, subject to the right of the Directors to extend the closing date.

## **1.10 Underwriting**

The Offer is not underwritten. Any entitlements not taken up will lapse.

## **1.11 Taxation**

Shareholders should consult their own professional tax adviser in relation to the taxation implications of subscribing for Notes under this Prospectus.

## **1.12 Stock Exchange Listing**

An application for admission of the Notes to quotation on the ASX will be made to ASX within 7 days after the date of this Prospectus. It is expected that allotment of the Notes and the dispatch of uncertificated holdings statements for the Notes will take place no more than 15 Business Days after the close of the Offer.

## **1.13 Market price of AFF Shares on ASX**

The highest and lowest closing sale prices for AFF Shares on ASX during the 3 months immediately preceding the date of this Prospectus, and the respective dates of those sales, were 33 cents on 1 October 2003 and 27 cents on 20 August 2003. The closing price for Shares on ASX on the last trading day prior to the date of this Prospectus was 32 cents.

The weighted average sale price for the Shares for the period from 14 October 2002 to 10 October 2003 was 28.3 cents.

## **1.14 Annual Report**

A summary of the Company's strategic focus, major activities and financial information is contained in the Annual Report. A full copy of the Annual Report has been lodged with ASIC. AFF will provide a copy of the Annual Report free of charge to anyone who asks for it during the term of this Prospectus.

## 2. PURPOSE AND EFFECT

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### 2.1 Purpose of Offer

As disclosed in the Annual Report, the Company is continuing with its strategy to expand its core businesses through acquisition.

In July 2003, the Company entered into a contract to purchase “The Glen”, a cotton farm adjoining “Milo” and “Newport” near Moree in North Western NSW. Settlement of that acquisition is scheduled for 31 December 2003.

The purpose of the Offer is to fund the acquisition of “The Glen” and the Directors consider that the Convertible Notes to be issued in accordance with the Offer are the most appropriate method of funding available to the Company. To the extent the Offer is not fully subscribed, the Directors intend to use existing bank facilities to complete the purchase of “The Glen”.

### 2.2 Principal effects

The principal effects on the Company of a fully subscribed Offer will be to:

- (a) provide funding to enable the acquisition of “The Glen”; and
- (b) maintain secured debt at the current level and ensure the Company’s Gearing and mix of short and long term debt is at a level acceptable to the Directors.

The principal effect on the capital structure of the Company is set out in section 2.3.

### 2.3 Effect on capital structure

Other than the impact of the application of AASB 1033: Presentation and Disclosure of Financial Instruments, as outlined in the notes below to the pro forma statement of financial position, there will be no effect on the capital structure of the Company until the Notes are converted in accordance with the terms and conditions of the issue.

Shares on issue at the date of this Prospectus	154,069,827
Options on issue at the date of this Prospectus	5,280,265
Notes offered under this Prospectus*	1,556,387
Amount to be raised under the Offer if all Notes taken up*	\$15,563,870
Number of Shares issued if all Notes converted into Shares*	42,064,600
Total Shares on issue if all Notes and Options are converted*	201,414,692

*\*Approximations only. Actual numbers are dependent on the number of Shareholders on the Record Date, the number of Notes taken up by Shareholders, and the number of Notes converted by Shareholders and Options exercised for Shares.*

## 2.4 Effect on Company's financial position

Set out below is a pro forma statement of financial position for the Company based on 30 June 2003 audited financial statements adjusted for the impact of the transactions referred to in the notes to these statements:

	AFF Audited Accounts <sup>1</sup>	Pro forma Accounts <sup>2</sup>
	\$'000	\$'000
<b>Current Assets</b>		
Cash assets	944	944
Receivables	9,626	11,503
Inventories	2,447	790
Self generating and regenerating assets	4,090	3,335
Other	1,258	1,258
<b>Total</b>	<b>18,365</b>	<b>17,830</b>
<b>Non-Current Assets</b>		
Investments accounted for using the equity method	2,118	2,118
Other financial assets	97	197
Property plant & equipment	96,569	115,495
Self generating and regenerating assets	12,014	12,014
<b>Total</b>	<b>110,798</b>	<b>129,824</b>
<b>Total Assets</b>	<b>129,163</b>	<b>147,654</b>
<b>Current Liabilities</b>		
Payables	2,667	2,667
Interest bearing liabilities	11,728	11,690
Provisions	178	178
<b>Total</b>	<b>14,573</b>	<b>14,535</b>
<b>Non-Current Liabilities</b>		
Interest bearing liabilities	33,803	47,979
Provisions	102	102
Deferred tax liabilities	2,846	2,846
<b>Total</b>	<b>36,751</b>	<b>50,927</b>
<b>Total Liabilities</b>	<b>51,324</b>	<b>65,462</b>
<b>Net Assets</b>	<b>77,839</b>	<b>82,192</b>
<b>Equity</b>		
Contributed equity	57,815	62,703
Reserves	10,518	10,518
Retained profits	9,506	8,971
<b>Total equity</b>	<b>77,839</b>	<b>82,192</b>
<b>Notes to the proforma statements of financial position</b>		
1.	As per the audited financial statement of the Company at 30 June 2003	
2.	Incorporates adjustments to take account of:	
(a)	Purchase of "The Glen" \$15,426,000 (includes stamp duty)	
(b)	Collection of proceeds from Notes issue of \$15,564,000	
(c)	AASB 1033 requires the issuer of a financial instrument that contains both a financial liability and an equity instrument to classify the instrument's component parts separately. The financial liability is a contractual obligation to deliver cash (interest payments and principal), and the equity instrument is a call option granting the holder the right for a specified period of time to convert into equity instruments of the issuer. Interest expense in relation to the Convertible Notes is recognised as the market interest rate for similar debt. The difference between the market interest rate and the coupon rate paid on the convertible debt is recognised as a liability.	
(d)	Further adjustment at Golden Mile Farms to carrying value of consumable self generating and regenerating assets recorded at 30 June 2003 of \$755,000.	
(e)	In accordance with the Shareholders resolution passed on 29 April 2003, the Company issued 10,000,000 Shares to Namcott Pty Ltd on 5 September 2003 (the nominee company of Namoi Cotton Co-operative Limited) in consideration of AFF receiving a 49% interest in Ashley Ginning Services, the owner and operator of Ashley Gin near Moree.	
(f)	The transaction costs representing direct legal and other fees associated with the establishment of the Notes has been treated as a borrowing cost and will be amortised over the 5 years life of the Notes.	
(g)	Recognition of the sale of the remaining Western Australian properties at a profit of approximately \$220,000.	

## **2.5 Principal risk factors associated with investing in Notes**

### **General market risks**

Shareholders should be aware that the ASX market price of the Company's securities may be influenced by a number of factors. General movements in local and international stock markets, exchange rates, prevailing economic conditions, investor sentiment and interest rates could all affect the market price of the Company's securities. These risks apply generally to any investment on ASX.

In addition to the general risks associated with investing in the stock market, there are risks specific to investing in any particular entity. If in doubt about the general or specific risks associated with the Company's securities, you should seek advice from your professional adviser.

### **Liquidity**

The market for Convertible Notes may be less liquid than the market for Shares.

### **Ranking**

AFF's Convertible Notes are debt instruments that are unsecured and subordinated to the Company's secured bank finance. Consequently, upon any winding up of AFF, Convertible Notes will rank behind secured and priority creditors of AFF, equally with all other unsecured creditors, but in priority to Shareholders to the extent of the face value of Notes and any accrued interest.

In the event of a shortfall of funds on a winding up, there is a risk that Noteholders will not receive a full return of their investment and any accrued interest.

### **Taxation Considerations**

It is important that Shareholders consider the tax implications of any investment in the Convertible Notes. Investors should consult with their own professional taxation adviser to obtain advice on the taxation implications of an investment in the Convertible Notes.

### **Company specific risks**

Shareholders would be aware that the Company's main businesses are:

- (a) the growing of citrus and mangos at Golden Mile Farms near Mundubbera in the Burnett Region of Central Queensland;
- (b) the growing of cotton and rotation crops allied to cotton growing at farms in the Moree district of North Western NSW; and
- (c) forestry investments.

Due to the Company's involvement in agriculture, it is exposed to various environmental factors which may affect the performance of its businesses. In particular, factors such as weather conditions (ie drought, floods), the outbreak of disease and other seasonal fluctuations may have an adverse impact upon the core businesses of the Company.

In addition, the Company's products are sold at market prices. The earnings of the Company will be affected by any movement in those market prices.

Interest payable on the Notes will be an additional cost to the Company. The impact of any reduction in earnings as a result of the risk factors described above will be increased as a result of the interest expense of the Notes.

The Company also faces similar risks associated with its pine forest investments. Pine forests are considered to be a longer term investment, where proceeds from clear felling arise at maturity but revenue is brought to account progressively in accordance with accounting standards adopted by the Company.

### 3. SIGNIFICANT DOCUMENTS

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The Directors consider that certain documents relating to the Company are significant to the Offer, the operations of AFF or are or may be relevant to Shareholders considering accepting their entitlement. A description of the significant documents, together with a summary of the more important details of each of those documents, is set out below.

#### 3.1 Convertible Note Trust Deed

The Convertible Note Trust Deed governs the terms and conditions on which the Notes are to be issued and is subject to the Corporations Act and the Listing Rules. The terms and conditions are set out in section 4.

#### 3.2 “The Glen” Acquisition Contract

AFF Properties Pty Limited (a wholly owned subsidiary of AFF) entered into a contract dated 9 July 2003 for the purchase of the property known as “The Glen” located at Ashley via Moree. The acquisition cost (including stamp duty) is \$15,426,000.

The property included in the purchase is:

- (a) freehold land of approximately 1841 hectares;
- (b) fixed improvements on the land;
- (c) plant and equipment;
- (d) 5 regulated river licences each for 972 megalitres per year; and
- (e) 1 unregulated licence for 482 megalitres per year.

A deposit of 20% of the purchase price has been paid under the contract and settlement of the balance is due on 31 December 2003.

AFF Properties Pty Ltd is currently in possession of the property, plant and equipment and is entitled to utilisation of the water for growing of crops pending settlement of the contract.

#### 3.3 Constitution

In addition to the Corporations Act and the general law, the Constitution governs the obligations and entitlements for Shares which are issued following the Conversion of the Convertible Notes.

## 4. TERMS OF CONVERTIBLE NOTES

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### 4.1 Issue Price

The Convertible Notes will:

- (a) be paid for in full on application; and
- (b) have an issue price of \$10 per Convertible Note ('Principal Amount').

### 4.2 Interest and Redemption on Maturity

- (a) AFF shall pay accrued interest in arrears on each relevant Interest Payment Date to those persons who are Noteholders on the last relevant Record Date before that Interest Payment Date.
- (b) For each Noteholder, interest accrues daily and, in the case of each Interest Period, the interest payable is calculated by:
  - (i) multiplying the Principal Amount of the Convertible Notes held by that Noteholder on the relevant Record Date by the Interest Rate;
  - (ii) dividing the resultant amount by 365;
  - (iii) multiplying the resultant amount by the actual number of days in the applicable Interest Period; and
  - (iv) rounding the resultant amount down to the nearest cent.
- (c) AFF's certificate as to the amount of interest that accrues and is payable on Convertible Notes is (in the absence of manifest error) sufficient evidence of the amount of interest due unless proven wrong.
- (d) Unpaid interest on the Convertible Notes shall:
  - (i) remain owing and not form part of the principal owing to the Noteholder; and
  - (ii) bear interest at the same rate as interest is payable on the Principal Amount calculated daily and payable on each Interest Payment Date on Maturity Date.
- (e) AFF shall redeem all issued and uncanceled Convertible Notes on the Maturity Date. The Principal Amount on each Convertible Note to be redeemed on the Maturity Date shall be repaid in full by the Company on the Maturity Date, (along with interest payable in accordance with section 4.2(a)) in accordance with and subject to the Conditions to the person who is the Noteholder on the relevant Record Date.

### 4.3 Early Redemption for Takeover Event or Tax Event

If a Takeover Event or Tax Event occurs, AFF may in its absolute discretion and subject to the Noteholders' right to convert in section 4.5, elect to redeem all or some (pari passu) of the Convertible Notes on issue prior to the Maturity Date:

- (a) with effect on the Early Redemption Date;
  - (b) by payment of an amount equal to the Early Redemption Amount in respect of each Convertible Note redeemed; and
  - (c) along with payment of any accrued and unpaid interest up to the Early Redemption Date,
- provided that the AFF has made an Early Redemption Announcement within 15 days after the Takeover Event or after determining that a Tax Event has occurred, and not less than 30 days prior to the proposed Early Redemption Date.

### 4.4 Early Redemption Announcement

An Early Redemption Announcement must:

- (a) be made to ASX;
- (b) state that AFF will redeem the Convertible Notes, the Early Redemption Amount to be repaid, the basis upon which the Early Redemption Amount is calculated and the number of Convertible Notes to be redeemed;
- (c) state the Early Redemption Date; and
- (d) otherwise comply with any requirements of the Listing Rules and the Corporations Act as to contents and timing.

#### **4.5 Conversion**

- (a) AFF must send an Entitlement Notice to each Noteholder not more than 30 Business Days before and not less than 20 Business Days before each Conversion Date, within 15 days after a Takeover Event (and not otherwise where a Conversion Date occurs in a Takeover Period), or at such other times as are permitted by the Listing Rules.
- (b) Subject to sections 4.5(c) and 4.5(d), a Noteholder may deliver a Conversion Notice (which shall be irrevocable) to AFF at the address of the Register requiring the conversion of all of the Principal Amount of and rights attaching to a Convertible Note (other than payment of interest) towards payment in full of the subscription price for the number of ordinary shares determined in accordance with these sections including sections 4.8 and 4.9 at any time during the period of 15 calendar days after the date of an Entitlement Notice (the **Conversion Option**).
- (c) A Noteholder may deliver a Conversion Notice in relation to all or some of its holding of Convertible Notes. Where a Noteholder delivers a Conversion Notice relating to only part of its holding of Convertible Notes, the Conversion Notice must relate to at least 50 Convertible Notes and in integral multiples of 50 Convertible Notes.
- (d) Where the Conversion Date is a Business Day during a Takeover Period, then the Conversion Notice must be given on a Business Day before the last day of the Takeover Period.
- (e) On the occurrence of a Takeover Event, AFF shall give notice of the occurrence of that event to the Trustee and to all Noteholders as soon as reasonably practicable and, in any event, within 5 Business Days of the date of occurrence of the Takeover Event.

#### **4.6 Issue of Shares**

Within 5 Business Days of the Conversion Date, AFF must issue to the Noteholder that number of ordinary shares in the capital of AFF calculated in accordance with section 4.8 (subject to any adjustments in accordance with section 4.9 in accordance with the Election Notice and in full satisfaction of the Principal Amount otherwise owing on the Convertible Notes which are the subject of the Conversion Notice.

#### **4.7 Ranking of Shares**

The Shares in the capital of AFF issued upon the conversion shall rank equally in all respects with all issued Shares in the capital of AFF at the Conversion Date, except that they will not be entitled to any dividend that has been declared or determined but not paid as at the Conversion Date.

#### **4.8 Number of ordinary shares issued on conversion**

Subject to section 4.9, where AFF elects to issue Shares on receipt of a Conversion Notice, a Noteholder on the Conversion of Convertible Notes shall be entitled to 27.027 Shares in the capital of AFF for every Convertible Note converted. Fractional entitlements to Shares are rounded up to the next whole number.

#### **4.9 Adjustments**

Subject to the Listing Rules the following applies:

- (a) If there is a reorganisation (including consolidation, subdivision, reduction or return) of the issued capital of AFF prior to the Conversion Date, the number of ordinary shares in the capital of AFF issued on Conversion shall be adjusted in the same proportion as the issued capital of AFF is reorganised and in a manner which will not result in any additional benefits being conferred on the Noteholder which are not conferred on the shareholders of AFF, (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of shareholders approving the reconstruction of capital) but in all other respects the terms for Conversion of the Convertible Notes shall remain unchanged.
- (b) If there is an offer of ordinary shares made within the terms of section 611 Item 10 of the Corporations Act prior to the Conversion Date ('Rights Issue'), the number of ordinary shares in the capital of AFF issued on Conversion shall be adjusted in proportion to the discount to the weighted average share price given to shareholders accepting the entitlement under the Rights Issue, and in a manner which will not result in any other additional benefits being conferred on the Noteholder which are not conferred on the shareholders of AFF, (subject to the same provisions with respect to rounding of entitlements as specified in these conditions), but in all other respects the terms for Conversion of the Convertible Notes shall remain unchanged.
- (c) The adjustments in this section 4.9 shall be determined by the Auditors acting as an expert and not as an arbitrator and the provisions of any applicable arbitration legislation are excluded to the fullest extent possible.
- (d) The determination of the Auditor will be final and binding subject only to any adjustment necessary to correct the manifest error of objective fact or calculation apparent on the face of their determination.
- (e) All costs and expenses of the Auditors must be paid by AFF.

#### **4.10 Bonus issues**

If the Noteholder exercises the Conversion Option and the Company at any time during the period subsequent to the issue of the Convertible Note to a Noteholder and prior to the Conversion Date shall have made a pro rata bonus issue to all its ordinary shareholders, then the following provisions shall apply:

- (a) AFF shall on issuing the ordinary shares in accordance with section 4.8 on exercise of the Conversion Option, issue (on terms and conditions that are the same as or correspond with, or are no more favourable to the Noteholder than, the terms and conditions on which the bonus shares were allotted to the ordinary shareholders of the Company) to the Noteholder that number of bonus shares to which the Noteholder would have been entitled if that proportion of the Principal Amount of those Convertible Notes had been converted immediately prior to the making of each bonus issue by the Company; and
- (b) in respect of any reorganisation of capital referred to in condition (a) which would have applied to ordinary shares issued under a pro rata bonus issue to which this section 4.10 applies, the provisions of condition 4.9 shall apply with necessary changes to any ordinary shares issued as bonus shares pursuant to this section 4.10.

#### **4.11 Register conclusive**

- (a) AFF must maintain or cause to be maintained a Register of Noteholders, which includes the information required under this Deed and the Corporations Act in relation to the Noteholders and the Convertible Notes.
- (b) Subject to section 4.11(c), for the purposes of Conversion:
  - (i) the Register shall be conclusive of the identity of the Noteholder entitled to deliver a Conversion Notice in accordance with section 4.5;
  - (ii) AFF shall not be affected by notice of any transfer of Convertible Notes where the transfer has not been registered on or before the Conversion Date;



- (iii) the Register shall be conclusive as to the identity of the Noteholder on the Conversion Date for the purpose of determining who shall be issued ordinary shares pursuant to section 4.6; and
  - (iv) AFF shall have no responsibility, duty or liability to issue ordinary shares to any person other than to the Noteholder shown on the Register at the relevant Conversion Date.
- (c) If the Noteholder shown on the Register at the relevant Conversion Date is different from the Noteholder giving the Conversion Notice, that Conversion Notice shall be disregarded and shall have no effect for the purpose of section 4.5.

#### **4.12 Purchase by AFF**

- (a) Provided that no event of default has occurred or is continuing, AFF may purchase all or any of the Convertible Notes on-market or by tender or by private contract at any price;
- (b) Any Convertible Notes purchased by AFF shall be cancelled and may not be resold or reissued.

#### **4.13 Power of the Noteholders to direct Trustee**

Upon the occurrence of an event of default, the Noteholders shall have the following powers exercisable by Extraordinary Resolution:

- (a) to direct the Trustee to commence proceedings for the winding up of the Company or take such other action relating to enforcement of payment of Moneys Owed to Noteholders (including without limitation issuing Redemption Notices requiring the Company to redeem the Notes) and deal with the proceeds in accordance with the Liquidation clause of the Convertible Note Trust Deed; and
- (b) to direct the Trustee to prove in any Liquidation of the Company (irrespective of when that Liquidation is commenced) and deal with the proceeds in accordance with the Liquidation clause of the Convertible Note Trust Deed..

#### **4.14 Record Date**

The Record Date:

- (a) for the making of interest payments shall be 7 calendar days (excluding the Interest Payment Date itself) before the Interest Payment Date; and
- (b) for the making of any other payment (including payment of the Principal Amount on the Maturity Date or the Early Redemption Amount on the Early Redemption Date) shall be 7 calendar days (excluding the date of payment) before the Maturity Date, the Early Redemption Date or other payment date; and
- (c) for issuing ordinary shares in AFF after a Conversion Date shall be the Conversion Date; or, in each case, such other date required by the Listing Rules or the SCH Business Rules.

#### **4.15 Method of payment**

- (a) Subject to sections 4.5 to 4.9 and 4.15(c), any interest or other monies payable on or in respect of any Convertible Notes must be paid in Australian dollars only:
  - (i) by payment of cheque marked 'not negotiable' and sent through the post to the address of the Noteholder on the Register or other person entitled thereto, or where the Convertible Notes are held by joint Noteholders to the address of the Noteholder whose name stands first on the Register in respect of those Convertible Notes; or
  - (ii) by deposit, including by way of telegraphic transfer, to such account with any ADI (as that expression is defined in the Banking Act 1959 (Cth)) in Australia as the Noteholder (or, where the Convertible Notes are held by joint Noteholders, the

Noteholder whose name stands first on the Register), by written notice to AFF may direct; or

- (iii) by any other method of transferring money approved by the Trustee from time to time.
- (b) Every cheque or payment referred to in section 4.15(a)(i) will be sent at the risk of the person entitled to the moneys represented by the cheque and payment will be deemed to have been made when the cheque is posted or the deposit is made in accordance with this clause. The cost of any replacement cheque shall be at the expense of the Noteholder. The Noteholder will be wholly responsible for any account details provided to AFF or any error or omissions made by AFF in respect of that payment. Any cheque returned to AFF, or any cheque not presented by a Noteholder, shall be treated by AFF as unclaimed money.
- (c) If so requested by the Trustee, AFF must make any payments payable to the Trustee under this Deed:
  - (i) at a place in Australia and in a manner reasonably required by the Trustee; and
  - (ii) in immediately available funds and without setoff, counterclaim, conditions or, unless required by law or the provisions of this deed, deductions or withholdings.

#### **4.16 No gross up**

If AFF is required by law to deduct or withhold Taxes from any payment to the Trustee or a Noteholder it must:

- (a) make the required deductions and withholdings;
- (b) pay in accordance with the relevant law the full amount deducted or withheld;
- (c) deliver to the Trustee or the Noteholder (as the case may be) the receipt for each payment; and
- (d) reduce the amount of the payment due to the Trustee or the Noteholder (as the case may be) by an amount equal to the deduction or withholding and the payment of such reduced amount shall be in full satisfaction of AFF's relevant payment obligation.

#### **4.17 Joint Noteholders**

In the case of Convertible Notes being held by more than one person, the following shall apply:

- (a) if several persons are entered in the Register as joint Noteholders in respect of a Convertible Note the receipt by any one of such persons for the payment or satisfaction of any Moneys Owing from time to time payable or repayable to the joint Noteholders will be an effective discharge by the Company of its obligations in relation to that Convertible Note;
- (b) AFF will not be bound to register more than three persons as the joint holders of any Convertible Notes subject to section 4.19(k);
- (c) subject to the sections, all of the joint Noteholders in respect of any Convertible Note must join in any:
  - (i) application to transfer the relevant Convertible Note from one Register to another Register; or
  - (ii) transfer of the relevant Convertible Note.
- (d) in the case of the death of any one of the joint Noteholders, the survivors will be the only persons recognised by AFF as having any title to or interest in the Convertible Notes registered in their names jointly.

#### **4.18 Non-resident Noteholders**

Where Convertible Notes are held by, or on behalf of, a person resident outside the Commonwealth of Australia, then, despite anything to the contrary contained in or implied by the Conditions, it is a condition precedent to any right of the Noteholder:

- (a) to receive payment of the Principal Amount; or
- (b) to receive payment of any interest on the Convertible Notes,

that all necessary Authorisations (if any) and any other statutory requirements which may then be in existence are obtained at the cost of the Noteholder and satisfied, provided that AFF acknowledges that section 128F of the Income Tax Assessment Act 1936 has been satisfied in respect of the Convertible Notes.

#### **4.19 Transfer of Convertible Notes**

- (a) A Noteholder is entitled to transfer a Convertible Note by:
  - (i) an instrument in writing in any usual or common form or in such other form as AFF may approve; or
  - (ii) a proper ASTC transfer or any other method of transferring or dealing in securities introduced by ASX or operated in accordance with the SCH Business Rules or Listing Rules, and in any such case recognised under the Corporations Act.
- (b) If AFF participates in a computerised or electronic securities transfer, settlement and registration system recognised by or permitted by the Corporations Act:
  - (i) AFF must comply with and give effect to the rules of that system; and
  - (ii) the only document required to be completed and delivered by AFF in relation to a transfer of the Convertible Notes is such document (if any) as those rules require to be so completed and delivered.
- (c) A written transfer instrument must be forwarded for registration to the address of the Register and together with such other evidence as the Directors may require to prove:
  - (i) the title of the transferor, or the Noteholder's right to transfer the Convertible Notes;
  - (ii) the due execution of the transfer; and
  - (iii) the due compliance with the provisions of any relevant statute relating to stamp duties, and if satisfied with such evidence and that the transferor has otherwise complied with this section 4.19, AFF will register the transfer and recognise the transferee as the Noteholder entitled to the Convertible Notes comprised in the transfer.
- (d) A written transfer instrument must be:
  - (i) executed by the transferor;
  - (ii) executed by the transferee; and
  - (iii) endorsed or accompanied by an instrument executed by the transferee to the effect that the transferee agrees to accept the Convertible Notes subject to the terms and conditions on which the transferor held them, to become a Noteholder and to be bound by this deed.

Subject to the Corporations Act, the written transfer instrument may comprise two or more documents.
- (e) Except in the case of a proper ASTC transfer, a transferor of Convertible Notes remains the owner of the Convertible Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Convertible Notes, and the transferee of Convertible Notes on being entered in the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Noteholder under this deed.
- (f) Subject to the Listing Rules and the Conditions, the Directors of AFF may in their absolute discretion refuse to register:
  - (i) any transfer that is not in accordance with the Conditions; or

- (ii) any transfer of a Convertible Note in favour of a person who is known to AFF to be a minor or of unsound mind, but AFF will not be bound to enquire as to the age or soundness of mind of any transferee.

The Directors shall not be bound to give any reason for refusing to register any transfer and their decision shall be final, conclusive and binding.

- (g) No instrument of transfer will be registered by AFF during any period when the Register is closed.
- (h) AFF must:
  - (i) register all valid, registrable transfer forms (if any) and transfers (if any); and
  - (ii) mark or note transfer forms (if any), without charge.
- (i) Any power of attorney granted by a Noteholder may be lodged, produced or exhibited to AFF or any of its officers and will, as between AFF and the Noteholder who granted the power of attorney:
  - (i) be taken and deemed to continue and will remain in full force and effect; and
  - (ii) may be acted upon, unless express notice in writing of its revocation or of the death of the Noteholder who granted it is lodged with AFF.
- (j) All instruments of transfer which are registered or surrendered to AFF will remain the property of AFF and will be retained by it for a period of 3 years or such minimum period or in such alternative form as may be permitted by law after receipt. However, any instrument of transfer which the Company declines to register will (except in the case of fraud or suspected fraud) be returned on demand to the person depositing the instrument.
- (k) No transfer of a Convertible Note may be made to more than 3 transferees jointly unless the transferees are the legal personal representatives or trustees of a deceased Noteholder.

#### **4.20 Form and Title**

- (a) The Convertible Notes are constituted by, and owing under, this Deed. Each entry in the Register constitutes a separate and individual acknowledgment to the relevant Noteholder of its entitlement to the Convertible Notes.
- (b) Entries in the Register in relation to a Convertible Note constitute conclusive evidence that the person so entered is the registered holder of the Convertible Note, subject to rectification for fraud or manifest error.

#### **4.21 Certificates**

No certificate or other evidence of title will be issued by or on behalf of the Company to evidence title to a Convertible Note other than notices required under the Chess security transfer system, unless AFF determines that certificates should be made available or it is required to do so pursuant to any applicable law or regulation.

#### **4.22 Indemnity to AFF**

- (a) Whenever in consequence of:
  - (i) the death of a Noteholder;
  - (ii) the non-payment of any income Tax or other Tax payable by a Noteholder;
  - (iii) the non-payment of any stamp or other duty by the legal personal representatives of a Noteholder or his estate; or
  - (iv) any other act or thing in relation to a Convertible Note or a Noteholder,any law for the time being of any other country or place, in respect of that Convertible Note, imposes or purports to impose any liability of any nature whatever on AFF to make any payments to any Governmental Agency, AFF will in respect of that liability be indemnified by that Noteholder and the Noteholder's legal personal representatives and any monies paid

by AFF in respect of that liability may be recovered by action from that Noteholder and/or the Noteholder's legal personal representatives as a debt due to AFF and AFF will have a lien in respect of those monies upon the Convertible Notes held by that Noteholder or his legal personal representatives and upon the principal and interest payable in respect thereof.

- (b) Nothing in this section 4.22 will prejudice or affect any right or remedy which any such law may confer or purport to confer on AFF.

#### **4.23 Deceased or insolvent Noteholders**

The legal personal representatives of a deceased Noteholder (not being one of joint Noteholders) will be the only persons recognised by AFF as having any title to that Noteholder's Convertible Notes. Any person becoming entitled to Convertible Notes in consequence of the death or liquidation of any Noteholder may, on producing such evidence of that person's title as the Directors think sufficient, be registered as the holder of the Convertible Notes or, subject to the preceding Conditions of the Convertible Notes as to transfer, may transfer those Convertible Notes. The Directors will be at liberty to retain the principal and interest and any other monies payable in respect of any Convertible Notes which any person under this Condition is entitled to or to transfer until such person is registered or has duly transferred the Convertible Notes in accordance with these Conditions of the Convertible Notes.

## 5. ADDITIONAL INFORMATION

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### 5.1 Continuous Reporting and Disclosure Obligations

This Prospectus is issued pursuant to section 713 of the Corporations Act as a prospectus for the offer of continuously quoted securities.

The Company is a "disclosing entity" for the purposes of the Corporations Act and as such is subject to regular reporting and disclosure obligations. Specifically, as a listed company, AFF is subject to the Listing Rules which require continuous disclosure of any information the Company has to the ASX which a reasonable person would expect to have a material effect on the price or value of its Shares.

The ASX maintains files containing publicly disclosed information about all listed companies. The Company's file is available for inspection at ASX in Brisbane during normal working hours. Information about the Company and its announcements can also be found at [www.aff-limited.com.au](http://www.aff-limited.com.au) and by following the prompts.

In addition, copies of documents lodged with ASIC in relation to the Company may be obtained from, or inspected at, an office of ASIC.

The Company will provide free of charge, to any person who requests it during the application period under this Prospectus, a copy of the Company's audited financial statements for the financial year ended 30 June 2003 and any continuous disclosure notices lodged by the Company after the lodgment of the Annual Report to the date of this Prospectus. Shareholders are entitled to inspect the following documents without charge during normal office hours at the registered office of AFF at Level 4 National Bank House, 255 Adelaide Street, Brisbane, Qld by arrangement with the Company Secretary:

- (a) each of the significant documents described in section 3; and
- (b) the Directors' consents.

### 5.2 Consents and Disclaimers of Responsibility

Each of the Directors has consented to the lodgment of this Prospectus with ASIC.

McCullough Robertson has given, and has not withdrawn, its written consent to being named as Lawyers to the Offer in the form and context in which it is named. McCullough Robertson has not caused or authorised the issue of the Prospectus and takes no responsibility for any part of the Prospectus.

Ernst & Young has given, and has not withdrawn, its written consent to the issue of this Prospectus with the inclusion of the Company's audited and pro forma statements of financial position for the financial year ended 30 June 2003 in the form and context in which they are included and have also consented to being named in this Prospectus as Auditor. Ernst & Young has not caused or authorised the issue of this Prospectus and takes no responsibility for any part of the Prospectus.

Computershare Investor Services Pty Limited has given, and has not withdrawn, its written consent to being named in this Prospectus as share registrar for the Company in the form and context in which it is named. Computershare Investor Services Pty Limited has not caused or authorised the issue of this Prospectus and takes no responsibility for any part of the Prospectus.

The Public Trustee of Queensland has given, and has not withdrawn, its written consent to being named in this Prospectus as Trustee for the Noteholders in the form and context in which it is named. The Public Trustee of Queensland has not caused or authorised the issue of this Prospectus and takes no responsibility for any part of the Prospectus.

### 5.3 Experts and Advisers Interests

Other than as set out below or elsewhere in this Prospectus, no expert or any firm in which any expert is a partner has, or has had in the two years before lodgement of this Prospectus, any interest in the promotion of, or in any property proposed to be acquired by AFF and no amounts, whether in cash or shares or otherwise, have been paid or agreed to be paid to any expert (or to any firm in which he or she is or was a partner) for services rendered by the expert or the firm in connection with the promotion, or was a director of AFF. No form of payment of any kind will be made or agreed to be made to any such expert or firm other than in cash.

McCullough Robertson has acted as Lawyers to the Offer and has performed certain work in relation to preparation of this Prospectus and due diligence enquiries, for which a maximum amount of \$45,000 exclusive of GST has been paid or has been agreed to be paid.

Ernst & Young has provided taxation advice and corporate financial services in relation to the Offer, for which a maximum amount of \$10,000 exclusive of GST has been paid or has agreed to be paid.

Computershare Investor Services Pty Limited has acted as share registrar to the Offer and will be paid fees by the Company for services provided.

The Public Trustee of Queensland has agreed to be the Trustee for the Noteholders and will be paid approximately \$10,000 per annum by the Company for services provided.

### 5.4 Expenses of the Offer

All expenses connected with the Offer are payable by AFF, including legal fees, share registry fees, printing costs and other miscellaneous expenses. These expenses are estimated at \$100,000.

### 5.5 Interests of Directors

#### Shareholdings

The Directors of AFF, or their associates, have a beneficial interest in the following shares in AFF:

Director	Shares	Options	Entitlement to Notes offered under this Prospectus
DW Robinson	46,625,425	1,958,458	466,255
MJ Millner	205,715	2,501	2,058
SC Gregory	79,920	Nil	800

It is the intention of the interests associated with David Robinson, Michael Millner and Stuart Gregory to take up their entitlement to Notes offered under this Prospectus.

Mr Gregory is currently the Chief Executive of McCullough Robertson, who are the Company's solicitors, and who have assisted the Company in the preparation of this Prospectus.

### 5.6 Payments to Directors

The Constitution of AFF provides that the Directors may be paid, as remuneration for their services, a sum determined from time to time by AFF's Shareholders in general meeting, with that sum to be divided amongst the Directors in such manner and proportions as they agree. As disclosed in the Annual Report, the fees (including superannuation) paid to Directors to 30 June 2003 was \$220,275.

## 6. DIRECTORS' STATEMENT

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The Directors report that, after due enquiry by them, they have not become aware of any circumstances which, in their opinion, will materially affect the assets and liabilities, financial position and performance, profits and losses or the prospects of AFF other than as disclosed in this Prospectus. The Directors have authorised the issue of this Prospectus.

Dated 22 October 2003

*(Signed DC Mackenzie)*

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Signed for and on behalf of the Company  
DC Mackenzie



## 7. GLOSSARY

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<i>\$</i>	Australian dollars
<i>Annual Report</i>	The Annual Report of the Company for the financial year ended 30 June 2003 which includes audited financial statements for the financial year ended 30 June 2003 and the auditor's report which was lodged with ASX and ASIC on 26 September 2003 and will be distributed to shareholders on 29 October 2003
<i>ASIC</i>	Australian Securities & Investments Commission
<i>ASX</i>	Australian Stock Exchange Limited ABN 98 008 624 691
<i>Board</i>	the board of directors of AFF
<i>Business Day</i>	a day on which ASX is open for trading in Brisbane
<i>Closing Date</i>	the date on which the Offer closes, being 1 December 2003. This date may be varied without prior notice by AFF
<i>Company or AFF</i>	Australian Food & Fibre Limited ABN 88 077 983 370
<i>Conditions</i>	the terms and conditions applicable to Notes, including the terms and conditions set out in Schedule 1 to the Deed, which are set out in section 4 of the Prospectus
<i>Consolidated Group</i>	the Company and all of its Subsidiaries
<i>Constitution</i>	the Constitution of the Company
<i>Conversion</i>	conversion of the Notes into Shares of the Company in accordance with section 4.5 of the Prospectus
<i>Conversion Date</i>	where a Conversion Notice is given under section 4.5: (a) an Interest Payment Date; (b) the Maturity Date; or (c) any date during a Takeover Period
<i>Conversion Notice</i>	a notice in the form specified in the Deed which may be given by a Noteholder to the Company pursuant to section 4.5(b)
<i>Conversion Option</i>	the option conferred by section 4.5(b) on the Noteholder to apply all or part of the redemption proceeds towards subscription for Shares in the Company in full satisfaction of the Principal Amount otherwise owing on the Note
<i>Conversion Rate</i>	the number of Shares to be issued to Noteholders on conversion of each Note, determined in the manner specified in section 4.5
<i>Corporations Act</i>	the <i>Corporations Act</i> 2001
<i>Deed or Trust Deed or Note Trust Deed</i>	the Convertible Note Trust Deed (including the terms and conditions set out in Schedule 1 to the Deed) and any document or documents supplemental to the Deed or executed pursuant to the Deed
<i>Directors</i>	the directors of AFF

<i>Early Redemption Amount</i>	<p>in relation to a Note on any day, the greater of:</p> <ul style="list-style-type: none"> <li>(a) the Principal Amount of that Note (plus any interest accrued but unpaid on that Note up to and including the Early Redemption Date); and</li> <li>(b) the volume weighted average price of that Note during the 10 Business Days prior to the occurrence of the relevant Takeover Event or Tax Event (the Calculation Period), except that this alternative shall not apply where: <ul style="list-style-type: none"> <li>(i) the total number of Notes sold by way of on-market transactions on ASX in the Calculation Period is less than 10% of the total number of Notes sold by way of on-market transactions on ASX in the 10 Business Days prior to the Calculation Period; or</li> <li>(ii) on any Business Day during the Calculation Period the Notes are suspended or otherwise not tradeable on-market on ASX</li> </ul> </li> </ul>
<i>Early Redemption Announcement</i>	an announcement of an early redemption by the Company in accordance with section 4.4
<i>Early Redemption Date</i>	the date specified in an Early Redemption Announcement as the date on which Notes are to be redeemed by the Company which must not be later than 90 days after the Early Redemption Announcement
<i>Entitlement &amp; Acceptance Form</i>	the Entitlement & Acceptance Form accompanying this Prospectus
<i>Entitlement Notice</i>	a notice from the Company to each Noteholder, setting out the entitlements of each Noteholder and the information required under the Listing Rules
<i>Funding Facility</i>	the funding facility established between the Company and the National Australia Bank Limited under an agreement dated 28 June 2001 and variations thereto dated 15 December 2001, 10 December 2002, 20 January 2003 and 1 September 2003
<i>Gearing</i>	the level of interest bearing debt compared to total assets
<i>Interest Payment Date</i>	30 June 2004 and the last day of each subsequent Financial Half Year until the Maturity Date and includes the Maturity Date (except that where there is a Conversion or a Redemption of the Notes under section 4.4, the Conversion Date or the Early Redemption Date (as the case may be) shall be the final Interest Payment Date in respect of the Notes Converted or Redeemed)
<i>Interest Period</i>	<p>in relation to a Note, the period from (and including) the Issue Date to (but excluding) the first Interest Payment Date and thereafter means:</p> <ul style="list-style-type: none"> <li>(a) where there is a Conversion Date or where the Notes are redeemed under section 4.4 (as the case may be), the period from (and including) the preceding Interest Payment Date to (and excluding) the Conversion Date or the Early Redemption Date (as the case may be);</li> <li>(b) the period from (and including) the preceding Interest Payment Date to (but excluding) the following Interest Payment Date; or</li> <li>(c) the period from (and including) the preceding Interest Payment Date to (but excluding) the Maturity Date</li> </ul>
<i>Interest Rate</i>	4% per annum

<i>Issue Date</i>	the date the Notes are issued, currently anticipated to be 28 November 2003
<i>Issue Price</i>	\$10 per Convertible Note
<i>Listing Rules</i>	Listing rules of ASX.
<i>Liquidation</i>	includes winding up, dissolution, deregistration, administration, amalgamation, receivership, reconstruction, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy
<i>Liquidator</i>	means the liquidator, provisional liquidator, trustee, administrator, manager, receiver, receiver and manager or other officer – who is appointed to administer or implement the Liquidation
<i>Maturity Date</i>	the Business Day immediately before the 5 <sup>th</sup> anniversary of the Issue Date
<i>Notes or Convertible Notes</i>	Convertible Notes of the Company issued under this Prospectus
<i>Noteholder</i>	in relation to a Note means the person entered in the Register as the holder of the Note
<i>Offer</i>	the non-renounceable offer of up to 1,556,387 Notes on the basis of 1 Note for every 100 Shares held as at the Record Date at an Issue Price of \$10 for each Note
<i>Options</i>	means the options described in section 1.2 of the Prospectus
<i>Principal Amount</i>	in relation to each Note, the nominal principal amount of such Note recorded in the Register (which unless otherwise specifically agreed shall equal the Issue Price)
<i>Prospectus</i>	this prospectus
<i>Record Date</i>	3 November 2003, or such other date as may be specified by the Company
<i>Redemption</i>	means redemption by the Company of all or some of the Notes then outstanding in accordance with the Conditions
<i>Redemption Amount</i>	of a Note means the Principal Amount of the Note
<i>Redemption Notice</i>	the notice which may be given by the Trustee pursuant to an exercise of its rights under the Note Trust Deed
<i>Register</i>	a register of holders of Notes established and maintained by the Company and includes any Clearing House Electronic Sub-Register System sub-register (if applicable)
<i>SCH Business Rules</i>	the Securities Clearing House Business Rules approved under the <i>Corporations Act</i>
<i>Shareholders</i>	holders of Shares in AFF
<i>Shares</i>	the fully paid ordinary shares in AFF
<i>Subsidiary</i>	has the meaning given to it in the <i>Corporations Act</i>
<i>Takeover Event</i>	<ul style="list-style-type: none"> <li>(a) announcement of a takeover bid under which the bidder proposes to obtain voting power in the Company of 50% or more; or</li> <li>(b) announcement to ASX of a scheme of arrangement or a proposal for the reduction of share capital which, if effective, would result in a person obtaining voting power in the Company of 50% or more,</li> <li>(c) whether or not the bidder or person obtaining voting power already has voting power in the Company of 50% or more</li> </ul>

*Takeover Period*

the period of time:

- (a) in the case of a takeover bid, commencing on the announcement of the bid and ending on the day on which the bid becomes unconditional; and
- (b) in the case of a scheme of arrangement, commencing on the announcement of the scheme and ending on the day on which the Court makes an order approving the scheme;
- (c) in the case of any other Takeover Event, commencing on the announcement of the Takeover Event and ending on the day on which the Takeover Event takes effect

*Tax*

includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Government Agency, and any related interest, penalty, charge, fee or other amount and includes GST

*Tax Event*

occurs if the Directors resolve on reasonable grounds (having obtained an opinion from reputable legal counsel or tax adviser) that a change in any taxation law, interpretation or ruling issued by any relevant governmental body has occurred (or is announced) and that change will materially increase the net costs to the Company of having the Notes on issue (having regard, without limitation, to any tax deductions available to the Company in connection with the payment of interest)

# TRUST DEED

Made on 21 October 2003

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BETWEEN      **AUSTRALIAN FOOD & FIBRE LIMITED ABN 88 077 983 370** of Level 4,  
National Bank House, 255 Adelaide Street, Brisbane in the State of Queensland  
(**'Company'** or **'AFF'**)

AND            **THE PUBLIC TRUSTEE OF QUEENSLAND** having its registered office at 444  
Queen Street, Brisbane in the State of Queensland

(**'Trustee'**)

## BACKGROUND

- A.      The Company intends to issue unsecured notes under this Deed, called 'Notes'.
- B.      The Company has agreed to enter into this Deed in order to make provision for the appointment of a trustee for Noteholders.
- C.      The Trustee has agreed for the consideration expressed in this Deed to act as trustee of this Deed on the terms contained in this Deed.

## OPERATIVE PROVISIONS

### 1.      DEFINITIONS AND INTERPRETATION

#### 1.1    Definitions

The following words have these meanings in this Deed (including in the Schedules to this Deed) unless the contrary intention appears:

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

**'Auditor'** means the auditor or firm of auditors appointed from time to time by the Company as required by the *Corporations Act*;

**'Authorisation'** includes:

- (a)      any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Government Agency (including any renewal or variation); or
- (b)      in relation to anything which will be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action;

**'Business Day'** means a day on which ASX is open for trading in Brisbane;

**'Conditions'** means the terms and conditions applicable to Notes, including the terms and conditions set out in Schedule 1;

**'Consolidated Group'** means the Company and all of its Subsidiaries;

**‘Constitution’** means the Constitution of the Company;

**‘Conversion’** means conversion of the Notes into ordinary shares of the Company in accordance with Condition 1.5 of the Conditions;

**‘Conversion Date’** means where a Conversion Notice is given under Condition 1.5:

- (a) an Interest Payment Date;
- (b) the Maturity Date; or
- (c) any date during a Takeover Period.

**‘Conversion Notice’** means a notice in the form specified in this Deed which may be given by a Noteholder to the Company pursuant to Condition 1.5(b);

**‘Conversion Option’** means the option conferred by Condition 1.5(b) on the Noteholder to apply all or part of the redemption proceeds towards subscription for ordinary shares in the Company in full satisfaction of the Principal Amount otherwise owing on the Note;

**‘Conversion Rate’** means the number of Ordinary Shares to be issued to Noteholders on conversion of each Note, determined in the manner specified in Condition 1.5;

**‘Corporations Act’** means the *Corporations Act 2001 (Cth)*;

**‘Deed’** or **‘Trust Deed’** means this deed (including the terms and conditions set out in Schedule 1) and includes any document or documents supplemental to this Deed or executed pursuant to this Deed (including without limitation any Conditions) and any schedules or appendices to this Deed;

**‘Delegate’** means a person appointed to act as a delegate of the Trustee for the purposes of this Deed under Clause 1.1 and 10.5;

**‘Early Redemption Amount’** means in relation to a Note on any day, the greater of:

- (a) the Principal Amount of that Note (plus any interest accrued but unpaid on that Note up to and including the Early Redemption Date); and
- (b) the volume weighted average price of that Note during the 10 Business Days prior to the occurrence of the relevant Takeover Event or Tax Event (the Calculation Period), except that this alternative shall not apply where:
  - (i) the total number of Notes sold by way of on-market transactions on ASX in the Calculation Period is less than 10% of the total number of Notes sold by way of on-market transactions on ASX in the 10 Business Days prior to the Calculation Period; or
  - (ii) on any Business Day during the Calculation Period the Notes are suspended or otherwise not tradeable on-market on ASX;

**‘Early Redemption Announcement’** means an announcement of an early redemption by the Company in accordance with Condition 1.4;

**‘Early Redemption Date’** means the date specified in an Early Redemption Announcement as the date on which Notes are to be redeemed by the Company which must not be later than 90 days after the Early Redemption Announcement;

**‘Entitlement Notice’** means a notice from the Company to each Noteholder, setting out the entitlements of each Noteholder and the information required under the Listing Rules;

**‘Event of Default’** means each of the events set out in Clause 8.1;

**‘Expenses’** has the same meaning as that term has in Clause 9.2;

**‘Extraordinary Resolution’** has the same meaning as that term has in Clause 19.23;

**‘Finance Arrangement’** means all of the documents and agreements:

- (a) which together constitute any arrangement for the borrowing or raising secured against all or any material part of the property or rights of the Company or its subsidiaries, or any document or agreement relating to, or issued under, such arrangement; and
- (b) any other documents or agreements which the Company declares to be a Finance Arrangement by notice in writing to the Trustee;

‘**Finance Creditor**’ excludes the Notes and includes:

- (a) each creditor of the Company which becomes a party to or a beneficiary of a Finance Arrangement as a creditor or agent or trustee of that creditor for so long as it remains a creditor under that Finance Arrangement;
- (b) each creditor of the Company which becomes a party to or a beneficiary of a Finance Arrangement on a refinancing (in whole or in part) of a Finance Arrangement as a creditor or agent or trustee of that creditor for so long as it remains a creditor under that first mentioned Finance Arrangement; and
- (c) any other person declared to be a Finance Creditor by the Company by notice in writing to the Trustee;

‘**Finance Debt**’ means all amounts which the Company may owe to a Finance Creditor under or in relation to a Finance Arrangement other than a Noteholder under this Deed, whether those amounts comprise principal, interest or any other amount owing under a Finance Arrangement, and whether that amount is or becomes owing now or in the future:

- (a) by the Company alone or together with one or more others; or
- (b) actually or contingently;

‘**Financial Half-Year**’ means a financial half year of the Company beginning on 1 January in each year and ending on the following 30 June or beginning on 1 July in each year and ending on the following 31 December;

‘**Government Agency**’ means any government or any governmental, semi-governmental or judicial entity or authority in Australia. It also includes any self regulatory organisation established under statute or any stock exchange;

‘**Interest Payment Date**’ means 30 June 2004 and the last day of each subsequent Financial Half Year until the Maturity Date and includes the Maturity Date (except that where there is a Conversion or a Redemption of the Notes under Condition 1.4, the Conversion Date or the Early Redemption Date (as the case may be) shall be the final Interest Payment Date in respect of the Notes Converted or Redeemed);

‘**Interest Period**’ means in relation to a Note, the period from (and including) the Issue Date to (but excluding) the first Interest Payment Date and thereafter means:

- (a) where there is a Conversion Date or where the Notes are redeemed under Condition 1.4 (as the case may be), the period from (and including) the preceding Interest Payment Date to (and excluding) the Conversion Date or the Early Redemption Date (as the case may be);
- (b) the period from (and including) the preceding Interest Payment Date to (but excluding) the following Interest Payment Date; or
- (c) the period from (and including) the preceding Interest Payment Date to (but excluding) the Maturity Date;

‘**Interest Rate**’ means 4% per annum;

‘**Issue Date**’ means the date the Notes are issued, currently anticipated to be 26 November 2003;

**‘Issue Price’** means \$10.00 for each Note;

**‘Liabilities’** means all liabilities and provisions including, without limitation, liabilities and provisions in respect of:

- (a) income and other taxes;
- (b) annual and long service leave of employees; and
- (c) dividends recommended, declared or accrued but unpaid;

**‘Liquidation’** includes winding up, dissolution, deregistration, administration, amalgamation, receivership, reconstruction, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy;

**‘Liquidator’** means the liquidator, provisional liquidator, trustee, administrator, manager, receiver, receiver and manager or other officer – who is appointed to administer or implement the Liquidation;

**‘Liquidation Proceeds’** means any amount received by or due to a person in a Liquidation of the Company in respect of a debt owed to that person by the Company;

**‘Listing Rules’** means the Official Listing Rules of ASX from time to time with any modification or waivers in their application to the Company which ASX may grant;

**‘Maturity Date’** means the Business Day immediately before the 5<sup>th</sup> anniversary of the Issue Date;

**‘Moneys Owing’** means all money which the Company (whether alone or not) is or at any time may become liable to pay to or for the account of the Trustee, a Noteholder or the Trustee on a Noteholder's behalf (whether alone or not) for any reason whatever under or in connection with any Transaction Document, and includes:

- (a) the aggregate Principal Amount and any interest payable on all of the Notes and any other moneys payable to the Noteholders under or pursuant to this Deed; and
- (b) money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with this deed or a Note, or as a result of a breach of or default by the Company under or in connection with any Transaction Document,

and in relation to a Noteholder means that portion of the Moneys Owing which is owing to or in relation to that Noteholder. Where the Company would have been liable for any Moneys Owing but for its Liquidation, it will be taken still to be liable for such Moneys Owing;

**‘Note’** means a Note issued by the Company under this Deed which is outstanding;

**‘Note Obligations’** means all Liabilities of the Company to Noteholders, and of the Company to the Trustee on behalf of Noteholders, under the Conditions of the Notes, including the Principal Amount and interest on the Principal Amount, but does not include any Liabilities of the Company to the Trustee for the costs, fees and expenses of the Trustee in respect of its duties under this Deed;

**‘Noteholder’** in relation to a Note means the person entered in the Register as the holder of the Note;

**‘Ordinary Share’** means an ordinary share in the Company;

**‘Paying Agent’** means a person appointed by the Company under Clause 5.3 to act as paying agent to distribute Moneys Owing to Noteholders;

**‘Principal Amount’** means in relation to each Note, the nominal principal amount of such Note recorded in the Register (which unless otherwise specifically agreed shall equal the Issue Price);



‘**Quarter**’ means each period of 3 calendar months (ending on 31 December, 31 March, 30 June and 30 September in each year) which ends on or before the Maturity Date;

‘**Record Date**’ has the meaning given in Condition 1.14 of the Conditions;

‘**Redemption**’ means redemption by the Company of all or some of the Notes then outstanding in accordance with the Conditions;

‘**Redemption Amount**’ of a Note means the Principal Amount of the Note;

‘**Redemption Notice**’ means the notice which may be given by the Trustee pursuant to an exercise of its rights under Clause 8.2 or 8.6 or by the Noteholder under Clause 8.7;

‘**Register**’ means a register of holders of Notes established and maintained under Clause 16.1 and includes any Clearing House Electronic Sub-Register System sub-register (if applicable);

‘**Registrar**’ means the person appointed by the Company from time to time to keep and update the Register, and as at the date of this Deed is Computershare Investor Services Pty Limited;

‘**Related Body Corporate**’ has the meaning given to it in the *Corporations Act*;

‘**SCH**’ means ASTC or other applicable CS facility licensee;

‘**SCH Business Rules**’ means the operating rules of ASTC or of any relevant organisation which is an alternative to, or successor or replacement of, ASTC or any applicable CS facility licensee;

‘**Shareholders**’ means holders of Ordinary Shares in the Company;

‘**Specified Office**’ means the registered office of the Company or such other office advised by the Company to the Trustee from time to time;

‘**Stock Market**’ or ‘**ASX**’ means Australian Stock Exchange Limited ABN 98 008 624 691;

‘**Stock Market Authority**’ means in relation to Australian Stock Exchange Limited – Australian Stock Exchange Limited;

‘**Subsidiary**’ has the meaning given to it in the *Corporations Act*;

‘**Takeover Event**’ means:

- (a) announcement of a takeover bid under which the bidder proposes to obtain voting power in the Company of 50% or more; or
- (b) announcement to ASX of a scheme of arrangement or a proposal for the reduction of share capital which, if effective, would result in a person obtaining voting power in the Company of 50% or more,

whether or not the bidder or person obtaining voting power already has voting power in the Company of 50% or more;

‘**Takeover Period**’ means the period of time:

- (a) in the case of a takeover bid, commencing on the announcement of the bid and ending on the day on which the bid becomes unconditional; and
- (b) in the case of a scheme of arrangement, commencing on the announcement of the scheme and ending on the day on which the Court makes an order approving the scheme;
- (c) in the case of any other Takeover Event, commencing on the announcement of the Takeover Event and ending on the day on which the Takeover Event takes effect.

‘**Tax**’ includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Government Agency, and any related interest, penalty, charge, fee or other amount and includes GST;

**‘Tax Event’** occurs if the Directors resolve on reasonable grounds (having obtained an opinion from reputable legal counsel or tax adviser) that a change in any taxation law, interpretation or ruling issued by any relevant governmental body has occurred (or is announced) and that change will materially increase the net costs to the Company of having the Notes on issue (having regard, without limitation, to any tax deductions available to the Company in connection with the payment of interest);

**‘Transaction Document’** means:

- (a) any Note;
- (b) this Deed;
- (c) any document or agreement which the Company and the Trustee (acting on the instructions of an ordinary resolution of Noteholders, provided that the Trustee is satisfied that the interests of all Noteholders will not be materially prejudiced) at any time agree is to be a Transaction Document for the purpose of this Deed; or
- (d) any document or agreement entered into under, or for the purpose of amending or notating, any of them;

**‘Trust Assets’** means all moneys or other property fully and finally received or recovered by the Trustee on account of the Note Obligations free and clear of third party rights or interest (including without limitation the subordination obligations in favour of Finance Creditors created by Clauses 4 and 8.2 - 8.8 of this Deed);

**‘Trustee’** means The Public Trustee of Queensland or any successor trustee appointed in accordance with this Deed;

**‘Trustee Company’** means a body corporate which would be entitled to act as a trustee for the holders of debentures as defined in Section 9 of the *Corporations Act* under Section 283AC of the *Corporations Act*;

**‘Unmarketable Parcel’** means any parcel of Notes which is not a marketable parcel as defined by the ASX Listing Rules or the SCH Business Rules; and

**‘Unpaid Interest’** means in relation to a Note, any interest accrued and due on that Note which is not paid by the Company on its due date.

## 1.2 Interpretation

In this Deed, including the Schedules, except to the extent that the subject or the context otherwise requires:

- (a) reference to any legislation or to any provision of any legislation shall include any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments issued under, such legislation or such provision and shall include the corresponding legislation in such other State or Territory of the Commonwealth of Australia as may be relevant from time to time;
- (b) words (including words defined in this Deed) denoting the singular number shall include the plural and vice versa;
- (c) words importing natural persons will (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- (d) words denoting any gender shall include all genders;
- (e) words ‘written’ and ‘in writing’ include any means of visible reproduction of words in a tangible and permanently viable form;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;

- (g) a reference to an accounting term is to be interpreted in accordance with accounting standards under the *Corporations Act* and, where not inconsistent with those accounting standards and that schedule, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time; and
- (h) reference to Clauses and Schedules are references to clauses and schedules of this Deed;
- (i) reference to a sub-clause is a reference to the sub-clause of the Clause in which it appears, reference to a paragraph is a reference to a paragraph of the sub-clause in which it appears and reference to a sub-paragraph is a reference to a sub-paragraph of a paragraph in which it appears; and
- (j) reference to any document or agreement shall be deemed to include references to such document or agreement as novated, supplemented, varied or replaced from time to time.

### **1.3 Headings**

The headings in this Deed are for the purpose of more convenient reference only and shall not form part of this Deed or affect its construction or interpretation.

## **2. APPOINTMENT OF TRUSTEE**

### **2.1 Appointment of Trustee**

The Trustee is hereby appointed as trustee and agrees for the consideration expressed in this Deed to perform the obligations imposed on it by this Deed for the benefit of Noteholders.

## **3. NOTES**

### **3.1 Issue of Notes**

The Company may from time to time issue Notes in accordance with and subject to this Deed.

### **3.2 No restriction on further indebtedness**

Nothing in this Deed shall prevent or restrain the Company at any time, from incurring, varying or otherwise dealing with any indebtedness or other obligations of any nature, whether contingent, secured or otherwise, and whether ranking in priority to, *pari passu* with or subordinated to the Notes.

### **3.3 Conditions of Issue**

Each Note shall be issued subject to the Conditions.

### **3.4 Conditions and this Deed Binding**

This Deed, including the Conditions, shall be binding on the Company, the Trustee, the Noteholders and all persons claiming through or under them and Noteholders will be entitled to the benefit of, will be bound by and will be deemed to have notice of, all the provisions of this Deed and the Conditions.

### **3.5 Validity of Notes**

Neither the Trustee nor any Noteholder shall be concerned or obliged to enquire whether any Note has been issued in contravention of this Deed or the Conditions. Each Note issued for valuable consideration shall be deemed to have been validly issued and constituted under this

Deed and entitled to the benefit of the provisions of this Deed and the Conditions, notwithstanding that it may subsequently be determined that the issue of such Note was in breach of any provision of this Deed or the Conditions (but without prejudice to the Trustee's rights under or pursuant to this Deed against the Company in relation to such breach).

### **3.6 Registration of Notes**

The Company will issue Notes by registering or causing the Registrar to register the Noteholder as the holder of the Notes. The Notes will be issued when the Noteholder is inscribed in the Register as the holder of the Notes. When Notes are issued to a Noteholder the Company will include, or cause the Registrar to include, in the Register the particulars required by Clause 16.1.

### **3.7 Equal Ranking**

All Notes will rank equally.

### **3.8 Unsecured**

Notes will be unsecured notes under Section 283BH of the *Corporations Act*.

### **3.9 Fees relating to Issue of Notes**

The Company may pay to any person commission, brokerage or procuration or other fees in relation to the issue or purchase of Notes (including, without limitation, for underwriting the issue or purchase of Notes).

### **3.10 Purchase by Company**

The Company may from time to time and in accordance with the Conditions purchase (on market or by private treaty) issued Notes and may cancel or re-issue any of those Notes so purchased.

## **4. SUBORDINATION AND STATUS OF NOTES**

### **4.1 Subordination**

All Notes are issued on the condition that (subject to Clause 4.2) the liabilities of the Company to Noteholders and to the Trustee under this Deed and the Notes will at all times be unsecured and:

- (a) shall rank in priority and right of payment behind and subordinated to all Finance Debt; and
- (b) shall rank *pari passu* with all other unsecured creditors of the Company.

### **4.2 Payments permitted prior to Liquidation**

Until the Company enters Liquidation, the Company shall be entitled to pay, and the Noteholders and the Trustee shall be entitled to receive payment from the Company of any obligations due and owing by the Company in respect of the Notes, and the Trustee shall be entitled to pay any sums so received to or for the benefit of Noteholders entitled to those sums. Any such payment by the Company or receipt by Noteholders or the Trustee prior to the Company entering Liquidation will not constitute a breach of Clause 4.1 and any such payment received by a Noteholder or the Trustee prior to the Company entering Liquidation shall be received free of any obligation on the part of the recipient to refund or return the same to the Company or a Liquidator or to hold the same on trust for Finance Creditors.

## 5. PAYMENT ON NOTES

### 5.1 Acknowledged Indebtedness

The Company acknowledges its indebtedness to the Trustee in respect of the Principal Amount of the Notes and interest thereon payable from time to time, provided however that unless the Trustee otherwise directs, the payment of such moneys shall occur by means of payment directly to each Noteholder in accordance with the following provisions and any such payment shall operate as a payment to the Trustee in satisfaction of the Company's obligations under this clause.

### 5.2 Payment of Moneys Owing

The Company must make payment of the Moneys Owing to Noteholders directly as and when due in accordance with the Conditions.

### 5.3 Paying Agent

The Company may appoint in writing at any time any person as Paying Agent to distribute Moneys Owing to Noteholders.

### 5.4 Return of Moneys Owing

If for any reason any amount to be distributed under Clause 5.1 is unable to be distributed within 6 months of the date the Company or a Paying Agent sought to make the distribution to the Noteholders, at the expiration of that 6 months the relevant amount will be returned by the Paying Agent to the Company or retained by the Company as the case may be ('retained amounts'). Where the Company is holding retained amounts, it will make payment to a Noteholder entitled to the Moneys Owing on demand by the Noteholder at any time before expiration of 6 years following the date the relevant retained amount was originally distributed to the Noteholder under Clause 5.1 or paid to the Paying Agent for distribution under Clause 5.3.

### 5.5 Interest accruing on Moneys Owing

Any interest which accrues on any Moneys Owing which have become retained amounts will accrue to the benefit of the Company and not to any Noteholder until such time as those moneys are distributed to Noteholders in accordance with Clause 5.4.

## 6. OBLIGATIONS OF COMPANY

### 6.1 Accounts

The Company must:

- (a) within 90 days of the end of a financial year of the Company, cause a set of consolidated accounts for the Company for that financial year as required by, and prepared in accordance with Part 2M.3, Division 1 of the *Corporations Act*, to be made out and lodged with the Australian Securities and Investments Commission and with the Trustee; and
- (b) within 75 days of the end of the first 6 months of a financial year of the Company, cause a set of half year accounts of the Company for that half year as required by, and prepared in accordance with Part 2M.3, Division 2 of the *Corporations Act*, to be made out and lodged with the Australian Securities and Investments Commission and with the Trustee.

## **6.2 Audit**

The accounts referred to in Clause 6.1(a) must be prepared and audited in accordance with Part 2M.3 Division 3 of the *Corporations Act*. The Company may elect to cause the accounts referred to in Clause 6.1(b) to be reviewed in accordance with Section 309(4) of the *Corporations Act* by a person qualified in accordance with Section 331AA(2) of the *Corporations Act*.

## **6.3 Section 283BF – Quarterly Report**

- (a) The Company must, as soon as possible (and in any case less than 6 months) after the first issue of Notes, notify the Trustee of a day for the purpose of Section 283BF(2) of the *Corporations Act*.
- (b) The directors of the Company must provide to the Trustee (and lodge a copy with the Australian Securities and Investments Commission) within one month of the end of a Quarter a report of the Company which must set out in detail any matter relating to that Quarter adversely affecting the security or the interests of Noteholders and otherwise include the matters referred to in Section 283BF of the *Corporations Act* (as amended from time to time).

## **6.4 Information at Reasonable Request of Trustee**

- (a) The Company agrees to provide the Trustee such information as the Trustee reasonably requests about the Company and any of its subsidiaries to enable the Trustee to carry out its duties under this Deed and the *Corporations Act*.
- (b) Where the information requested in Clause (a) relates to financial information, the Trustee may request the Company to provide an Auditor's certificate stating that the Auditor has reviewed that financial information and acknowledges that based on the Auditor's reasonable enquiries nothing has come to the Auditor's attention which causes the Auditor to believe that the information provided to the Trustee is incorrect or incomplete.

## **6.5 Compliance with Deed**

- (a) The Company undertakes to the Trustee to comply with this Deed.
- (b) The Trustee declares and acknowledges that the following are held in trust by the Trustee for the benefit of Noteholders:
  - (i) the right to enforce the Company duty to repay the Principal Amount paid on the Notes;
  - (ii) any charge or security for repayment;
  - (iii) the right to enforce any other duty that the Company has under:
    - (A) the terms of the Notes;
    - (B) the provisions of the Deed; or
    - (C) Chapter 2L of the *Corporations Act*.

## **7. COVENANTS BY COMPANY**

The Company hereby covenants with the Trustee that it will comply with the following covenants.

### **7.1 Conduct of Business**

The Company will carry on and conduct the business of the Company in a proper and efficient manner and will procure that each of its subsidiaries will carry on and conduct their businesses in a proper and efficient manner.

### **7.2 Inspection of Records by Trustee**

The Company will make available for inspection by the Trustee or any registered company auditor appointed by the Trustee the whole of the accounting or other records of the Company and will give to the Trustee such information as it requires with respect to all matters relating to the accounting or other records of the Company.

### **7.3 Meeting Convened by Noteholders**

On the application of Noteholders holding not less than 10% in nominal value of the Notes delivered to the Company's registered office the Company will give notice to the Trustee and to each Noteholder at the Noteholder's address as specified in the Register convening a meeting of Noteholders:

- (a) to consider the balance sheet and accounts which were laid before the last preceding annual general meeting of the Company; and
- (b) to give to the Trustee directions in relation to the exercise of the Trustee's powers;

with the meeting to be held at a time and place specified in the notice and under the chairmanship of a person nominated by the Trustee or, if the Trustee does not nominate a person, the Chairman is to be a person appointed by the Noteholders present at the meeting.

### **7.4 Compliance with Covenants**

The Company will duly and punctually observe, fulfil, perform and comply with all the covenants, conditions and obligations imposed upon it by or under this Deed or the Conditions.

### **7.5 Duties at Law**

The Company covenants to:-

- (a) perform each of the duties or obligations imposed on it by the *Corporations Act* including the obligations and duties imposed by Part 2L of the *Corporations Act* or any other statute from time to time and the ASX Listing Rules;
- (b) ensure that all information provided to the Trustee is true and correct and is not (by omission or otherwise) misleading.

### **7.6 General Covenants**

The Company covenants to:-

- (a) give to the Trustee any information which it may reasonably require for the purposes of this Deed;
- (b) immediately advise the Trustee in writing of any default and particulars of such default by the Company under any encumbrance over all or any part of its assets or undertaking;
- (c) duly and punctually fulfil perform and comply with all the covenants, terms, conditions and obligations imposed upon it by or under this Deed, Chapter 2L of the *Corporations Act* or the Conditions and notify the Trustee in writing immediately on becoming aware that any of those covenants terms conditions and obligations cannot be fulfilled or performed;

- (d) not without the prior consent in writing of the Trustee make an application under section 411 of the *Corporations Act*;
- (e) not pay any dividend while any interest on the Notes is overdue and unpaid or while any of the Notes is overdue and unpaid or while any of the Notes which have become payable or redeemable has not been paid or redeemed as a consequence of default by the Company;
- (f) not without the prior consent in writing of the Trustee reduce or attempt to reduce its capital;
- (g) execute and do all such assurances and things as are reasonably required for giving effect to this Deed and conferring the full benefit of this Deed upon Noteholders.

## 8. EVENTS OF DEFAULT

### 8.1 Events

Each of the following events is an Event of Default:

- (a) **(unremedied default in payment)** if the Company makes default in the payment of any Moneys Owing in respect of the Notes and that default continues unremedied by the Company for a period of one month after demand for those moneys is made by the Trustee or any Noteholder;
- (b) **(unremedied material breach)** if the Company commits a material breach of any other covenant, condition or obligation imposed on it by this Deed or the Conditions and that breach has not been remedied within 30 days of receiving notice of the breach from the Trustee requiring that breach to be remedied;
- (c) **(winding up)** if an order is made or a resolution is effectively passed for the winding up of the Company except for the purposes of a reconstruction or amalgamation with the prior written consent of the Trustee (such consent not to be unreasonably withheld);
- (d) **(insolvency)** if the Company is unable to pay its debts within the meaning of the *Corporations Act*; and
- (e) **(liquidation)** if the Company enters Liquidation.

### 8.2 Action upon an Event of Default

- (a) Upon the occurrence of an Event of Default, the Trustee on behalf of Noteholders may only take action as set out in this Clause 8.2. However, nothing in this Clause 8.2 prevents the Trustee from taking any action permitted by Clause 8.4 or 8.5 or bringing proceedings or taking any other action from time to time to recover moneys owing to it.
- (b) Upon becoming actually aware of the occurrence of an Event of Default the Trustee must convene a meeting of Noteholders to consider that Event of Default and, if so resolved by Extraordinary Resolution, give the Trustee directions to exercise any of the powers referred to in Clause 8.2(c).
- (c) If directed by an Extraordinary Resolution, the Trustee must do all or any of the following as directed:
  - (i) commence proceedings for the winding up of the Company or take such other action relating to enforcement of payment of Moneys Owing to Noteholders (including without limitation issuing Redemption Notices requiring the Company to redeem the Notes) and deal with the proceeds in accordance with Clause 8.6; and



- (ii) to prove in any Liquidation of the Company (irrespective of when that Liquidation is commenced) and deal with the proceeds in accordance with Clause 8.6.

### **8.3 No enforcement**

Whether or not an Event of Default has occurred, the Trustee must not demand, plead or seek to enforce, directly or indirectly, including by way of set off or counterclaim, or in any other manner, the payment of any obligations of the Company in respect of the Notes other than as set out in Clauses 8.2, 8.4 and/or 8.5.

### **8.4 Permitted Actions by Trustee**

Nothing in this Deed shall exclude, limit, defer or otherwise prejudicially affect:

- (a) the right of the Trustee to seek directions from a court pursuant to Part 2L.8 of the *Corporations Act* or to take any other proceedings seeking the directions or guidance of any court, tribunal or other authority as to the performance of its functions and duties pursuant to this Deed;
- (b) any proceedings taken by the Trustee at any time seeking a judgment or order declaratory of the rights or obligations of any Noteholder or any of the parties to this Deed;
- (c) the right to take proceedings in respect of any breach or threatened breach of, or to compel or enforce performance of, any of the covenants, undertakings and obligations of the Company under this Deed other than in relation to the payment of Note Obligations prior to the Company entering Liquidation;
- (d) the right to take proceedings under the Constitution; or
- (e) the right to take proceedings for the Liquidation of the Company for failure to redeem a Note, in any circumstances where the Conditions or this Deed specifically give that power to the Trustee.

### **8.5 No subordination of Trustee's Fees**

Nothing in this Deed shall subordinate the liability of the Company to the Trustee to pay all fees and outgoings of the Trustee arising out of its duties as Trustee under this Deed including any right of the Trustee to be indemnified under this Deed, nor prevent the Trustee from demanding, pleading, seeking to enforce or enforcing its rights against the Company in respect of that liability.

### **8.6 Liquidation**

Upon the Company entering Liquidation:

- (a) subject to the succeeding provisions of this Clause 8.6, each Note will be due to be redeemed for an amount equal to the Redemption Amount of the Note calculated at the date of the Company entering Liquidation;
- (b) no Noteholder nor the Trustee shall be entitled to receive payment from the Liquidator or the Company (including by way of set off or counterclaim) of any Notes Obligations then outstanding until all Finance Debt has been paid in full. If any such payment or benefit by way of set off is received by a Noteholder or constitutes a voidable preference, the amount or benefit received shall be held upon trust by the Noteholder for the Trustee and shall be paid by the Noteholder to the Trustee upon trust for the purpose of being applied as provided in Clause (d);
- (c) any proof of debt or other claim (including by way of set off) made by the Trustee in respect of a Note Obligation shall be made subject to the Trustee acknowledging the

priority for payment of all Finance Debt and shall be limited to the Redemption Amount and Unpaid Interest;

- (d) any amounts received by the Trustee from the Noteholder under Clause (b) shall be received by it on trust to be applied:
  - (i) first in or towards payment or satisfaction of the costs, charges, expenses and Liabilities incurred by it in the execution of the trusts of this Deed (including any unpaid remuneration);
  - (ii) secondly, in or towards payment of the claims of those persons who the Liquidator determines, as at the date of the Company entering Liquidation, were Finance Creditors to the extent that those claims have been admitted to proof in the Liquidation (and have not been satisfied out of the other resources of the Company) but excluding interest accruing on those claims after the commencement of the Liquidation;
  - (iii) thirdly, in or towards payment *pari passu* and rateably the Redemption Amount of all Notes remaining unpaid and any other obligations of the Company which rank *pari passu* with the Note Obligations; and
  - (iv) fifthly, the balance, if any in payment to the Liquidator.
- (c) The trust mentioned in Clause (d) may be performed by the Trustee or any Noteholder paying over to the Liquidator for the time being the relevant amounts received by the Trustee or the Noteholder on terms that the Liquidator is to distribute those amounts in accordance with the ranking of priority or payment set out in this Deed. The receipt of the Liquidator will be a good discharge to the Trustee or any Noteholder for the performance of that trust.

## **8.7 No Individual Enforcement by Noteholders**

- (a) Only the Trustee may enforce the provisions of this Deed and the Notes (including without limitation applying for Liquidation, lodging a proof or claim or seeking damages).
- (b) No Noteholder may:
  - (i) exercise or enforce the interest, right, remedy or power (as applicable); nor
  - (ii) waive or vary the interest, right, remedy or power (as applicable),against or in relation to the Company provided for in, or arising under or as a result of a breach of, this Deed or prove in the winding up of the Company.

## **8.8 Trustee and Indemnity**

The Trustee need not take any such proceeding unless it is indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may thereby render itself and all costs, charges, damages and expenses which it may incur by so doing.

## **9. REMUNERATION OF TRUSTEE**

### **9.1 Fee**

The Company shall pay to the Trustee by way of remuneration for its services as trustee:

- (a) An establishment fee of \$3,300 (GST inclusive);
- (b) An annual administration fee payable each Quarter in arrears from the Issue Date until the Maturity Date, of:
  - (i) \$8,800 (GST inclusive) where the Principal Amount does not exceed \$10 million; and

- (ii) \$8,800 and \$220 for each \$1 million or part thereof that the Principal Amount exceeds \$10 million (GST inclusive), where the Principal Amount exceeds \$10 million.

## 9.2 Expenses

Without limiting the generality of the other provisions of this Deed the Company will on demand pay all costs charges liabilities and expenses which are reasonable in amount and properly incurred by the Trustee, or its Delegate properly appointed under Clause 1.1 or 10.5 (other than costs, charges, liabilities and expenses which are of an overhead or administrative nature) including, without limitation, legal costs (on a full indemnity basis) and any stamp or other duty:

- (a) in or about the preparation, execution and amendment of this Deed;
- (b) in or in connection with the carrying out by the Trustee or a Delegate of any right, power or privilege conferred by this Deed or by law conferred on the Trustee or upon any Noteholder, (including without limitation in respect of any waiver or consent sought by the Company);
- (c) in or in connection with the transfer of Notes;
- (d) in or in connection with any breach or default in the observance or performance by the Company of the covenants, obligations and conditions of this Deed;
- (e) in or in connection with the convening, holding and carrying out of any directions or resolutions of any meeting of Noteholders; and
- (f) in or in connection with any actual or contemplated legal proceedings (including without limitation any application for directions) brought by or against the Trustee, or in which the Trustee is otherwise involved or any advice sought by the Trustee in relation to any such legal proceedings from any legal, accounting or other professional advisors,

(‘the **Expenses**’).

## 9.3 Indemnity

Subject to Section 283DA of the *Corporations Act*, the Company hereby indemnifies and agrees to keep indemnified the Trustee in respect of the Expenses. This indemnity is in addition to any indemnity allowed by law, but does not extend to costs, charges (including all duties, taxes and any fines or penalties in respect of a charge), liabilities or expenses arising from the Trustee’s own fraud, negligence or breach of trust or that of any attorney, employee, agent or person (including a Delegate) appointed by it under this Deed. The Trustee may retain and pay out of any moneys in its hands arising therefrom (in priority to any claim by a Noteholder) all sums necessary to give effect to or satisfy such indemnity.

## 9.4 Advance by Company

Without limiting the generality of Clause 9.3, the Trustee appointed by it under this Deed may, in any case where it is entitled under Clause 9.3 to be indemnified by the Company if it incurred a cost, charge (including all duties, taxes and any fines or penalties in respect of a charge), liability or expense, require the Company to advance to it before that cost, charge (including all duties, taxes and any fines or penalties in respect of a charge), liability or expense is incurred a sum sufficient to cover that cost, charge, liability or expense. A certificate signed by an authorised officer of the Trustee stating the amount of any advance requested under this Clause will in the absence of manifest error be conclusive and binding on the parties to this Deed.

## **9.5 Priority of Trustee entitlements**

All remuneration and payments referred to in this Clause 9 will be paid in priority to any claim by any Noteholder and will continue to be payable until the trusts of this Deed are finally wound up and whether or not the trusts of this Deed are in the course of administration by or under the order of any court and the Trustee may retain and pay to itself in priority to any claim by any Noteholder all such remuneration and payments out of any moneys for the time being in its hands on the trusts of this Deed.

## **9.6 No set-off or reduction**

To the maximum extent permitted by law, the Company shall pay all fees or other amounts payable to the Trustee under Clause 9 without any set off or counterclaim and free and clear of and without any deduction or withholding for or on account of any taxes, duties or other imposts.

# **10. TRUSTEE'S POWERS AND DUTIES**

## **10.1 Powers**

Subject to this Deed, the Trustee has all the powers that is legally possible for a natural person or corporation to have in connection with the exercise of its powers under this Deed.

## **10.2 Determination by Trustee**

The Trustee may as between itself and the Noteholders determine all questions and matters of doubt arising in relation to any of the provisions of this Deed and every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustee shall be conclusive unless a court of competent jurisdiction otherwise orders.

## **10.3 Waiver and application to Court**

The Trustee may whenever it thinks fit and so long as it is not detrimental to the interests of the Noteholders:

- (a) waive on any terms or conditions any breach by the Company of any of the covenants or obligations binding upon the Company under this Deed or the Conditions; and
- (b) apply to any court for directions under Part 2L.8 of the *Corporations Act* or in relation to any question of law or fact and assent to and approve of or oppose any application to any court made by or at the instance of any Noteholder.

## **10.4 Trustee may act on advice**

The Trustee may in relation to this Deed act or decline to act on the advice or opinion of or any information obtained from any barrister, solicitor, accountant, valuer, surveyor, broker, auctioneer or other expert and the Trustee will not be responsible or liable for any loss occasioned by its acting or declining to act in good faith on any such advice, opinion or information.

## **10.5 Appointment of Delegates**

In addition to the appointment referred to in Clause 2.1, the Trustee may appoint in writing from time to time a Delegate to undertake, perform or discharge any of the duties, powers, discretions or other functions of the Trustee under this Deed. Where more than one corporation is appointed as the delegate of the Trustee to undertake, perform or discharge the same duty, power, discretion or other function of the Trustee under this Deed, the corporations so appointed shall act jointly and severally.

## **10.6 Dealing with Delegates**

The Trustee may by the terms of any appointment of a Delegate under Clause 10.5 include provisions for the protection and convenience of persons dealing with that Delegate as the Trustee thinks fit. Notwithstanding those provisions, the Trustee will be liable, for any act or omission of that Delegate. The Delegate may be a Related Body Corporate of the Trustee.

## **10.7 Trustee may take action**

Subject to the provisions of this Deed, the Trustee may at any time on behalf of Noteholders take any action or proceeding against the Company in the event of a breach by the Company of this Deed, and the Conditions in relation to a Noteholder's Notes.

## **11. DISCRETION OF TRUSTEE**

The Trustee has, as regards all the powers and authorities and discretions vested in it by this Deed, an absolute and uncontrolled discretion as to the exercise of that discretion in all respects and, in the absence of its fraud, negligence or breach of trust (or the fraud, negligence or breach of trust of any attorney, employee, agent or person (including a Delegate) appointed by it under this Deed), the Trustee will not be in any way responsible for any loss, damage, cost or expense that may result from the exercise or non-exercise of that discretion.

## **12. LIABILITY OF TRUSTEE**

### **12.1 Capacity of Trustee**

The parties acknowledge and agree that the Trustee enters into this Deed as trustee for Noteholders under this Deed and in no other capacity.

### **12.2 Exclusion of Liability**

Subject to Clause 12.6 the Trustee will not be under any liability whatsoever under this Deed..

### **12.3 Liability for acts of Delegates**

If the Trustee appoints a Delegate:

- (a) the Delegate is not the delegate or agent of the Trustee in its personal capacity;
- (b) the Delegate cannot by its acts or omissions make the Trustee liable in its personal capacity, and no act or omission of the Delegate will of itself be considered the fraud, negligence or breach of trust by the Trustee for the purposes of Clause 12.2.

### **12.4 Exclusion of Responsibility or Liability**

Subject to Clause 12.6 and the *Corporations Act* the Trustee:

- (a) is not responsible or liable in respect of moneys subscribed by applicants for Notes or bound to see to the due application of those moneys;
- (b) is not responsible or liable to pay or satisfy any of its obligations under this Deed, and has no liability to the Company, the Noteholders or any other person, except to the extent of the Trustee's right of indemnity out of the Trust Assets.

### **12.5 No Action for Shortfall**

If the Trust Assets are insufficient, neither the Company, the Noteholders nor any other person (subject to Clause 12.6) may seek to recover any shortfall by bringing proceedings against the Trustee personally and may not seek the appointment of a liquidator,

administrator, receiver or similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee.

## **12.6 Fraud, Negligence, Breach of Trust, Breach of Duty**

The Trustee is liable personally and is not released to the extent that a liability under this Deed arises out of the Trustee's own fraud, negligence, breach of trust or breach of duty which disentitles it from an indemnity out of the Trust Assets in relation to the relevant liability.

## **12.7 Paramountcy in Inconsistency**

Notwithstanding any other provision of this Deed, the liability of the Trustee is limited by the provisions of this Clause 12. In the event of any inconsistency with any other provision of this Deed, these clauses are paramount.

# **13. RETIREMENT AND REMOVAL OF TRUSTEE AND APPOINTMENT OF NEW TRUSTEE**

## **13.1 Retirement**

The Trustee may retire at any time (with or without giving any reason for its retirement) after the expiration of not less than 60 days' notice in writing to the Company of its intention so to do or such shorter period as is agreed to by the Company. The retirement will not take effect until a Trustee Company has been appointed as trustee in its stead.

## **13.2 Appointment of new Trustee**

Subject to Clause 13.3 the power of appointing a new trustee of this Deed is vested in the Company but a trustee of this Deed must not be appointed unless:

- (a) the new trustee is a Trustee Company; and
- (b) it has undertaken to the Company or any other party in whose favour the undertaking is to be made or acknowledgment is to be given to comply with any undertakings or confirm any acknowledgments previously given by a Trustee under this Deed.

## **13.3 Appointment by Company**

If when the period of notice referred to in Clause 13.1 expires a new trustee has not been appointed, the Trustee may at any time thereafter and so long as an appointment has not been made by the Company under Clause 13.2 appoint by deed under its seal a Trustee Company willing to act as new trustee of this Deed and that appointment will be effective without the need for approval of the Noteholders.

## **13.4 Removal**

The Company may remove the Trustee from office by notice in writing addressed to the Trustee if:

- (a) the Trustee ceases to be a Trustee Company;
- (b) an Extraordinary Resolution of Noteholders determines that the Trustee should be removed;
- (c) the Trustee ceases to carry on business (other than in its capacity as trustee of another trust), enters into a scheme of arrangement (other than for the purposes of or in connection with a solvent reconstruction or amalgamation) or goes into liquidation, provisional liquidation or administration or has a receiver or receiver and manager appointed over any part of the assets or undertakings of the Trustee (not being assets

- or undertakings of the Trustee held in its capacity as trustee of another trust) which is not removed or withdrawn within 30 days after the date of the appointment;
- (d) the Trustee defaults in performing or observing any of its obligations under this Deed and:
    - (i) if that default is incapable of remedy and has had or is likely to have a material adverse effect on the ability of the Company to perform or observe its obligations to Noteholders; or
    - (ii) if that default is a material default and is capable of remedy, that default has not been remedied within 10 Business Days of receiving written notice of the default from the Company requiring that default to be remedied; or
  - (e) the Trustee has repeatedly defaulted in the performance or observance of any of its obligations under this Deed and the Company has given notice in writing in respect of those defaults.

### **13.5 No removal without new appointment**

The Company may not remove the Trustee pursuant to Clause 13.4 until the Company has appointed a new trustee of this Deed which is a Trustee Company.

## **14. FURTHER POWERS OF TRUSTEE**

### **14.1 Trustee may hold Notes**

Subject to Section 283AC of the *Corporations Act*, nothing in this Deed will be deemed to prohibit any Trustee or any Related Body Corporate or director of the Trustee (all in this Clause, where the context permits, being included in the expression 'Trustee') from being a Noteholder in the Company or in any of its subsidiaries or from acting in any representative capacity for a Noteholder and in particular and without prejudice to the generality of the foregoing it is expressly declared that:

- (a) the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity nor shall the acting in any such capacity be deemed a breach of the obligations arising out of the fiduciary relationship between the Trustee on the one hand and the Company or any Related Body Corporate of the Company on the other or the Trustee and the Noteholders hereby established or otherwise imposed or implied by law; and
- (b) the Trustee will not by reason of its fiduciary capacity be precluded from making any contracts or entering into any transactions with the Company or any Related Body Corporate of the Company or with itself in any other capacity (including without limitation its personal capacity) and without prejudice to the generality of these provisions it is expressly declared that such contracts and transactions include any contract or transaction in relation to the subscription or placing of or any dealing with any stocks, shares, debenture stock, debenture, notes or other security of the Company or Related Body Corporate or of any other company in which the Company or any Related Body Corporate is interested and the acceptance of any office or profit from the Company or any Related Body Corporate or any contract loan or deposit or other contract or transaction which any person or company not being a Trustee of this Deed could or might have entered into with the Company or any Related Body Corporate or with itself as Trustee including the customary share of brokerage and usual banker's profit and the Trustee shall not be accountable either to the company or any of the Company's Related Bodies Corporate or the Noteholders for any profits arising from any such contracts transactions or offices.

## **14.2 Trustee may rely on certificate**

The Trustee is:

- (a) at liberty to accept and rely on a certificate signed by the chairman or any two directors of the Company as the case may be as to any fact or matter as conclusive evidence thereof and a like certificate to the effect that any particular dealing or transaction or step or thing is in the opinion of the person so certifying commercially desirable and not detrimental to the interests of the Noteholders as conclusive evidence that it is so;
- (b) entitled to accept and act on any information, statement, certificate, report, balance sheet or account supplied by the Company or any Related Body Corporate of the Company or any director, secretary, Auditor or duly authorised officer of the Company or of any of the Company's Related Bodies Corporate;
- (c) entitled to accept and act upon the statements and opinions contained in any statement, certificate, report, balance, sheet or account given under this Deed as conclusive evidence of its contents,

and the Trustee will not be bound:

- (d) to call for further evidence other than that certificate, statement, report, balance sheet or account; or
  - (e) to enquire as to the accuracy or completeness of such a document; and
- will not be responsible for any loss, damage, cost, expense or liability that may be occasioned by relying on such a document.

## **14.3 Trustee not bound to give notice**

The Trustee is not bound to give notice to any person or persons of the execution hereof and the Trustee is not bound to take any steps to ascertain whether any event has happened upon the happening of which the Notes hereby constituted become immediately payable.

## **15. POWER OF AMENDMENT**

### **15.1 Amendment without Noteholder consent**

The Company and the Trustee are entitled without any authority or assent on the part of the Noteholders to amend or add to this Deed if in the opinion of the Trustee such amendment or addition:

- (a) is of a formal, minor or technical nature;
- (b) is made to correct a manifest error;
- (c) is expedient or requisite to enable the Notes to be listed or remain listed for quotation on any Stock Market or to be offered for subscription or sale under the laws for the time being in force in any place; or
- (d) in the opinion of the Trustee is not likely (taken as a whole and in conjunction with all other modifications, if any, to be made contemporaneously therewith) to be materially prejudicial to the interests of the Noteholders and two directors of the Company on behalf of the board of directors of the Company have so certified to the Trustee. The Trustee in determining whether or not such amendment or addition is materially prejudicial to the interests of the Noteholders may act upon the advice or the opinion of or any information obtained from an expert (at the expense of the Company) and will not be responsible for any loss occasioned by its acting or declining to act on such advice, opinion or information.



## **15.2 Amendment with Extraordinary Resolution**

The Company and the Trustee may with the authority of an Extraordinary Resolution make any amendment or addition to this Deed.

## **16. REGISTER OF NOTEHOLDERS**

### **16.1 Maintenance of Register**

The Company must establish and maintain or cause to be established and maintained a Register in accordance with Section 168 of the *Corporations Act* and there must be entered into the Register:

- (a) all information required by Section 171 of the *Corporations Act*;
- (b) the number of Notes held by each Noteholder and the Principal Amount of those Notes;
- (c) the date of issue or transfer of those Notes; and
- (d) any other particulars which the Company thinks fit or which the Trustee requires.

### **16.2 Alteration of Register**

The Register will be altered accordingly on receipt of details of any change of name or address of Noteholder notified in writing to the Company and accompanied in the case of change of name by any evidence which the Company may reasonably require.

### **16.3 Register to be kept open**

Subject to Clause 16.4 and to any instrument of exemption granted by the Australian Securities and Investments Commission to the Company from the provisions of Section 168 of the *Corporations Act* ('Instrument of Exemption') the Register will remain open at all reasonable times during normal business hours for inspection by the Trustee and each Noteholder or any person authorised in writing by either of them. Upon requisition from a Noteholder, the Company must provide that Noteholder within 14 days with a document setting out that Noteholder's registry entry in the Register (a 'Noteholder Statement'). This Trust Deed constitutes an acknowledgment of indebtedness in respect of all the Notes on issue at any time. A Noteholder Statement does not constitute a certificate of title or an acknowledgment of debt. The Company must provide the Trustee with a copy of the Register within two Business Days of a request by the Trustee (or such lesser time as is necessary to enable the Trustee to comply with its obligations under this Deed).

### **16.4 Closure of Register**

On giving a notice by advertisement or otherwise as may be required by law or, whilst the Notes are listed for quotation on the Stock Market, by the requirements of the Stock Market Authority, the Company may from time to time close any Register for any period or periods not exceeding 30 days in aggregate in any calendar year.

### **16.5 No trust**

No notice of any trust express implied or constructive will be entered in any Register.

### **16.6 Delegation**

The Company may delegate any of its powers and obligations in respect of the Registers.

## 17. NOTICES

### 17.1 Form of Notices

A notice, approval, consent or other communication ('Communication') in connection with this Deed or the Notes;

- (a) must be in writing; and
- (b) must:
  - (i) in the case of the Trustee and the Company, be left at the address of the addressee or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile with the details specified in this Clause or if the address notifies another address or facsimile number then to that address or facsimile number:

**Company:**

Address: National Bank House  
Level 4 255 Adelaide Street  
Brisbane Qld 4000

Fax: 07 3303 2525

Attention: Company Secretary

**Trustee:**

Address: The Public Trustee of Queensland  
Trustee House  
444 Queen Street  
Brisbane QLD 4000

Fax: 07 3213 9150

Attention: Mr Frank Prostamo

- (ii) in the case of a Noteholder (other than a joint Noteholder), be sent through the post in a prepaid letter addressed to that Noteholder at his registered address (but if that registered address is outside Australia the Communication must be sent by airmail); or
- (iii) in the case of joint Noteholders, be sent through the post in a prepaid letter addressed to the Noteholder whose names stands first in the register in respect of those joint Noteholders at his registered address (but if that registered address is outside Australia the Communication must be sent by airmail).

### 17.2 Effective upon receipt

Unless a later time is specified in it a Communication takes effect from the time it is received.

### 17.3 Timing of Receipt

A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this Clause.

## 18. CONFIDENTIALITY

### 18.1 Non disclosure

All information and other matters provided to or obtained by the Trustee, a Delegate or any officer, employee, professional adviser or other consultant of the Trustee on a confidential basis:

- (a) under, in connection with or related to this Deed; or
  - (b) in the performance of any obligation, duty or power of the Trustee under this Deed,
- (collectively the 'Information') is confidential to the Company and may not be disclosed to any person other than as set out in Clause 18.2.

### 18.2 Permitted disclosure

Information which is in the public domain is not required to be kept confidential. Information may be disclosed:

- (a) as (but only to the extent) required by this Deed or in connection with any obligation, duty or power of the Trustee under this Deed, a law or any judicial or regulatory body or authority;
- (b) to those officers, employees, Delegates and professional advisers of the Trustee to whom it is absolutely necessary to reveal the Information or any part of it;
- (c) to a person approved of in writing by the Company; or
- (d) if the Company is listed on any Stock Market, to relevant Stock Market Authority to enable the Company or the Trustee to comply with the relevant Listing Rules.

### 18.3 Confidentiality

The Trustee is required to use best endeavours to ensure that every person to whom Confidential Information is given under Clause 18.2 keeps that Information confidential.

## 19. MEETINGS OF NOTEHOLDERS

The Trustee or the Company may call a meeting of Noteholders in the manner provided in this Clause 19 and those meetings will be conducted and have the powers as are set out in this Clause 19 provided however if there is any inconsistency between the provisions of this clause and the Section 283EA of the *Corporations Act*, the *Corporations Act* will prevail.

### 19.1 Convening Meetings

The Trustee or the Company may at any time summon a meeting of Noteholders. The Company must summon a meeting of Noteholders if requested in writing to do so by persons holding Notes representing not less than 10% in value of the Principal Amount. Meetings are to be held in Brisbane or at such other place as the Trustee may determine or approve.

### 19.2 Notice

Noteholders must be given at least 14 days' notice of a meeting but if the meeting is to consider an Extraordinary Resolution 21 days' notice of the meeting shall be required. The period of notice is to be determined exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given.

### **19.3 Provision of Notices**

Notices to Noteholders must be given in the manner provided by the Deed. A notice of meeting must specify the place day and hour of meeting and the general nature of the business to be transacted but it is not necessary to specify in the notice the precise terms of the resolutions to be proposed. A copy of the notice must be promptly sent by post to the Trustee unless the meeting has been convened by the Trustee and to the Company unless the meeting has been convened by the Company.

### **19.4 Failure to give notice does not invalidate**

The accidental omission to give notice to or the non-receipt of notice by any of the Noteholders does not invalidate the proceedings at any meeting but where notice of a meeting convened by the Company or Trustee is not received by the other of them all business transacted and all resolutions passed at the meeting shall be void and of no effect unless such notice is waived by such other of them.

### **19.5 Quorum**

At any meeting a quorum for the transaction of business shall be formed by 2 Noteholders present in person or by proxy or being a corporation by proxy or duly authorised representative holding Notes in aggregate representing at least 10% in value of the Principal Amount.

### **19.6 Adjournment in the absence of quorum**

If within 30 minutes from the time appointed for the meeting a quorum is not present the meeting convened upon the requisition of Noteholders shall be dissolved. In any other case it shall stand adjourned to such day and time not being less than 14 days thereafter or in the case of an adjourned meeting of Noteholders at which an Extraordinary Resolution is to be submitted 21 days thereafter and to such place as may be appointed by the Chairman. At such an adjourned meeting the Noteholders present and entitled to vote whatever the value of the Notes held by them will be a quorum for the transaction of business including the passing of Extraordinary Resolutions. Notice of any adjourned meeting of Noteholders at which an Extraordinary Resolution is to be submitted must be given in the same manner as of an original meeting and such notice must state that the Noteholders present at the adjourned meeting whatever their number and the amount of Notes held by them will form a quorum.

### **19.7 Chairman**

The Trustee or some other person nominated in writing by the Trustee is entitled to be Chairman at every meeting but if no such person is nominated or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting the Noteholders present may choose one of their number to be Chairman. The Trustee and the solicitors to the Trustee and any director or officer of a corporation being the Trustee and any director and the secretary and solicitors of the Company and any other person authorised by the Company may attend any meeting and be heard.

### **19.8 Adjournment by Chairman**

The Chairman may with the consent of any meeting at which a quorum is present (such consent being obtained if the Trustee so requires on a poll) and must if directed by the meeting so resolving on a poll, adjourn the meeting from time to time and from place to place but no business may be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.

## **19.9 Voting**

At any meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman, the Trustee or the Company or in writing by one or more Noteholders present in person or by proxy and holding or representing one-twentieth in value of the Principal Amount. Unless a poll is so demanded a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority or lost is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

## **19.10 Poll**

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

## **19.11 Casting Vote**

In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote in addition to the votes (if any) to which he may be entitled as a Noteholder.

## **19.12 Poll Demands**

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

## **19.13 Voting entitlements**

On a show of hands every Noteholder who being an individual is present in person or by attorney or being a corporation is present by proxy or attorney or by its authorised representative has one vote and on a poll every Noteholder who is present in person or by proxy has one vote for every Note with respect to which he is the registered holder.

## **19.14 Joint holders**

In the case of joint registered holders of Notes the vote of the senior who tenders a vote whether in person or by proxy is to be accepted to the exclusion of the votes of the other joint holders and for this purpose seniority is determined by the order in which the names appear in the Register of Noteholders in respect of the joint holding.

## **19.15 Noteholder entitled to more than one vote**

On a poll votes may be given either personally or by proxy and a Noteholder entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

## **19.16 Proxy**

The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under its

Common Seal or under the hand of an officer or attorney so authorised. A person appointed to act as proxy need not be a Noteholder.

#### **19.17 Noteholder which is a corporation**

A Noteholder which is a corporation may be represented at a meeting of Noteholders or may vote at the meeting or on a poll or in relation to any resolution of Noteholders by proxy or by attorney or by representative appointed in accordance with the provisions of Section 250D of the *Corporations Act* as if references to 'member' or 'members' in that section were references to 'Noteholder' or 'Noteholders'.

#### **19.18 Deposit of Proxies**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of the power or authority must be deposited at such place at the Trustee or the Company with the approval of the Trustee may in the notice convening the meeting direct or if no such place is appointed then at the registered office of the Company not less than 24 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy will not be treated as valid. No instrument appointing a proxy is valid after the expiration of 12 months from the date named in it as the date of its execution.

#### **19.19 Proxy Instruments**

An instrument of proxy may be in the usual common form or in such other form as the Company and the Trustee may approve and need not be witnessed. The proxy will be deemed to include the right to demand or join in demanding a poll. Unless the contrary is stated on the instrument of proxy, a proxy is valid for any adjournment of the meeting to which it relates.

#### **19.20 Proxy Voting**

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

#### **19.21 Powers of meeting of Noteholders**

##### **(a) Powers**

Without limiting the rights of Noteholders, the Company and the Trustee pursuant to the Trust Deed, a meeting of the Noteholders has in addition to all other powers, the following powers exercisable by Extraordinary Resolution only:

- (i) power to sanction the release of the Company from all or any part of their liability to pay the Principal Amount and interest owing upon the Notes;
- (ii) power to sanction any modification or compromise or any arrangement in respect of the rights of the Noteholders against the Company whether such rights shall arise under the Trust Deed, the Conditions or otherwise;
- (iii) power to assent to any modification of the provisions contained in this Deed or the Conditions and to authorise the Trustee to concur in and execute any supplemental deed embodying any such modification;

- (iv) power to give any sanction, direction or request which under any of the provisions of this Deed is required to be given with the consent of Noteholders;
- (v) power to give any release in respect of anything done or omitted to be done by the Trustee; and
- (vi) power to remove a Trustee.

#### **19.22 Extraordinary Resolution binding**

An Extraordinary Resolution passed at a meeting of the Noteholders duly convened and held in accordance with this Deed is binding upon all the Noteholders whether or not present at the meeting and each Noteholder is bound to give effect to it accordingly.

#### **19.23 Extraordinary Resolution – definition**

The expression ‘Extraordinary Resolution’ when used in this Deed means a resolution passed at a meeting of the Noteholders duly convened and held in accordance with this Deed and carried by a majority consisting of the holders of Notes representing not less than 75% in value of the Principal Amount held by the holders of Notes who are present at the meeting in person, by proxy or representative.

#### **19.24 Minutes**

Minutes of all resolutions and proceedings at every meeting must be made and duly entered in the books to be from time to time provided for that purpose by the Company and any minute if purporting to be signed by the Chairman of the meeting at which a resolution was passed or proceedings were held or by the Chairman of the next succeeding meeting of Noteholders is prima facie evidence of the matters stated in it.

### **20. INSPECTION OF TRUST DEED**

On receipt of a request from a Noteholder for a copy of this Deed, the Company must provide that Noteholder with a copy of the Deed within 21 days after the date that request is made. Copies of this Deed will be provided to the Noteholder at the Company’s registered office in Brisbane unless the Company otherwise agrees.

### **21. APPLICABLE LAW**

This Deed shall be construed and take effect in accordance with the law for the time being of Queensland.

## SCHEDULE 1

### Conditions of Notes

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#### 1. CONDITIONS

##### 1.1 Issue Price

The Convertible Notes will:

- (a) be paid for in full on application; and
- (b) have an issue price per Convertible Note equal to the Principal Amount.

##### 1.2 Interest and Redemption on Maturity

- (a) AFF shall pay accrued interest in arrears on each relevant Interest Payment Date to those persons who are Noteholders on the last relevant Record Date before that Interest Payment Date.
- (b) For each Noteholder, interest accrues daily and, in the case of each Interest Period, the interest payable is calculated by:
  - (i) multiplying the Principal Amount of the Convertible Notes held by that Noteholder on the relevant Record Date by the Interest Rate;
  - (ii) dividing the resultant amount by 365;
  - (iii) multiplying the resultant amount by the actual number of days in the applicable Interest Period; and
  - (iv) rounding the resultant amount down to the nearest cent.
- (c) AFF's certificate as to the amount of interest that accrues and is payable on Convertible Notes is (in the absence of manifest error) sufficient evidence of the amount of interest due unless proven wrong.
- (d) Unpaid interest on the Convertible Notes shall:
  - (i) remain owing and not form part of the principal owing to the Noteholder; and
  - (ii) bear interest at the same rate as interest is payable on the Principal Amount calculated daily and payable on each Interest Payment Date on Maturity Date.
- (e) AFF shall redeem all issued and uncanceled Convertible Notes on the Maturity Date. The Principal Amount on each Convertible Note to be redeemed on the Maturity Date shall be repaid in full by the Company on the Maturity Date, (along with interest payable in accordance with condition 1.2(a)) in accordance with and subject to the Conditions to the person who is the Noteholder on the relevant Record Date.

##### 1.3 Early Redemption for Takeover Event or Tax Event

If a Takeover Event or Tax Event occurs, AFF may in its absolute discretion and subject to the Noteholders' right to convert in condition 1.5, elect to redeem all or some (pari passu) of the Convertible Notes on issue prior to the Maturity Date:

- (a) with effect on the Early Redemption Date;
- (b) by payment of an amount equal to the Early Redemption Amount in respect of each Convertible Note redeemed; and
- (c) along with payment of any accrued and unpaid interest up to the Early Redemption Date,



provided that the AFF has made an Early Redemption Announcement within 15 days after the Takeover Event or after determining that a Tax Event has occurred, and not less than 30 days prior to the proposed Early Redemption Date.

#### **1.4 Early Redemption Announcement**

An Early Redemption Announcement must:

- (a) be made to ASX;
- (b) state that AFF will redeem the Convertible Notes, the Early Redemption Amount to be repaid, the basis upon which the Early Redemption Amount is calculated and the number of Convertible Notes to be redeemed;
- (c) state the Early Redemption Date; and
- (d) otherwise comply with any requirements of the Listing Rules and the Corporations Act as to contents and timing.

#### **1.5 Conversion**

- (a) AFF must send an Entitlement Notice to each Noteholder not more than 30 Business Days before and not less than 20 Business Days before each Conversion Date, within 15 days after a Takeover Event (and not otherwise where a Conversion Date occurs in a Takeover Period), or at such other times as are permitted by the Listing Rules.
- (b) Subject to conditions 1.5(c) and 1.5(d), a Noteholder may deliver a Conversion Notice (which shall be irrevocable) to AFF at the address of the Register requiring the conversion of all of the Principal Amount of and rights attaching to a Convertible Note (other than payment of interest) towards payment in full of the subscription price for the number of ordinary shares determined in accordance with these Conditions including Conditions 1.8 and 1.9 at any time during the period of 15 calendar days after the date of an Entitlement Notice (the **Conversion Option**).
- (c) A Noteholder may deliver a Conversion Notice in relation to all or some of its holding of Convertible Notes. Where a Noteholder delivers a Conversion Notice relating to only part of its holding of Convertible Notes, the Conversion Notice must relate to at least 50 Convertible Notes and in integral multiples of 50 Convertible Notes.
- (d) Where the Conversion Date is a Business Day during a Takeover Period, then the Conversion Notice must be given on a Business Day before the last day of the Takeover Period.
- (e) On the occurrence of a Takeover Event, AFF shall give notice of the occurrence of that event to the Trustee and to all Noteholders as soon as reasonably practicable and, in any event, within 5 Business Days of the date of occurrence of the Takeover Event.

#### **1.6 Issue of ordinary shares**

Within 5 Business Days of the Conversion Date, AFF must issue to the Noteholder that number of ordinary shares in the capital of AFF calculated in accordance with condition 1.8 (subject to any adjustments in accordance with condition 1.9) in accordance with the Election Notice and in full satisfaction of the Principal Amount otherwise owing on the Convertible Notes which are the subject of the Conversion Notice.

#### **1.7 Ranking of ordinary shares**

The ordinary shares in the capital of AFF issued upon the conversion shall rank equally in all respects with all issued ordinary shares in the capital of AFF at the Conversion Date, except

that they will not be entitled to any dividend that has been declared or determined but not paid as at the Conversion Date.

### **1.8 Number of ordinary shares issued on conversion**

Subject to condition 1.9, where AFF elects to issue Ordinary Shares on receipt of a Conversion Notice, a Noteholder on the Conversion of Convertible Notes shall be entitled to 27.03 ordinary shares in the capital of AFF for every Convertible Note converted. Fractional entitlements to ordinary shares are rounded up to the next whole number.

### **1.9 Adjustments**

Subject to the Listing Rules the following applies:

- (a) If there is a reorganisation (including consolidation, subdivision, reduction or return) of the issued capital of AFF prior to the Conversion Date, the number of ordinary shares in the capital of AFF issued on Conversion shall be adjusted in the same proportion as the issued capital of AFF is reorganised and in a manner which will not result in any additional benefits being conferred on the Noteholder which are not conferred on the shareholders of AFF, (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of shareholders approving the reconstruction of capital) but in all other respects the terms for Conversion of the Convertible Notes shall remain unchanged.
- (b) If there is an offer of ordinary shares made within the terms of section 611 Item 10 of the Corporations Act prior to the Conversion Date ('Rights Issue'), the number of ordinary shares in the capital of AFF issued on Conversion shall be adjusted in proportion to the discount to the weighted average share price given to shareholders accepting the entitlement under the Rights Issue, and in a manner which will not result in any other additional benefits being conferred on the Noteholder which are not conferred on the shareholders of AFF, (subject to the same provisions with respect to rounding of entitlements as specified in these conditions), but in all other respects the terms for Conversion of the Convertible Notes shall remain unchanged.
- (c) The adjustments in this condition 1.9 shall be determined by the Auditors acting as an expert and not as an arbitrator and the provisions of any applicable arbitration legislation are excluded to the fullest extent possible.
- (d) The determination of the Auditors will be final and binding subject only to any adjustment necessary to correct the manifest error of objective fact or calculation apparent on the face of their determination.
- (e) All costs and expenses of the Auditors must be paid by AFF.

### **1.10 Bonus issues**

If the Noteholder exercises the Conversion Option and the Company at any time during the period subsequent to the issue of the Convertible Note to a Noteholder and prior to the Conversion Date shall have made a pro rata bonus issue to all its ordinary shareholders, then the following provisions shall apply:

- (a) AFF shall on issuing the ordinary shares in accordance with condition 1.8 on exercise of the Conversion Option, issue (on terms and conditions that are the same as or correspond with, or are no more favourable to the Noteholder than, the terms and conditions on which the bonus shares were allotted to the ordinary shareholders of the Company) to the Noteholder that number of bonus shares to which the Noteholder would have been entitled if that proportion of the Principal Amount of those Convertible Notes had been converted immediately prior to the making of each bonus issue by the Company; and

- (b) in respect of any reorganisation of capital referred to in condition 1.9(a) which would have applied to ordinary shares issued under a pro rata bonus issue to which this condition 1.10 applies, the provisions of condition 1.9 shall apply with necessary changes to any ordinary shares issued as bonus shares pursuant to this condition 1.10.

#### **1.11 Register conclusive**

- (a) AFF must maintain or cause to be maintained a Register of Noteholders, which includes the information required under this Deed and the Corporations Act in relation to the Noteholders and the Convertible Notes.
- (b) Subject to condition 1.11(c), for the purposes of Conversion:
  - (i) the Register shall be conclusive of the identity of the Noteholder entitled to deliver a Conversion Notice in accordance with condition 1.5;
  - (ii) AFF shall not be affected by notice of any transfer of Convertible Notes where the transfer has not been registered on or before the Conversion Date;
  - (iii) the Register shall be conclusive as to the identity of the Noteholder on the Conversion Date for the purpose of determining who shall be issued ordinary shares pursuant to condition 1.6; and
  - (iv) AFF shall have no responsibility, duty or liability to issue ordinary shares to any person other than to the Noteholder shown on the Register at the relevant Conversion Date.
- (c) If the Noteholder shown on the Register at the relevant Conversion Date is different from the Noteholder giving the Conversion Notice, that Conversion Notice shall be disregarded and shall have no effect for the purpose of Condition 1.5.

#### **1.12 Purchase by AFF**

- (a) Provided that no event of default has occurred or is continuing, AFF may purchase all or any of the Convertible Notes on-market or by tender or by private contract at any price;
- (b) Any Convertible Notes purchased by AFF shall be cancelled and may not be resold or reissued.

#### **1.13 Power of the Noteholders to direct Trustee**

Upon the occurrence of an event of default, the Noteholders shall have the following powers exercisable by Extraordinary Resolution:

- (a) to direct the Trustee to commence proceedings for the winding up of the Company or take such other action relating to enforcement of payment of Moneys Owning to Noteholders (including without limitation issuing Redemption Notices requiring the Company to redeem the Notes) and deal with the proceeds in accordance with Clause 8.6; and
- (b) to direct the Trustee to prove in any Liquidation of the Company (irrespective of when that Liquidation is commenced) and deal with the proceeds in accordance with Clause 8.6.

#### **1.14 Record Date**

The Record Date:

- (a) for the making of interest payments shall be 7 calendar days (excluding the Interest Payment Date itself) before the Interest Payment Date; and
- (b) for the making of any other payment (including payment of the Principal Amount on the Maturity Date or the Early Redemption Amount on the Early Redemption Date)

shall be 7 calendar days (excluding the date of payment) before the Maturity Date, the Early Redemption Date or other payment date; and

- (c) for issuing ordinary shares in AFF after a Conversion Date shall be the Conversion Date; or, in each case, such other date required by the Listing Rules or the SCH Business Rules.

### **1.15 Method of payment**

- (a) Subject to conditions 1.5 to 1.9 and 1.15(c), any interest or other monies payable on or in respect of any Convertible Notes must be paid in Australian dollars only:
  - (i) by payment of cheque marked 'not negotiable' and sent through the post to the address of the Noteholder on the Register or other person entitled thereto, or where the Convertible Notes are held by joint Noteholders to the address of the Noteholder whose name stands first on the Register in respect of those Convertible Notes; or
  - (ii) by deposit, including by way of telegraphic transfer, to such account with any ADI (as that expression is defined in the Banking Act 1959 (Cth)) in Australia as the Noteholder (or, where the Convertible Notes are held by joint Noteholders, the Noteholder whose name stands first on the Register), by written notice to AFF may direct; or
  - (iii) by any other method of transferring money approved by the Trustee from time to time.
- (b) Every cheque or payment referred to in Condition 1.15(a)(i) will be sent at the risk of the person entitled to the moneys represented by the cheque and payment will be deemed to have been made when the cheque is posted or the deposit is made in accordance with this clause. The cost of any replacement cheque shall be at the expense of the Noteholder. The Noteholder will be wholly responsible for any account details provided to AFF or any error or omissions made by AFF in respect of that payment. Any cheque returned to AFF, or any cheque not presented by a Noteholder, shall be treated by AFF as unclaimed money.
- (c) If so requested by the Trustee, AFF must make any payments payable to the Trustee under this Deed:
  - (i) at a place in Australia and in a manner reasonably required by the Trustee; and
  - (ii) in immediately available funds and without setoff, counterclaim, conditions or, unless required by law or the provisions of this deed, deductions or withholdings.

### **1.16 No gross up**

If AFF is required by law to deduct or withhold Taxes from any payment to the Trustee or a Noteholder it must:

- (a) make the required deductions and withholdings;
- (b) pay in accordance with the relevant law the full amount deducted or withheld;
- (c) deliver to the Trustee or the Noteholder (as the case may be) the receipt for each payment; and
- (d) reduce the amount of the payment due to the Trustee or the Noteholder (as the case may be) by an amount equal to the deduction or withholding and the payment of such reduced amount shall be in full satisfaction of AFF's relevant payment obligation.

### **1.17 Joint Noteholders**

In the case of Convertible Notes being held by more than one person, the following shall apply:

- (a) if several persons are entered in the Register as joint Noteholders in respect of a Convertible Note the receipt by any one of such persons for the payment or satisfaction of any Moneys Owing from time to time payable or repayable to the joint Noteholders will be an effective discharge by the Company of its obligations in relation to that Convertible Note;
- (b) AFF will not be bound to register more than three persons as the joint holders of any Convertible Notes subject to condition 1.19(k);
- (c) subject to the Conditions, all of the joint Noteholders in respect of any Convertible Note must join in any:
  - (i) application to transfer the relevant Convertible Note from one Register to another Register; or
  - (ii) transfer of the relevant Convertible Note.
- (d) in the case of the death of any one of the joint Noteholders, the survivors will be the only persons recognised by AFF as having any title to or interest in the Convertible Notes registered in their names jointly.

### **1.18 Non-resident Noteholders**

Where Convertible Notes are held by, or on behalf of, a person resident outside the Commonwealth of Australia, then, despite anything to the contrary contained in or implied by the Conditions, it is a condition precedent to any right of the Noteholder:

- (a) to receive payment of the Principal Amount; or
- (b) to receive payment of any interest on the Convertible Notes,

that all necessary Authorisations (if any) and any other statutory requirements which may then be in existence are obtained at the cost of the Noteholder and satisfied.

### **1.19 Transfer of Convertible Notes**

- (a) A Noteholder is entitled to transfer a Convertible Note by:
  - (i) an instrument in writing in any usual or common form or in such other form as AFF may approve; or
  - (ii) a proper ASTC transfer or any other method of transferring or dealing in securities introduced by ASX or operated in accordance with the SCH Business Rules or Listing Rules, and in any such case recognised under the Corporations Act.
- (b) If AFF participates in a computerised or electronic securities transfer, settlement and registration system recognised by or permitted by the Corporations Act:
  - (i) AFF must comply with and give effect to the rules of that system; and
  - (ii) the only document required to be completed and delivered by AFF in relation to a transfer of the Convertible Notes is such document (if any) as those rules require to be so completed and delivered.
- (c) A written transfer instrument must be forwarded for registration to the address of the Register and together with such other evidence as the Directors may require to prove:
  - (i) the title of the transferor, or the Noteholder's right to transfer the Convertible Notes;
  - (ii) the due execution of the transfer; and

- (iii) the due compliance with the provisions of any relevant statute relating to stamp duties, and if satisfied with such evidence and that the transferor has otherwise complied with this condition 1.19, AFF will register the transfer and recognise the transferee as the Noteholder entitled to the Convertible Notes comprised in the transfer.
- (d) A written transfer instrument must be:
  - (i) executed by the transferor;
  - (ii) executed by the transferee; and
  - (iii) endorsed or accompanied by an instrument executed by the transferee to the effect that the transferee agrees to accept the Convertible Notes subject to the terms and conditions on which the transferor held them, to become a Noteholder and to be bound by this deed.

Subject to the Corporations Act, the written transfer instrument may comprise two or more documents.

- (e) Except in the case of a proper ASTC transfer, a transferor of Convertible Notes remains the owner of the Convertible Notes transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Convertible Notes, and the transferee of Convertible Notes on being entered in the Register shall have all the rights and obligations which the transferor had and all the rights and obligations of a Noteholder under this deed.
- (f) Subject to the Listing Rules and the Conditions, the Directors of AFF may in their absolute discretion refuse to register:
  - (i) any transfer that is not in accordance with the Conditions; or
  - (ii) any transfer of a Convertible Note in favour of a person who is known to AFF to be a minor or of unsound mind, but AFF will not be bound to enquire as to the age or soundness of mind of any transferee.

The Directors shall not be bound to give any reason for refusing to register any transfer and their decision shall be final, conclusive and binding.

- (g) No instrument of transfer will be registered by AFF during any period when the Register is closed.
- (h) AFF must:
  - (i) register all valid, registrable transfer forms (if any) and transfers (if any); and
  - (ii) mark or note transfer forms (if any), without charge.
- (i) Any power of attorney granted by a Noteholder may be lodged, produced or exhibited to AFF or any of its officers and will, as between AFF and the Noteholder who granted the power of attorney:
  - (i) be taken and deemed to continue and will remain in full force and effect; and
  - (ii) may be acted upon, unless express notice in writing of its revocation or of the death of the Noteholder who granted it is lodged with AFF.
- (j) All instruments of transfer which are registered or surrendered to AFF will remain the property of AFF and will be retained by it for a period of 3 years or such minimum period or in such alternative form as may be permitted by law after receipt. However, any instrument of transfer which the Company declines to register will (except in the case of fraud or suspected fraud) be returned on demand to the person depositing the instrument.
- (k) No transfer of a Convertible Note may be made to more than 3 transferees jointly unless the transferees are the legal personal representatives or trustees of a deceased Noteholder.

### **1.20 Form and Title**

- (a) The Convertible Notes are constituted by, and owing under, this Deed. Each entry in the Register constitutes a separate and individual acknowledgment to the relevant Noteholder of its entitlement to the Convertible Notes.
- (b) Entries in the Register in relation to a Convertible Note constitute conclusive evidence that the person so entered is the registered holder of the Convertible Note, subject to rectification for fraud or manifest error.

### **1.21 Certificates**

No certificate or other evidence of title will be issued by or on behalf of the Company to evidence title to a Convertible Note other than notices required under the Chess security transfer system, unless AFF determines that certificates should be made available or it is required to do so pursuant to any applicable law or regulation.

### **1.22 Indemnity to AFF**

- (a) Whenever in consequence of:
  - (i) the death of a Noteholder;
  - (ii) the non-payment of any income Tax or other Tax payable by a Noteholder;
  - (iii) the non-payment of any stamp or other duty by the legal personal representatives of a Noteholder or his estate; or
  - (iv) any other act or thing in relation to a Convertible Note or a Noteholder, any law for the time being of any other country or place, in respect of that Convertible Note, imposes or purports to impose any liability of any nature whatever on AFF to make any payments to any Governmental Agency, AFF will in respect of that liability be indemnified by that Noteholder and the Noteholder's legal personal representatives and any monies paid by AFF in respect of that liability may be recovered by action from that Noteholder and/or the Noteholder's legal personal representatives as a debt due to AFF and AFF will have a lien in respect of those monies upon the Convertible Notes held by that Noteholder or his legal personal representatives and upon the principal and interest payable in respect thereof.
- (b) Nothing in this condition 1.22 will prejudice or affect any right or remedy which any such law may confer or purport to confer on AFF.

### **1.23 Deceased or insolvent Noteholders**

The legal personal representatives of a deceased Noteholder (not being one of joint Noteholders) will be the only persons recognised by AFF as having any title to that Noteholder's Convertible Notes. Any person becoming entitled to Convertible Notes in consequence of the death or liquidation of any Noteholder may, on producing such evidence of that person's title as the Directors think sufficient, be registered as the holder of the Convertible Notes or, subject to the preceding Conditions of the Convertible Notes as to transfer, may transfer those Convertible Notes. The Directors will be at liberty to retain the principal and interest and any other monies payable in respect of any Convertible Notes which any person under this Condition is entitled to or to transfer until such person is registered or has duly transferred the Convertible Notes in accordance with these Conditions of the Convertible Notes.

## SCHEDULE 2

### Notice of Exercise of Right to Convert

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To: **AUSTRALIAN FOOD & FIBRE LIMITED ABN 88 077 983 370**

I/We hereby give notice of exercise of my/our right to exchange all/part of my/our holding of Convertible Notes into fully paid ordinary shares in Australian Food & Fibre Limited.

---

(Number of figures)

(Number in words)

I/We request you issue such shares to me/us and agree to accept them as subject to the Company's constitution.

Holder Reference Number

Registration Details of Note

Holder:

---

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This application may be signed by:

- the holder(s) of the Notes; or
- a person appointed by a power of attorney from the holder (if signed under power of attorney, a certified copy of the document must accompany this form if it has not already been noted by the company). The attorney is to declare that he/she has no notice of revocation of the power of attorney.
- if a company has a seal, then the seal must be affixed in accordance with its constitution.

Print name & office  
(eg. Director, if company  
signing)

Signature

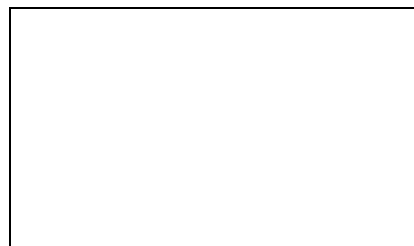
Print name & office  
(eg. Director, if company  
signing)

Signature

/ /  
Date

#### IMPORTANT NOTE:

Please read the conditions to the issue and conversion of these Notes carefully.



Company Seal (if applicable)



Lodging Participant's Stamp (if applicable)



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McCULLOUGH ROBERTSON

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*Success. In business*

## UNSECURED CONVERTIBLE NOTE TRUST DEED

AUSTRALIAN FOOD & FIBRE LIMITED ABN 88 077 983 370

*and*

THE PUBLIC TRUSTEE OF QUEENSLAND ABN 12 676 939 467


████████████████████  
Level 12 Central Plaza Two  
66 Eagle Street Brisbane  
GPO Box 1855 Brisbane Qld 4001  
Telephone (07) 3233 8888 Fax (07) 3229 9949  
Email [info@mccullough.com.au](mailto:info@mccullough.com.au)  
<http://www.mccullough.com.au/>

EXECUTED as a deed

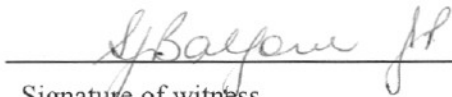
THE COMMON SEAL of  
**AUSTRALIAN FOOD & FIBRE LIMITED**  
ABN 88 077 983 370 is affixed in accordance with  
its constitution in the presence of:



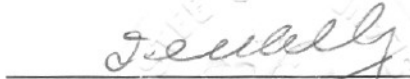
  
A Director

  
A Director/Secretary

SIGNED by IAN KONG who also  
caused the seal of the Public Trustee of Queensland  
to be affixed hereto in the presence of:

  
A Signature of witness

SYLVIA JEAN BALFOUR  
A Name of witness (print)

  
A Signature of

SIGNED AS DELEGATE FOR THE PUBLIC TRUSTEE UNDER  
SECTION 11A OF THE PUBLIC TRUSTEE ACT 1978