



Wednesday, 1 July 2015

ASX Market Announcement Office
ASX Limited
Level 4, Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

BRADKEN COMPLETES \$70 MILLION INVESTMENT BY SIGDO KOPPERS AND CHAMP PRIVATE EQUITY

Bradken announced today that the consortium of Sigdo Koppers and CHAMP Private Equity has completed its investment of approximately \$70 million in Bradken, by way of Redeemable Convertible Preference Securities issued by a wholly owned subsidiary of Bradken. As announced on 26 June 2015, proceeds from the issue of the RPS will be used to pay-down current debt and increase operating flexibility for the business. A copy of the Investment Agreement and RPS Terms are attached.

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About Bradken

Bradken is the leading supplier of differentiated consumable and capital products to the global resources, energy and freight rail industries. The Company employs almost 4,000 people in 34 manufacturing facilities and more than 30 sales and service centres across Australia, New Zealand, USA, Canada, the United Kingdom, Indonesia, Malaysia, South Africa, South America and China. The Company which became a publicly listed company in August 2004 has been in business for over 90 years and operates four market-focused divisions and a separate business.

Investment Agreement

Dated

Perpetual Trustee Company Limited (ACN 000 001 007) as trustee of the CHAMP Buyout III Trust ("**CHAMP Australia**")
CHAMP Buyout III Pte Ltd (Registration No. 200909086E) ("**CHAMP Singapore**")
Perpetual Corporate Trust Limited (ACN 000 341 533) as trustee of the CHAMP Buyout III (SWF) Trust ("**CHAMP SWF**")
P.T. Limited (ACN 004 454 666) as trustee of the CHAMP Buyout III (WW) Trust ("**CHAMP WW**")
Sigdo Koppers S.A. ("**SK**")

(each an "**Investor**" and together, the "**Investors**")

Bradken RPS Pty Limited ACN 606 577 084 ("**Issuer**")
Bradken Limited ABN 33 108 693 009 ("**Company**")

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Investment Agreement

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Investment Agreement

Details

Parties	Investors, Issuer and Company	
CHAMP Australia	Name	Perpetual Trustee Company Limited as trustee of the CHAMP Buyout III Trust
	ACN	000 001 007
	Address	Level 12 123 Pitt Street Sydney NSW 2000 AUSTRALIA
	Fax	+61 2 8256 1406
	Email	private.equity.team@perpetual.com.au
	Attention	Jenna Mollross, Manager – Corporate Trust – Funds Services
CHAMP Singapore	Name	CHAMP Buyout III Pte Ltd
	Registration No.	200909086E
	Address	6 Battery Road #12-08 Singapore 049909
	Fax	+65 6576 9170
	Email	nchildres@champequity.com.au
	Attention	Nathaniel Childres
CHAMP SWF	Name	Perpetual Corporate Trust Limited as trustee of the CHAMP Buyout III (SWF) Trust
	ACN	000 341 533
	Address	Level 12 123 Pitt Street Sydney NSW 2000 AUSTRALIA
	Fax	+61 2 8256 1406
	Email	private.equity.team@perpetual.com.au
	Attention	Jenna Mollross, Manager – Corporate Trust –

Funds Services

CHAMP WW	Name	P.T. Limited as trustee of the CHAMP Buyout III (WW) Trust
	ACN	004 454 666
	Address	Level 12 123 Pitt Street Sydney NSW 2000 AUSTRALIA
	Fax	+61 2 8256 1406
	Email	private.equity.team@perpetual.com.au
	Attention	Jenna Mollross, Manager – Corporate Trust – Funds Services

SK	Name	Sigdo Koppers S.A.
	Incorporated in	Chile
	Address	RUT 99.598.300-1 Malaga 120, 8th Floor, Las Condes Santiago, Chile
	Email	jpa@sk.cl
	Attention	Juan Pablo Aboitz

Issuer	Name	Bradken RPS Pty Limited
	ACN	606 577 084
	Incorporated in	Commonwealth of Australia
	Address	20 McIntosh Drive Mayfield West NSW 2304 AUSTRALIA
	Fax	+61 2 4926 8201
	Email	dchesterfield@bradken.com
	Attention	Company Secretary

Company	Name	Bradken Limited
	ABN	33 108 693 009
	Incorporated in	Commonwealth of Australia
	Address	20 McIntosh Drive Mayfield West NSW 2304

AUSTRALIA

Fax +61 2 4926 8201

Email dchesterfield@bradken.com

Attention Company Secretary

- Recitals**
- A** The parties have agreed that the Investors will subscribe for, and the Issuer will issue to the Investors, their respective Subscription RPS on the terms and conditions of this document.
 - B** This document provides for Conversion rights concerning the RPS.
 - C** The Company has agreed to guarantee the obligations of the Issuer under this document and the RPS Terms.
-

Governing law New South Wales, Australia

Investment Agreement

General terms

1 Interpretation

1.1 Definitions

Unless the contrary intention appears these meanings apply:

Accession Agreement means an agreement substantially in the form of schedule 3.

Affiliate has the meaning given to it in the RPS Terms.

Approved Number of Shares has the meaning given in clause 7.3(d)(i).

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or the market operated by it, as the context requires.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales (not being a Saturday, Sunday or public holiday in that place).

Capital Raising has the meaning given to it in the RPS Terms.

Common Terms Deed means the common terms deed poll entered into on 27 April 2011 (as amended and restated on 31 March 2014) by the Company and Bradken Finance Pty Limited ACN 098 300 942, amongst others.

Completion means the completion of the subscription for and the issue and allotment of the Subscription RPS in accordance with this document and **Complete** has a corresponding meaning.

Completion Date means the earlier of 30 June 2015 (where the Condition Precedent in clause 3.1(a) is satisfied) and the date which is 2 Business Days after the satisfaction of the Condition Precedent in clause 3.1(a) or any other date agreed by the Issuer and the Investors.

Conditions Precedent means the conditions precedent set out in clause 3.1 (and each is a **Condition Precedent**).

Confidentiality Agreement means the confidentiality agreement entered into on 6 January 2015 between the Company and CHAMP III Management Pty Limited (ABN 84 134 673 162).

Constitution means the constitution of the Issuer.

Control has the meaning it has in the Corporations Act but ignoring section 50AA(4).

Controlled Entity means, in relation to an Entity, another Entity which is a Subsidiary of it, or which is Controlled by it.

Controller has the meaning it has in the Corporations Act.

Conversion has the meaning given to it in clause 7.1(a).

Conversion Date means:

- (a) if the Conversion Notice is given in the context of a Capital Raising under paragraph 4.2(b) of the RPS Terms, the relevant date set out in 7.1(g)(iii); and
- (b) in all other circumstances, the date that is 20 Business Days after a Conversion Notice is given.

Conversion Notice means the notice given by an Investor to the Company pursuant to clause 7.1(a).

Conversion Period means the period from the Completion Date until the later of:

- (a) 18 months after the Completion Date; or
- (b) 12 months after the Merger Termination Date.

Conversion Price means the conversion price set out in clause 7.1(a), as may be adjusted from time to time in accordance with clauses 7.4, 7.5, 7.6, 7.7, 7.8, 7.9 and 7.10.

Converting Investor has the meaning given to it in clause 7.1(a).

Corporations Act means the *Corporations Act 2001* (Cth).

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Current Market Price means, in respect of an Ordinary Share at a particular date, the arithmetic average of the VWAP of an Ordinary Share for each of the 10 consecutive Dealing Days ending on the Dealing Day immediately preceding such date; provided that if at any time during the said 10-dealing-day period the VWAP shall have been based on a price ex-dividend (or ex-any other entitlement) and during some other part of that period the VWAP shall have been based on a price cum-dividend (or cum-any other entitlement), then:

- (b) if the Ordinary Shares to be issued do not rank for the dividend (or entitlement) in question, the VWAP on the dates on which the Ordinary Shares shall have been based on a price cum-dividend (or cum-any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such dividend or entitlement per Ordinary Share as at the date of first public announcement by the Issuer of such dividend (or entitlement) (excluding, in any case, any associated tax credit); or
- (c) if the Ordinary Shares to be issued do rank for the dividend (or entitlement) in question, the VWAP on the dates on which the Ordinary Shares shall have been based on a price ex-dividend (or ex-any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount,

and provided further that, if the VWAP of an Ordinary Share is not available on one or more of the said 10 Dealing Days, then the arithmetic average of such

VWAPs which are available in that 10-dealing-day period shall be used.

Cut-Off Date has the meaning given to it in clause 7.3(d)(ii)(A).

DDQ means the completed due diligence questionnaire dated 25 June 2015, provided by the Company to the Investors before the execution of this document and initialled by the Company for the purposes of identification.

Dealing Day means a day on which ASX is open for business, other than a day on which ASX or relevant stock exchange or securities market is scheduled to or does close prior to its regular weekday closing time.

Details means the section of this document headed "Details".

Distribution Payment Date has the meaning given to it in the RPS Terms.

Distribution Period has the meaning given to it in the RPS Terms.

Encumbrance means:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (d) third party right or interest or any right arising as consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

End Date means 31 July 2015 or such other date agreed between the Issuer and the Investors.

Entity includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

Event of Default means:

- (a) a failure by the Issuer to make any payment to an Investor required pursuant to this document or the RPS Terms (except that, where such failure to pay is caused solely by an administrative, technical or banking system issue, such payment is made on or before the date which is 3 Business Days after the date on which that payment was due);
- (b) a failure by the Company to make any payment to an Investor required pursuant to this document (except that, where such failure to pay is caused solely by an administrative, technical or banking system issue, such payment is made on or before the date which is 3 Business Days after the date on which that payment was due);
- (c) an action being taken that results in, or is reasonably likely to result in, the Issuer no longer being Controlled by the Company;

- (d) the Company or any of its Controlled Entities becoming Insolvent or having an Encumbrance enforced over it or any of its material assets; or
- (e) either the Company or the Issuer (or both) being in material breach of any of its obligations under this document (which shall include any breach of undertaking, representation or warranty given by either of them) or the Exclusivity Agreement (to the extent it applies).

Excluded Shares means any Ordinary Shares issued:

- (a) on the exercise of any rights of conversion into, or exchange or subscription for or purchase of, Ordinary Shares;
- (b) in connection with an employee incentive or share plan or other employee incentive arrangement;
- (c) pursuant to a dividend reinvestment plan of the Company and an issue of Ordinary Shares to an underwriter of that plan;
- (d) pursuant to an agreement, arrangement or understanding disclosed by the Company to ASX in relation to the acquisition of any person for scrip consideration; or
- (e) under a share purchase plan which does not require the issue of a disclosure document or product disclosure statement in accordance with Australian Securities and Investments Commission Class Order 09/425 and an issue of Ordinary Shares to an underwriter of that plan.

Exclusivity Agreement means the exclusivity agreement dated on or about the date of this document between the Company, CHAMP III Management Pty Limited (ABN 84 134 673 162) and Sigdo Koppers S.A. in connection with the Merger Proposal.

Exclusivity Period has the meaning given to it in the Exclusivity Agreement.

FIRB means the Foreign Investment Review Board.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Group means the Company and its Subsidiaries.

Guarantee means the guarantee in clause 9.2.

Guaranteed Obligations has the meaning given to it in clause 9.2(a).

Higher Investor Offer has the meaning given to it in clause 7.4(a).

Independent Financial Adviser means an investment bank appointed jointly by the Investors and the Company (acting in good faith) for the purposes of clause 7.10(a) or if they do not agree on the person to be appointed within 10 Business Days, then the investment bank appointed by the Investors (which must not be an investment bank that has been mandated by either the Company or the Investors in the 2 years prior to that date).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);

- (b) is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Instrument has the meaning given to it in clause 7.8,

Issue Price means \$100 for each RPS.

Listing Rules means the listing rules of ASX.

Material Adverse Change means an event, condition or circumstance that has, or is reasonably likely to have, a materially adverse effect on the financial condition, business assets, liabilities, results of operations or prospects of the business run by the Company and its Controlled Entities, taken as a whole, but excluding any such effect directly caused by:

- (a) any matter fairly disclosed to an Investor or its Representatives on or before the date of this document (including as a result of disclosures made by or on behalf of the Company generally or to ASX and matters described or referred to in any announcement previously agreed with the Investors and released, or previously agreed with the Investors and proposed to be released, on the date of this document by the Company in accordance with clause 15.1);
- (b) any act or omission which occurs directly or indirectly as a result of any matter, event or circumstance required by this document or the RPS Terms or the transactions contemplated by them;
- (c) changes in taxation, law, accounting policy (to the extent required by law), interest rates, exchange rates or securities or commodity prices or in economic, financial, market or political conditions generally;
- (d) an act of war or terrorism; or
- (e) a flood, earthquake or other natural calamity (excluding fire).

Maximum Number of Shares has the meaning given to it by clause 7.3(a).

Merger Proposal means the potential merger of the Company and the Magotteaux business wholly owned by Sigdo Koppers S.A.

Merger Termination Date means the date a Merger Termination Event occurs.

Merger Termination Event means either:

- (a) the Company and the Investor agreeing in writing to end discussions about the Merger Proposal; or
- (b) a notice delivered by the Company to the Investors, or by the Investors to the Company, after the end of the Exclusivity Period, notifying the recipient(s) that it wishes to terminate its consideration of the Merger Proposal.

Offer Period has the meaning given to it in clause 8.3(b).

Operating Rules means the operating rules of ASX.

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

Ordinary Shareholder means the holder of an Ordinary Share from time to time.

Outstanding RPS Amount has the meaning given to it in the RPS Terms.

Prescribed Interest Rate has the meaning given to it in the RPS Terms.

Prohibited Transferee means a vulture fund or any other entity that principally invests in 'loan to own' debt.

Proposed Number of Shares has the meaning given to it by clause 7.3(d).

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

Raising Redemption Notice has the meaning given to it in the RPS Terms.

Redeemed has the meaning given to it in the RPS Terms.

Redemption Amount has the meaning given to it in the RPS Terms.

Redemption Capital Raising has the meaning given to it in the RPS Terms.

Redemption Date has the meaning given to it in the RPS Terms.

Redemption Notice has the meaning given to it in the RPS Terms.

Related Body Corporate has the meaning it has in the Corporations Act.

Reorganisation Event means:

- (a) a bonus issue of Ordinary Shares;
- (b) a sub-division or consolidation of Ordinary Shares; or
- (c) any other reorganisation or reconstruction of Ordinary Shares where the Company does not pay or receive cash.

Representative means any person acting for or on behalf of a party, including any Controlled Entity or any director, officer, employee, agent or professional advisor of a party or a Controlled Entity.

RPS means redeemable preference shares in the capital of the Issuer.

RPS Amount has the meaning given to it in clause 8.3(a).

RPS Distribution Amount has the meaning given to the term “Distribution Amount” in the RPS Terms.

RPS Terms means the terms of issue set out in schedule 2.

Securities means any securities including Ordinary Shares or options, warrants or other rights to subscribe for or purchase or acquire Ordinary Shares.

Step Up Date has the meaning given to it in the RPS Terms.

Subscription Fee means:

- (a) with respect to CHAMP Australia, the amount of \$417,573;
- (b) with respect to CHAMP SWF, the amount of \$172,260;
- (c) with respect to CHAMP WW, the amount of \$511,473;
- (d) with respect to CHAMP Singapore, the amount of \$578,694; and
- (e) with respect to SK, the amount of \$420,000.

Subscription Price means:

- (a) with respect to CHAMP Australia, the amount of \$13,919,100;
- (b) with respect to CHAMP SWF, the amount of \$5,742,000;
- (c) with respect to CHAMP WW, the amount of \$17,049,100;
- (d) with respect to CHAMP Singapore, the amount of \$19,289,800; and
- (e) with respect to SK, the amount of \$14,000,000.

Subscription RPS means:

- (a) with respect to CHAMP Australia, 139,191;
- (b) with respect to CHAMP SWF, 57,420;
- (c) with respect to CHAMP WW, 170,491;
- (d) with respect to CHAMP Singapore, 192,898; and
- (e) with respect to SK, 140,000,

redeemable preference shares in the capital of the Issuer issued on the RPS Terms.

Subsidiary has the meaning given in the Corporations Act.

Substantial Shareholder means a person who holds a relevant interest (as defined in the Corporations Act) in 10% or more of the Ordinary Shares.

Superior Proposal means:

- (a) a takeover offer under Chapter 6 of the Corporations Act for all of the Ordinary Shares made by a Third Party; or
- (b) a scheme of arrangement under Part 5.1 of the Corporations Act is put to the Company's shareholders whereby a Third Party would acquire all of the Ordinary Shares,

which would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to the Company's shareholders as a whole than the relevant transaction which is the subject of the relevant Triggering Event, taking into account all of the terms and conditions of each proposal, including consideration, conditionality, funding, certainty and timing. In each case, the transaction will be considered to be a Superior Proposal if it is reasonably determined by the Investors to be a Superior Proposal, provided that a transaction will be considered to be a Superior Proposal (irrespective of the determination of the Investors) if the board of the Company determines the transaction to be a Superior Proposal promptly, and in any event within 10 Business Days of the transaction being announced.

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

Third Party means a party other than an Investor or a Related Body Corporate or Affiliate or Associate of an Investor.

Third Party Offer has the meaning given to it in clause 8.3(b).

Transfer means, with respect to a security, to sell, transfer, assign or otherwise dispose of or deal with any legal or equitable interest in that security, or create any contractual or synthetic arrangement that provides a third person with both economic exposure attributable to that security and the right to instruct the holder in relation to legal rights associated with that security.

Transfer Notice has the meaning given to it in clause 8.3(a).

Transferor has the meaning given to it in clause 8.3(a).

Treasurer means the Treasurer of the Commonwealth of Australia.

Trigger Date has the meaning given to it in clause 6.1(a)(i).

Triggering Event means:

- (a) a takeover offer under Chapter 6 of the Corporations Act for all of the Ordinary Shares is:
 - (i) made by a Third Party; and
 - (ii) recommended unanimously by the directors of the Company, subject to their being no Superior Proposal,

and an independent expert appointed by the Company issues a report which includes a determination from the independent expert that the takeover offer is fair to the Company's shareholders; and

- (b) a scheme of arrangement under Part 5.1 of the Corporations Act is put to the Company's shareholders whereby a Third Party would acquire all of the Ordinary Shares that is recommended unanimously by the directors of the Company (subject to their being no Superior Proposal) and an

independent expert appointed by the Company issues a report which includes a determination from the independent expert that the scheme of arrangement is fair and in the best interests of the Company's shareholders.

Trust means each of CHAMP Australia, CHAMP SWF and CHAMP WW.

Trustee means:

- (a) with respect to CHAMP Australia, Perpetual Trustee Company Limited;
- (b) with respect to CHAMP SWF, Perpetual Corporate Trust Limited; and
- (c) with respect to CHAMP WW, P.T. Limited.

Unpaid Distribution Amount has the meaning given to it in the RPS Terms.

VWAP means, in respect of an Ordinary Share and a period, the volume-weighted average price sale price of an Ordinary Share sold on ASX in the ordinary course of trading on ASX during that period (including the closing single price auction), but excluding any transaction defined in the Operating Rules as a special crossing prior to the commencement of the open session state, crossings during overnight trading (i.e. following the closing single price action), any overseas trades or trades pursuant to the exercise of options over Ordinary Shares and any other sales which the directors of the Company consider may not be fairly reflective of natural supply and demand.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and a Government Agency or any other fund, entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney, New South Wales time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);

- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day.

2 Subscription

2.1 Adoption of RPS Terms

The Issuer must adopt the RPS Terms as an amendment to its constitution prior to Completion.

2.2 Issue and subscription

Each Investor agrees to subscribe for and pay the Subscription Price for its Subscription RPS, and the Issuer agrees to allot and issue to each Investor its Subscription RPS on the terms and conditions of this document.

2.3 Conditional on FIRB approval

Clause 2.2 does not come into effect and is not binding until the Condition Precedent in clause 3.1(a) is satisfied.

3 Conditions Precedent

3.1 Conditions Precedent

Completion is conditional on:

- (a) either:
 - (i) the Treasurer (or their delegate) providing written advice with or without conditions that there are no objections under Australia’s foreign investment policy to the proposed subscription by the Investors for the Subscription RPS; or
 - (ii) following notice of the proposed subscription for the Subscription RPS having been given by or on behalf of the Investors to the Treasurer under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), the Treasurer ceases to be empowered to make any order under Part III of that Act because of lapse of time;

- (b) before 9.00am on the Completion Date, there having been no material breach of the Exclusivity Agreement by the Company;
- (c) before 9.00am on the Completion Date, the Company not having exercised its rights under clause 4 of the Exclusivity Agreement; and
- (d) no Material Adverse Change having occurred between the date of this document and 9.00am on the Completion Date.

3.2 Satisfaction of Conditions Precedent

Each Party must use their best endeavours to obtain the written advice referred to in clause 3.1(a)(i) as soon as practicable after the date of this document and in any event before the End Date.

The Issuer and the Company must provide any information regarding the Company and its operations reasonably required by any Investor to assist it in satisfying the Condition Precedent in clause 3.1(a).

Each Investor must keep the Issuer informed of any circumstances which may result in the Condition Precedent in clause 3.1(a) not being satisfied in accordance with its terms before 9.00am on 29 June 2015 and then on a weekly basis thereafter.

3.3 Notice in relation to the Condition Precedent

The Investors must as soon as practicable on becoming aware of the satisfaction of the Condition Precedent in clause 3.1(a), or that the Condition Precedent in clause 3.1(a) cannot be satisfied in accordance with its terms before the End Date, notify the Issuer of that fact and provide reasonable evidence that the Condition Precedent in clause 3.1(a) has been satisfied or cannot be satisfied (as applicable).

4 Completion

4.1 Time and place of Completion

Completion will take place at 10.00 am on the Completion Date at the offices of King & Wood Mallesons at Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney, New South Wales or any other time and place agreed by the Issuer and the Investors.

4.2 Issuer's obligations at Completion

At Completion, the Issuer must:

- (a) issue to each Investor its Subscription RPS;
- (b) register each Investor as the holder of its Subscription RPS;
- (c) deliver to each Investor share certificates in respect of its Subscription RPS; and
- (d) subject to clause 4.4, pay to each Investor its Subscription Fee.

4.3 Investor's obligations at Completion

At Completion, each Investor must:

- (a) deliver to the Issuer an application for its Subscription RPS, duly completed and executed by that Investor, in the form set out in schedule 1; and
- (b) subject to clause 4.4, pay its Subscription Price to the Issuer.

4.4 Set off

The amounts payable under clauses 4.2(d) and 4.3(b) must be set off against each other so that on Completion the only payments to be made by the Issuer and the Investors under this document are payments of:

- (a) \$13,501,527 from CHAMP Australia to the Issuer;
- (b) \$5,569,740 from CHAMP SWF to the Issuer;
- (c) \$16,537,627 from CHAMP WW to the Issuer;
- (d) \$18,711,106 from CHAMP Singapore to the Issuer; and
- (e) \$13,580,000 from SK to the Issuer.

4.5 Simultaneous actions at Completion

In respect of Completion:

- (a) the obligations of the parties under this document are interdependent; and
- (b) unless otherwise stated, all actions required to be performed by the parties at Completion will be taken to have occurred simultaneously on the Completion Date.

4.6 Completion taken not to have occurred

If any obligation specified in clauses 4.2 and 4.3 is not performed on or before Completion (unless otherwise waived by the relevant party entitled to the benefit of the relevant obligation) then, without limiting any other rights of the parties, Completion is taken not to have occurred and any document or other item delivered, or payment made, under those clauses must be returned to the party that delivered it or paid it (as applicable).

5 Dividends

5.1 Distributions by the Issuer

The Company must, to the extent it is within its control, put in place arrangements so that the Issuer has distributable amounts available such that the Issuer can pay to the Investors the relevant RPS Distribution Amounts on each Distribution Payment Date.

5.2 Payment of dividends to ordinary shareholders of the Company

Each of the Company and the Issuer may only pay a dividend, or make any other type of distribution, on any class of its shares (in the case of the Company) or its non RPS shares (in the case of the Issuer) if, prior to any such payment, the Company has procured that all RPS Distribution Amounts that are due and payable under the RPS Terms prior to the proposed dividend payment date are

paid in priority to the payment of the dividend to the holders of Ordinary Shares or non RPS Shares in the case of the Issuer (as applicable).

5.3 Consequences of not Redeeming on or before the Step Up Date

If all of the RPS are not Redeemed or Converted on or before the Step Up Date, the Company must not pay or announce the payment of a dividend on its Ordinary Shares before the date on which all of the RPS are Redeemed.

6 Triggering Event

6.1 Triggering Event

Subject to clause 6.3 and unless otherwise waived in writing by the Company, if a Triggering Event is announced in the period between the date of this document and the date that is 6 months after the Merger Termination Date, the Investors must (and must procure that each of their respective Affiliates):

- (a) either:
 - (i) in the case of a takeover offer, accept, or procure the acceptance of, the takeover offer in respect of all of the Ordinary Shares which it then holds as a result of a Conversion on or before the date which is 8 days before the last day of the initial offer period for the takeover offer (the "**Trigger Date**"), whether or not that Trigger Date is within 6 months after the Merger Termination Date; or
 - (ii) in the case of a scheme of arrangement, vote, or procure the voting of, all of the Ordinary Shares which it then holds as a result of a Conversion in favour of that scheme of arrangement and any related resolutions which are required in connection with the implementation of the scheme of arrangement, whether or not that date for voting is within 6 months after the Merger Termination Date; and
- (b) not take any action that could frustrate the completion of the takeover offer or scheme of arrangement (as applicable).

6.2 Transfer of Ordinary Shares

If an Investor disposes of or Transfers (other than by way of an on-market trade in the ordinary course of trading) Ordinary Shares held by it within 4 months following the Merger Termination Date, the parties acknowledge and agree that a person who is or will become on that Transfer taking place a Substantial Shareholder (unless that person is a fund manager with a broad based investment mandate), must not be registered as the holder of those Ordinary Shares unless the person has entered into a deed with the Company in the form reasonably required by the Company agreeing to be bound by this clause 6.

6.3 Superior Proposal

If prior to the Trigger Date, the board of the Company receives a Superior Proposal which is capable of acceptance by holders of Ordinary Shares, each Investor and each of their respective Affiliates may accept, or procure the acceptance of, the Superior Proposal in respect of all the Ordinary Shares which it then holds as a result of a Conversion.

6.4 Exceptions

Nothing in this clause 6:

- (a) prevents any Investor or any of its Associates or Affiliates from proposing or announcing a takeover offer or scheme of arrangement to acquire all of the Ordinary Shares at any time; or
- (b) shall apply if an Event of Default is subsisting.

7 Conversion right and anti-dilution

7.1 Conversion right

- (a) Subject to this clause 7, an Investor (the “**Converting Investor**”) may at any time, and from time to time, by 20 Business Days’ notice to the Company (“**Conversion Notice**”) during the Conversion Period convert some or all of the Converting Investor’s RPS into Ordinary Shares (rounded down to the nearest whole number), in each case in accordance with this document and the RPS Terms, based on the following formula and subject to adjustment in accordance with the following provisions (such a transaction being a “**Conversion**”):

$$\text{Ordinary Shares} = \frac{IS}{\text{Conversion Price}}$$

where:

IS is the aggregate Issue Price of the RPS delivered for Conversion.

Conversion Price means \$2.00.

- (b) The Conversion Price is subject to adjustment upon the occurrence of any of the events in clauses 7.4, 7.5, 7.6, 7.7, 7.8, 7.9 and 7.10.
- (c) Each Conversion must be for a minimum of 10,000 RPS or, if the relevant Investor holds less than 10,000 RPS at the relevant time, for all of the RPS held by the Investor.
- (d) For the avoidance of doubt, the Investor’s right to Convert RPS under clause 7.1(a) is available to the Investor only during the Conversion Period.
- (e) Subject to clause 7.1(g)(iii)(B), once given a Conversion Notice is irrevocable and unconditional.
- (f) As provided for in paragraph 4.1(b) of the RPS Terms, where a Redemption Notice is given in accordance with paragraph 4.1(a) of the RPS Terms:
 - (i) each holder of RPS will be entitled to give a Conversion Notice in the 30 days after a Redemption Notice is given; and
 - (ii) after that time no Conversion Notice may be given and, if thereafter given, will be of no force or effect.
- (g) Where a Redemption Notice is given in relation to a Capital Raising:
 - (i) each holder of RPS will be entitled to give a Conversion Notice in the 10 Business Days after a Redemption Notice is given; and

- (ii) after that time no Conversion Notice may be given and, if thereafter given, will be of no force or effect; and
- (iii) a Conversion Notice:
 - (A) given in respect of a Redemption Capital Raising is unconditional and the Conversion Date for such Conversion shall be 3 Business Days following such Conversion Notice; or
 - (B) given in respect of a Capital Raising that is not a Redemption Capital Raising is conditional upon completion of the Capital Raising taking place materially in accordance with the terms notified in the Raising Redemption Notice and the Conversion Date for such Conversion shall be 3 Business Days following completion of the Capital Raising materially in accordance with the terms notified in the Raising Redemption Notice.
- (h) Each Investor agrees that it will not exercise any right of Conversion prior to the Merger Termination Date.

7.2 Mechanics of Conversion

On the Conversion Date:

- (a) the Company must deliver to the Converting Investor (or its nominee, who must be an Affiliate of that Investor) the Ordinary Shares to be issued on Conversion on the Conversion Date, all of which are, on the Conversion Date, freely tradeable in the ordinary course on ASX (and must apply to ASX for quotation of those Ordinary Shares); and
- (b) the Company must procure that the RPS which are the subject of the Conversion are cancelled (other than, if clause 7.3(d) applies, those RPS to which clause 7.3(d)(ii)(B) applies).

7.3 Conversion limit

- (a) Subject to clause 7.3(d), the maximum number of Ordinary Shares that may be issued on a Conversion Date is the maximum number of Ordinary Shares that can be issued without shareholder approval on that date pursuant to Listing Rule 7.1. To the extent a Conversion Notice specifies a greater number of Ordinary Shares, that Conversion Notice will be deemed to be for the maximum number of Ordinary Shares that can be delivered under this clause 7.3 (“**Maximum Number of Shares**”).
- (b) As at the date of this document, the Company represents to each of the Investors that it has placement capacity to issue 24,599,438 Ordinary Shares without shareholder approval pursuant to Listing Rule 7.1. The Company undertakes that following the date of this document, it will only utilise that placement capacity:
 - (i) with the prior written consent of each Investor; or
 - (ii) in relation to employee incentive grants in the ordinary course of business; or
 - (iii) in relation to a Redemption Capital Raising to fund the Redemption of the RPS.

- (c) The Company undertakes that at its next general meeting it will seek shareholder approval for the issue of all Ordinary Shares on Conversion and its directors will recommend in favour of shareholder approval of such a resolution.
- (d) If the Maximum Number of Shares is less than the number of Ordinary Shares that would have been issued in relation to the Conversion Notice but for the requirement to obtain shareholder approval pursuant to Listing Rule 7.1 (“**Proposed Number of Shares**”):
- (i) the Company must use reasonable endeavours to obtain the required shareholder approval as soon as reasonably practicable after the date on which the Company receives the Conversion Notice to enable the Company to issue to the Investor the number of Ordinary Shares equal to the Proposed Number of Shares less the Maximum Number of Shares (“**Approved Number of Shares**”) and for all Ordinary Shares that may be issued on Conversion and that its directors will recommend in favour of shareholder approval of such a resolution; and
- (ii) if the shareholder approval contemplated by clause 7.3(d)(i) is:
- (A) obtained on or before the date which is 40 Business Days after the date on which the Company received the Conversion Notice (“**Cut-Off Date**”), the Converting Investor is taken to have given to the Company a new Conversion Notice for the Approved Number of Shares on the date that shareholder approval is obtained and the number of Ordinary Shares that must be issued to the Investor (or its nominee, who must be an Affiliate of that Investor) on the Conversion Date will be equal to the Approved Number of Shares and the Company will procure that the relevant RPS will be cancelled; or
- (B) not obtained on or before the Cut-Off Date, the Converting Investor is taken to have given to the Company a new Conversion Notice on the earlier of the date that the results of the relevant shareholder vote are announced and the Cut-off Date and the Company will procure that the Issuer:
- (aa) buys back the outstanding RPS held by the Converting Investor for a cash price equal to:
- $$C = (\$RPS/\$CP) \times V$$
- where:
- C** means the aggregate cash price payable;
- \$RPS** means the aggregate Issue Price of the outstanding RPS held by the Converting Investor;
- \$CP** means the Conversion Price; and
- V** means the Current Market Price for the Conversion Date applicable to the underlying Conversion Notice; and

- (ab) pays to the Investor any Unpaid Distribution Amount on those RPS.

7.4 Adjustment to the Conversion Price

- (a) If and whenever an Investor or an Associate or Affiliate of an Investor makes a takeover offer for the Company or enters into an implementation agreement for a scheme of arrangement with the Company at a higher price or value to the Conversion Price, the Conversion Price will be increased to that higher price or value ("**Higher Investor Offer**").
- (b) If a Conversion has occurred and a Higher Investor Offer is announced on or before the earlier of:
- (i) the last day of the Conversion Period; and
 - (ii) the date which is 4 months after the date of the relevant Conversion Notice,

and completed thereafter, that prior Conversion will be recalculated as if the Conversion had taken place at completion of the Higher Investor Offer based on the adjusted Conversion Price and the Investor must take such steps to reflect that recalculation as may be specified by the Company, including by agreeing to the sale of shares and accounting of proceeds, the cancellation of shares for nil consideration and the issue of replacement RPS.

7.5 Consolidations, reclassifications or subdivisions

If and whenever there shall be a consolidation, reclassification or subdivision in relation to the Ordinary Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such consolidation, reclassification or subdivision by the following fraction:

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

where:

- A** is the aggregate number of Ordinary Shares in issue immediately before such consolidation, reclassification or subdivision, as the case may be; and
- B** is the aggregate number of Ordinary Shares in issue immediately after, and as a result of, such consolidation, reclassification or subdivision, as the case may be.

Such adjustment shall become effective on the date the consolidation, reclassification or subdivision, as the case may be, takes effect.

7.6 Capitalisation of profits or reserves

If and whenever the Company shall issue any Ordinary Shares credited as fully paid to Ordinary Shareholders by way of capitalisation of profits or reserves other than:

- (a) where any such Ordinary Shares are or are to be issued instead of the whole or part of a cash dividend which the Ordinary Shareholders would or could otherwise have elected to receive or received; or

- (b) where the Ordinary Shareholders may elect to receive a cash dividend in lieu of such Ordinary Shares,

the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue by the following fraction:

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

where:

- A** is the aggregate nominal amount of the issued Ordinary Shares immediately before such issue; and
- B** is the aggregate nominal amount of the issued Ordinary Shares immediately after such issue.

Such adjustment shall become effective on the date of issue of such Ordinary Shares.

7.7 Ordinary Share issues below market value

If and whenever the Company shall issue any Ordinary Shares (other than Excluded Shares) at a price per Ordinary Share which is less than 95% of the Current Market Price per Ordinary Share on the Dealing Day immediately preceding the date of the first public announcement by the Company of the terms of such issue or grant, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

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

where:

- A** is the number of Ordinary Shares in issue immediately before the issue of such Ordinary Shares;
- B** is the number of Ordinary Shares which would otherwise be issued by the Company if the aggregate consideration paid to the Company for the additional Ordinary Shares to be issued was divided by the Current Market Price per Ordinary Share; and
- C** is the number of Ordinary Shares to be issued pursuant to such issue of Ordinary Shares.

Such adjustment shall become effective on the date of issue of such additional Ordinary Shares.

7.8 Options, warrants and similar issues in respect of Ordinary Shares

Except as otherwise provided for in clause 7.7, if and whenever:

- (a) the Company issues or grants any options, warrants or other similar rights to subscribe for or purchase or acquire any Ordinary Shares; or
- (b) the Company or (at the direction or request of or pursuant to any arrangements with the Company) any other person issues or grants any securities which by their terms of issue carry (directly or indirectly)

rights of conversion into, or exchange or subscription for, Ordinary Shares (or grants any such rights in respect of existing securities so issued) or securities which by their terms might be redesignated as Ordinary Shares,

(together, the “**Instruments**”), then the Conversion Price shall be adjusted to the extent necessary so that the Converting Investor’s percentage equity interest in the Company on Conversion remains the same immediately before and after the issue or grant of the Instruments, calculated on a fully diluted basis and on the assumption that the Instruments are converted into Ordinary Shares to the maximum extent as at the date of issue or grant of the Instruments. Such adjustment shall become effective on the date of issue or the date of grant of the Instruments.

If at the time of issue of the relevant Instrument (as used in this clause, the “**Specified Date**”) such number of Ordinary Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Instrument is converted or exchanged or rights of subscription are exercised or, as the case may be, such Instrument is redesignated at such other time as may be provided) then for the purposes of this clause 7.8, such adjustment shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange, subscription, purchase or acquisition or, as the case may be, redesignation had taken place on the Specified Date.

Such adjustment shall become effective on the date of issue of such Instrument, or, as the case may be, the grant of such rights.

7.9 Modification of certain rights

If and whenever there shall be any modification of the rights of conversion, exchange or subscription for or redesignation as Ordinary Shares attaching to any such Instruments (other than the RPS) as are mentioned in clause 7.8 above, then the Conversion Price shall be adjusted to the extent necessary so that the Converting Investor’s percentage equity interest in the Company on Conversion remains the same immediately before and after the modification of the rights of conversion, exchange or subscription attaching to such Instruments, calculated on a fully diluted basis and on the assumption that the Instruments are converted into Ordinary Shares to the maximum extent as at the date of modification.

Such adjustment shall become effective on the date of modification of the rights of conversion into, exchange or subscription for or redesignation as Ordinary Shares attaching to such Instruments.

7.10 Other events or circumstances

- (a) If 1 or more events or circumstances affecting the Company, the capital structure of the Company, the Group or the capital structure of the Group (including the issue or grant of a security or other instrument) that does not fall within the operations of clauses 7.5 to 7.9 above or which is otherwise specifically excluded from the operation of clauses 7.5 to 7.9 above occurs, the Company shall immediately notify the holders of RPS. The holders of the RPS and the Company shall negotiate in good faith to determine and agree as soon as practicable what adjustment (if any) to the Conversion Price is fair and reasonable to protect the rights and interests of the holders of the RPS taking account of that event or circumstance.

- (b) For the avoidance of doubt, the issue of Ordinary Shares pursuant to a Conversion or the issue of Excluded Shares shall not result in an adjustment to the Conversion Price.
- (c) If the Company and the Investors (each acting reasonably and in good faith) fail to agree on an appropriate adjustment to the Conversion Price within 30 days of the Company notifying the Investors of the event or circumstance affecting the Company, the capital structure of the Company, the Group or the capital structure of the Group, then the Investors or the Company may request an Independent Financial Adviser to determine as soon as practicable what adjustment (if any) to the Conversion Price is fair and reasonable to take account of the events or circumstances and the date on which the adjustment should take effect and upon such determination the adjustment (if any) will be made and take effect in accordance with such determination.
- (d) The Investors and the Company will each pay 50% of the Independent Financial Adviser's costs and expenses in connection with any appointment for the purposes of clause 7.10(c).

7.11 No adjustments for employee incentive arrangements

- (a) Subject to clause 7.11(b), no adjustment will be made to the Conversion Price when Ordinary Shares or other Securities are issued, offered or granted to employees and/or officers of the Company or any other member of the Group pursuant to any employee incentive or share plan or other employee incentive arrangement.
- (b) Clause 7.11(a) shall not apply, and the relevant adjustment shall be made, to the extent that any such Ordinary Shares or other Securities that are issued, offered or granted to employees and/or officers of the Company or any other member of the Group:
 - (i) are issued, offered or granted outside of the ordinary course of business; or
 - (ii) when aggregated with all existing Ordinary Shares and other Securities outstanding pursuant to such incentive arrangements, would, when fully exercised or diluted, exceed 2.5% of the ordinary share capital of the Company.

7.12 FIRB

The parties acknowledge and agree that notwithstanding any other provisions of this document, the Company is under no obligation to allot and issue Ordinary Shares to the Investor under this clause 7, until the Investor has delivered to the Company reasonable evidence that the Investor has obtained all required approvals to subscribe for the Ordinary Shares under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

7.13 Ordinary Shares issued on Conversion

- (a) The Ordinary Shares to which a Converting Investor is entitled on Conversion of its RPS must be issued on the relevant Conversion Date and that issue will have effect on and from, and be deemed to have been made on, that Conversion Date.
- (b) Each Ordinary Share issued on Conversion of any RPS ranks equally in all respects and forms one class with the Ordinary Shares on issue at the relevant Conversion Date.

- (c) The Company must use reasonable endeavours to, and must furnish all such documents, information and undertakings as may be reasonably necessary in order to, procure official quotation of the Ordinary Shares issued on Conversion of any RPS on ASX on the Conversion Date and that such Ordinary Shares are freely tradeable from the Conversion Date.

8 Dealing with RPS

8.1 Restrictions on Transfer

- (a) An Investor may only Transfer RPS it holds:
 - (i) in accordance with clause 8.2;
 - (ii) to a Prohibited Transferee in accordance with clauses 8.1(a)(iv), 8.2 or 8.3;
 - (iii) to any person other than a Prohibited Transferee, if the relevant Investor has first consulted with the Company for a period of at least 10 Business Days prior to the date of the Transfer (provided the Investor has advised the Company of the identity of the third party transferee at the beginning of that period, subject to such disclosure not breaching any bona fide confidentiality obligations owed by the Investor to the third party transferee or its Affiliates); or
 - (iv) to any person at any time:
 - (A) while an Event of Default is subsisting; or
 - (B) following the delivery of a Conversion Notice by that Investor.
- (b) Other than a Transfer made pursuant to clauses 8.1(a)(iv) or 8.2, an Investor must Transfer a minimum of 10,000 RPS in each Transfer or, if the relevant Investor holds less than 10,000 RPS at the relevant time, all of the RPS held by the Investor.
- (c) An Investor must not Transfer its RPS to any person prior to the Merger Termination Date.

8.2 Permitted Transfers

An Investor may Transfer the RPS without consulting with, or obtaining the prior consent of the Company where the Transfer is made to:

- (a) an Affiliate of an Investor; or
- (b) to another Investor.

8.3 Prohibited Transferee

- (a) An Investor wishing to Transfer RPS to any Prohibited Transferee (a “**Transferor**”) must first give notice to the Issuer (a “**Transfer Notice**”) stating that it wishes to Transfer RPS to a Prohibited Transferee and the number of RPS it wishes to Transfer (the “**RPS Amount**”). For the avoidance of doubt, an Investor may approach or enter into discussions with any Prohibited Transferee in relation to a proposed Transfer of RPS

at any time and does not need to have identified a particular Prohibited Transferee prior to providing a Transfer Notice

- (b) Within 10 Business Days of receiving a Transfer Notice (the “**Offer Period**”), the Issuer may:
 - (i) give a Redemption Notice to the Transferor in accordance with paragraph 4.6 of the RPS Terms; or
 - (ii) procure an unconditional and irrevocable offer from a third party for the RPS Amount where such offer must:
 - (A) be for a price per RPS no less than the Redemption Amount applicable to that RPS;
 - (B) be capable of immediate acceptance and structured to complete by the end of the Offer Period; and
 - (C) contain no undertakings from, or liability for, the Transferor other than the obligation to deliver the RPS Amount and standard warranties as to title and capacity, (a “**Third Party Offer**”).
- (c) If the Issuer does not give a Redemption Notice or procure a Third Party Offer within the Offer Period the Investor will be free to transfer the RPS Amount to any Prohibited Transferee on any terms at its sole discretion.
- (d) If the Issuer does procure a Third Party Offer during the Offer Period then the Transferor must accept that Third Party Offer. If that Third Party Offer is not completed within the Offer Period (other than due to a breach by the Transferor) then the Investor will be free to transfer the RPS Amount to a Prohibited Transferee at its sole discretion.

8.4 Accession Agreement

The parties acknowledge and agree that a person may not be registered as the holder of RPS acquired on a Transfer of RPS unless the person is a party to this document or has signed an Accession Agreement and provided it to the Company, the Issuer and each Investor then a party to this document.

9 Guarantee

9.1 Consideration

The Company acknowledges that it has received valuable consideration in connection with its entry into this Guarantee and that the Investors are acting in reliance on the Company incurring obligations and giving rights under this clause 9.

9.2 Guarantee

The Company unconditionally and irrevocably:

- (a) guarantees to each Investor the Issuer’s punctual performance of all its obligations under or in connection with this document and the RPS Terms (the “**Guaranteed Obligations**”), including:
 - (i) each obligation to pay money;

- (ii) payment of RPS Distribution Amounts payable on each Distribution Payment Date and any amount of interest payable under paragraph 3.2 of the RPS Terms;
 - (iii) payment of the Redemption Amount on the Redemption Date; and
 - (iv) payment of any Outstanding RPS Amount on a winding up of the Issuer;
- (b) undertakes with each Investor that whenever the Issuer does not pay any amount when due under or in connection with this document or the RPS Terms (or anything which would have been due if such document or the amount was enforceable, valid and not illegal), the Company shall immediately on demand pay that amount as if it was the principal obligor;
 - (c) agrees with each Investor that if an Event of Default occurs it will, as an independent and primary obligation, indemnify each Investor immediately on demand against any cost, expense, loss or liability such Investor incurs as a result of the occurrence of such Event of Default; and
 - (d) agrees with each Investor that if any Guaranteed Obligation is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify each Investor immediately on demand against any cost, expense, loss or liability such Investor incurs as a result of the Issuer not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under this document or the RPS Terms on the date when it would have been due. The amount of the cost, expense, loss or liability shall be equal to the amount which that Investor would otherwise have been entitled to recover.

Each of paragraphs (a), (b) and (c) is a separate obligation. None is limited by reference to the other.

If the Issuer does not perform the Guaranteed Obligations on time and in accordance with this document, then the Company agrees to perform those obligations on demand from the Investor. A demand may be made on the Company whether or not the relevant Investor has made demand on the Issuer.

9.3 Extent of Guarantee

The Guarantee is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Guaranteed Obligations. The Company waives any right it has of first requiring the relevant Investor to commence proceedings or enforce any other right against the Issuer or any other person before claiming from the Company.

9.4 Payments

The Company agrees to make payments under this Guarantee:

- (a) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (b) in Australian dollars, in immediately available funds.

If a Tax deduction is required by law to be made by the Company, the Company shall pay an additional amount together with the payment so that, after making

any Tax deduction, the relevant Investor receives an amount equal to the payment which would have been due if no Tax deduction had been required.

9.5 No merger

This Guarantee does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any other guarantee, indemnity, mortgage, charge or other Encumbrance, or other right or remedy to which an Investor is entitled; or
- (b) a judgment which an Investor obtains against the Company, the Issuer or any other person in connection with this document.

An Investor may still exercise its rights under this Guarantee as well as under the judgment, mortgage, charge or other Encumbrance or the right or remedy.

9.6 Rights of the Investor are protected

The rights given to each Investor under this Guarantee, and the Company's liabilities under it, are not affected by any act or omission or any other thing which might otherwise affect them under law or otherwise (without limitation and whether or not known to the Company or any other party). For example, those rights and liabilities are not affected by:

- (a) any act or omission:
 - (i) amending, varying, novating, supplementing or replacing in any way and for any reason this document or the RPS Terms (however fundamental and whether or not on terms more onerous); or
 - (ii) releasing the Issuer or giving the Issuer a concession or consent (including more time to pay); or
- (b) acquiescence or delay by an Investor or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against the Issuer or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Issuer or any other person;
- (e) any unenforceability, illegality or invalidity of any obligation of any person under this or any other document;
- (f) any insolvency or similar proceedings; or
- (g) this document or the RPS Terms not being executed by or binding against the Issuer or any other party.

9.7 Deferral of Company's rights

Until all amounts which may be or become payable by the Issuer or the Company under or in connection with this document or the RPS Terms (the "**relevant documents**") have been irrevocably paid in full and unless the Investors otherwise direct, the Company will not exercise any rights which it may have by

reason of performance by it of its obligations under the relevant documents or by reason of any amount being payable, or liability arising, under this clause 9:

- (a) to be indemnified by the Issuer;
- (b) to claim any contribution from any provider of guarantees or security for the Issuer's obligations under the relevant documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Investors under the relevant documents or of any other guarantee or security taken pursuant to, or in connection with, the relevant documents by any Investor;
- (d) to bring legal or other proceedings for an order requiring the Issuer to make any payment, or perform any obligation, in respect of which the Company has given a guarantee;
- (e) to exercise any right of set-off against the Issuer;
- (f) to claim or prove as a creditor of the Issuer in competition with any Investor; and/or
- (g) in any form of administration of the Issuer (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process) prove for or claim, or exercise any vote or other rights in respect of, any indebtedness of any nature owed to it by the Issuer.

9.8 Reinstatement of rights

Under law relating to liquidation, administration, insolvency or the protection of creditors, a person may claim that a transaction (including a payment) in connection with this Guarantee or this document is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) each Investor is immediately entitled as against the Company to the rights in connection with this Guarantee or this document to which it was entitled immediately before the transaction; and
- (b) on request from an Investor, the Company agrees to do anything (including signing any document) to restore to that Investor any mortgage, charge or other Encumbrance (including this Guarantee) held by it from the Company immediately before the transaction.

9.9 Continuing Obligations

The Company's obligations under this clause are continuing obligations independent of the Company's other obligations under this Guarantee or this document and continue after this Guarantee ends.

10 Termination

10.1 Termination by the Investors for non-satisfaction of the Conditions Precedent

If the Condition Precedent in clause 3.1(a) is not satisfied by 5.00pm on the End Date, then provided the Investors have complied with clause 3.2, the Investors may terminate this document at any time before Completion by joint notice given by the Investors to the Issuer.

If the Conditions Precedent in clause 3.1(b), 3.1(c) or clause 3.1(d) are not satisfied by 9.00am on the Completion Date, the Investors may terminate this document at any time before Completion by notice given by the Investors to the Issuer.

10.2 Termination by Issuer for non-satisfaction of the FIRB Condition Precedent

If the Condition Precedent in clause 3.1(a) is not satisfied by 9.00am on the End Date, then provided the Issuer has complied with clause 3.2, the Issuer may terminate this document at any time before Completion by notice given by the Issuer to the Investors.

10.3 Failure by a party to Complete

If a party does not Complete, other than as a result of default by another party, a non-defaulting party may give the defaulting party notice requiring it to Complete within 5 Business Days of receipt of the notice.

10.4 Specific performance or termination

If the defaulting party does not Complete within the period specified in clause 10.3, a non-defaulting party may choose either to proceed for specific performance or terminate this document. In either case, the non-defaulting parties may seek damages for the default.

10.5 Automatic termination on Redemption

This document automatically terminates on the date on which the last RPS is Redeemed in accordance with the RPS Terms.

10.6 Effect of termination

If this document is terminated under clauses 10.1, 10.2, 10.4 or 10.5 then, in addition to any other rights, powers or remedies provided by law each party retains the rights it has against any other party in connection with any breach or claim that has arisen before termination

The termination of this document under this clause 10 does not affect any other rights the parties have against one another at law and clauses 1, 6 and 9, this clause 10.6 and clauses 14, 15, 16, 18, 19, 20, 21 and 22 survive termination.

11 Warranties

11.1 Issuer's warranties

The Issuer represents and warrants to each Investor that each of the following statements is correct and not misleading in any material respect on the date of this document and will be correct and not misleading in any material respect on the Completion Date, each Conversion Date and each RPS Distribution Date as if made on and as of each of those dates:

- (a) **(incorporation)** it has been incorporated as a company limited by shares in accordance with the laws in its place of incorporation set out in the Details and is validly existing under those laws;
- (b) **(compliance with constituent documents)** the business and affairs of the Issuer have at all times been and continue to be conducted in accordance with the Constitution and the Corporations Act;

- (c) **(power)** it has the power to enter into and perform this document and has obtained all necessary consents and authorisations to enable it to do so;
- (d) **(binding obligations)** this document constitutes valid and binding obligations upon it enforceable in accordance with its terms by appropriate legal remedy;
- (e) **(no breach)** this document and performance by the Issuer of its obligations under it do not conflict with or result in a breach of any obligation (including any statutory, contractual or fiduciary obligation) or constitute or result in any default under any provision of its constitution or any material provision of any agreement, deed, writ, order, injunction, judgment or law to which it is a party or is subject or by which it is bound;
- (f) **(financing arrangements)** this document and the performance by the Issuer of its obligations under it (including the issuance of any RPS, the Conversion of any RPS into Ordinary Shares and the payment of any dividends, distributions or other amounts in connection with the RPS (including any RPS Distribution Amounts)) do not breach the terms of any financing arrangement to which it or any of its Related Bodies Corporate is a party;
- (g) **(solvency)** it is not Insolvent;
- (h) **(no Encumbrances)** the Subscription RPS will be free from all Encumbrances;
- (i) **(no restrictions)** there is no restriction on issue of the Subscription RPS to the Investor;
- (j) **(consents)** it has obtained all consents necessary to enable it to issue the Subscription RPS;
- (k) **(no breach)** the issue of the Subscription RPS does not breach any obligation or agreement binding on the Issuer or its members;
- (l) **(taxes)** it has timely paid all taxes as required by law;
- (m) **(financial capacity)** it has access to sufficient funds to meet all of its obligations under this document and the RPS Terms; and
- (n) **(compliance with law)** it is in compliance in all material respects with the Corporations Act, its constitution and all other laws and regulations (including any ASIC related regulations) applicable to it, including in relation to the execution and delivery by it of this document. The performance by it of its obligations and undertakings under this document and the RPS Terms will not breach any obligation on it under the Corporations Act or its constitution and will comply with all other law or regulation applicable to it.

11.2 Company's warranties

The Company represents and warrants to each Investor that each of the following statements is correct and not misleading in any material respect on the date of this document and will be correct and not misleading in any material respect as at the Completion Date, each Conversion Date and each RPS Distribution Date as if made on each of those dates:

- (a) **(incorporation)** it has been incorporated as a company limited by shares in accordance with the laws in its place of incorporation set out in the Details and is validly existing under those laws;
- (b) **(power)** it has the power to enter into and perform this document and has obtained all necessary consents and authorisations to enable it to do so, and the entry into and performance of this document is for its commercial benefit;
- (c) **(binding obligation)** this document constitutes valid and binding obligations upon it enforceable in accordance with its terms by appropriate legal remedy;
- (d) **(no breach)** this document and performance by the Company of its obligations under it do not conflict with or result in a breach of any obligation (including any statutory, contractual or fiduciary obligation) or constitute or result in any default under any provision of its constitution or any material provision of any agreement, deed, writ, order, injunction, judgment or law to which it is a party or is subject or by which it is bound;
- (e) **(financing arrangements)** this document and the performance by the Company of its obligations under it (including the Conversion of any RPS into Ordinary Shares, the guaranteeing the obligations of the Issuer under this document and the RPS Terms and the making of any payments pursuant to such guarantee) do not breach the terms of any financing arrangement to which it or any of Related Bodies Corporate is a party;
- (f) **(solvency)** neither it, nor any of its Controlled Entities, is Insolvent;
- (g) **(taxes)** it has timely paid all taxes as required by law;
- (h) **(compliance with law)** it is in compliance in all material respects with the Corporations Act, the Listing Rules, its constitution and all other laws and regulations (including any ASIC related regulations) applicable to it, including in relation to the execution and delivery by it of this document. The performance by it of its obligations and undertakings under this document will not breach any obligation on it under the Corporations Act, or constitution and will comply with any other Listing Rule law or regulation applicable to it;
- (i) **(continuous disclosure)** without limitation to clause 11.2(h), the Company:
 - (i) is in compliance with Listing Rule 3.1; and
 - (ii) as at immediately before the execution of this document by the Company, it is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure that it is intending to pursue at that time, other than in respect of the transactions contemplated by this document or described or referred to in any announcement previously agreed with the Investors and released, or previously agreed with the Investors and proposed to be released, on the date of this document by the Company in accordance with clause 15.1;
- (j) **(DDQ)** the information provided in the DDQ is true, accurate, and not misleading or deceptive by omission or otherwise; and
- (k) **(no action)** it is not aware of any:

- (i) action taken or proposed to be taken, or any order, directive or regulation made or proposed to be made; or
- (ii) actual or proposed prosecution or enforcement action,
- (iii) by any Government Authority in respect of the Company or its Controlled Entities that is likely to have a material adverse effect on a business of the Company or any of its Controlled Entities.

11.3 Investors' warranties

Each Investor separately represents and warrants to each of the Issuer and the Company that each of the following statements is correct and not misleading in any material respect in respect of itself only on the date of this document and will be correct and not misleading in any material respect in respect of itself only as at the Completion Date, each Conversion Date and each RPS Distribution Date as if made on each of those dates:

- (a) **(incorporation)** it has been incorporated as a company limited by shares in accordance with the laws in its place of incorporation set out in the Details and is validly existing under those laws;
- (b) **(power)** it has the power to enter into and perform this document and has obtained all necessary consents and authorisations to enable it to do so;
- (c) **(binding obligation)** this document constitutes valid and binding obligations upon it enforceable in accordance with its terms by appropriate legal remedy;
- (d) **(no breach)** this document and performance by the Investor of its obligations under it do not conflict with or result in a breach of any obligation (including any statutory, contractual or fiduciary obligation) or constitute or result in any default under any provision of its constitution or any material provision of any agreement, deed, writ, order, injunction, judgment or law to which it is a party or is subject or by which it is bound;
- (e) **(solvency)** it is not Insolvent;
- (f) **(funding)** it has access to sufficient funds to pay the Subscription Price, and those funds will be available at Completion to make payments under this document;
- (g) **(acting as principal)** the Investor is acting as principal, and not as agent, in relation to this document and the transactions contemplated by this document; and
- (h) **(disposing of Subscription RPS)** neither the Investor nor any of its Associates or Affiliates has entered into any agreement, arrangement or understanding which would mean a person (other than the Investor) would directly or indirectly acquire a legal or equitable interest in the Subscription RPS.

11.4 Separate Warranties

Each warranty and representation in this document is to be treated as a separate representation and warranty. The interpretation of any statement made may not be restricted by reference to or inference from any other statement.

11.5 Reliance

Each party acknowledges that each other party has entered this document in reliance on the representations and warranties in this document

11.6 No extinguishment

The warranties and representations in this document are not extinguished or affected by any event or matter unless:

- (a) each beneficiary of the warranty and representation (as applicable) has given a specific written waiver or release; or
- (b) the claim relates to a thing done or not done after the date of this document at the written request or with the written approval of each Investor.

11.7 Disclaimer

Subject to any law to the contrary and except as provided in the representations and warranties contained in this document, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and the Company, the Issuer and each Investor disclaim all liability in relation to these to the maximum extent permitted by law.

12 Undertakings

The Issuer and the Company hereby undertakes to each Investor that:

- (a) while the Investor holds RPS; and
- (b) provided the Investor has not given a Conversion Notice,

it will:

- (c) **(Common Terms Deed)** comply with the terms of clauses 9.4 (*Positive undertakings*) and 9.5 (*Negative undertakings*) of the Common Terms Deed (as at the date of this document), provided that any actions which are expressed to require the consent of the 'Majority Creditor' or all 'Creditors' under those clauses of the Common Terms Deed (including under any related permitted definitions) shall not be permitted under the terms of this document without the consent of all Investors;
- (d) **(information)** upon written request of an Investor, provide that Investor with all information required to be provided to a 'Creditor' pursuant to clause 9.2 (*Reporting undertakings*) of the Common Terms Deed provided that such information will be provided to that Investor directly (and not on any shared information platform or similar where any non-requesting Investor would reasonably likely be expected to be able to view or access such information);
- (e) **(no voluntary wind-up)** procure that no members' voluntary winding up of the Issuer is commenced without the prior written consent of each Investor; and
- (f) **(no Transfer)** ensure that no security of the Issuer (other than a RPS) is Transferred without the prior written consent of each Investor.

13 Events of Default

If an Event of Default occurs then while the Event of Default is subsisting and has not been cured to the satisfaction of the Investors:

- (a) **(governance)** an Investor may by written notice to the Issuer or the Company require it to convene within 7 days of its receipt of such notice:
- (i) a meeting of its board of directors at which at least two thirds of the directors must be present for the purpose of discussing the steps proposed to address or remedy the Event of Default; and/or
 - (ii) a meeting of the remuneration subcommittee of its board of directors for the purpose of discussing the performance of its chief executive officer and chief financial officer,

in which case the Issuer or the Company, as applicable, must comply with that written notice and representatives of each Investor may attend and address the relevant meeting;

- (b) **(reporting)** an Investor may by written notice to the Issuer or the Company require it to:
- (i) provide to that Investor, as soon as they are available, but in any event within 2 Business Days after the end of each week, consolidated, unaudited, weekly accounts of the Company and its Related Bodies Corporate as of the end of such week; and/or
 - (ii) convene a weekly meeting between its chief executive officer and chief financial officer and representatives of the Investors,

in which case the Issuer or the Company, as applicable, must comply with that written notice;

- (c) **(investigating consultants)** an Investor may by written notice to the Issuer and/or the Company require it to appoint any accountants or other financial consultants ("**Consultants**") approved by the Investors to:
- (i) examine its books and property;
 - (ii) examine and monitor the conduct and performance of its affairs and operations and its financial and trading condition;
 - (iii) attend all management and directors' meetings;
 - (iv) prepare recommended business practices for its business; and
 - (v) report to it and to Investors on the results of its examinations and investigations, and provide to each of them with its advice and recommendations,

in which case the Issuer and the Company must comply with that written notice and provide all assistance reasonably required by the Consultants for the purpose of carrying out any of the above; and

- (d) **(Prescribed Interest Rate)** any amounts that are accrued or outstanding under this document or the RPS Terms shall accrue interest at the Prescribed Interest Rate from the occurrence of any Event of Default.

14 Confidentiality

14.1 Confidentiality Agreement

Each of the parties agree that each Investor shall be bound (in favour of the Company) by the terms of the Confidentiality Agreement as a Recipient (as that term is defined in the Confidentiality Agreement).

14.2 Confidential Information

Each of the parties agree that the following shall be considered to be Confidential Information (as that term is defined in the Confidentiality Agreement) unless it is of the type described in clause 3.8 of the Confidentiality Agreement:

- (a) the existence and terms of this document;
- (b) the content of any communications between the parties concerning this document and discussions concerning the negotiation of and entering into of it;

14.3 Expansion of 'Purpose'

Each of the parties agree that the meaning of the term 'Purpose' as used in the Confidentiality Agreement shall be expanded to include the negotiation of, entry into, and performance of, this document.

15 Announcements

15.1 Agreed announcement

Immediately after execution of this document, the Company must issue a public announcement in a form previously agreed to in writing between the Company and the Investors.

15.2 Public announcements

Subject to clause 15.1, to the extent able to do so having regard to any applicable law, legally binding order of any Government Agency or the rules of any securities exchange pursuant to which the disclosure must be made, each party must provide the other parties with a reasonable opportunity to review and comment on any disclosure relating to this document, the transactions contemplated by this document or both, including the form and content of that disclosure, and to the extent practicable the relevant party must take any reasonable comments received from another party into account prior to making such disclosure.

15.3 Required disclosure

Subject to clause 15.2, nothing in this document prevents a party from making an announcement or public disclosure to the extent it is legally required to do so by any law, legally binding order of any Government Agency or the rules of any securities exchange on which its securities or the securities of any of its Related Bodies Corporate are listed (except that this clause 15.3 does not permit the disclosure of information under section 275(4) of the PPSA unless section 257(5) of the PPSA applies).

16 Goods and services tax (GST)

16.1 Consideration GST exclusive

Unless expressly stated otherwise in this document, all amounts payable or consideration to be provided under this document are exclusive of GST.

16.2 Payment of GST

If GST is payable on any supply made under this document, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 16.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

16.3 Reimbursements

If a party is required under this document to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

16.4 Calculation of payments

If an amount payable under this document is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

16.5 Interpretation

For the purposes of this clause 16:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 16;
- (b) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

17 Payments

17.1 Direction

Any reference in this document to a payment to any party includes payment to another person at the direction of that party.

17.2 Method of payment

Each payment referred to in this document must be made (at the election of the payee) by:

- (a) unendorsed bank cheque drawn on an Australian bank;
- (b) direct deposit of cleared funds to the credit of an Australian bank account specified in writing by the payee to the payer no later than 2 Business Days before the due date for payment; or
- (c) any other method agreed by the payee and the payer.

17.3 No deduction

Any payment to be made under this document must be made in full without set off or counterclaim and without any deduction in respect of taxes unless required by law, consented to by the payee or expressly permitted by this document.

18 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document and of other related documentation.

19 Notices and other communications

19.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

19.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Details;
- (c) sent by fax to the fax number referred to in the Details; or

- (d) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

19.3 When effective

Communications take effect from the time they are received or taken to be received under clause 19.4 (whichever happens first) unless a later time is specified in the communication.

19.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 3 days after posting (or 7 days after posting if sent from 1 country to another);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery;
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed; or
 - (iii) if the sender receives an automated message that the recipient will not receive the message for a specified time, at that specified time,

whichever happens first.

19.5 Receipt outside business hours

Despite anything else in this clause 19, if communications are received or taken to be received under clause 19.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

20 Trustee limitation of liability

- (a) Notwithstanding any other provision in this document:
 - (i) the Trustee enters into this document only in its capacity as trustee of each Trust and in no other capacity;
 - (ii) a liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the relevant Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any

representation, warranty, conduct, omission, agreement or transaction related to this document ;

- (iii) the parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of the relevant Trust, including seek the appointment of a receiver (except in relation to property of the relevant Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the relevant Trust).
- (b) The provisions of this clause 20 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the relevant Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the relevant Trust, as a result of the Trustee's fraud, negligence or wilful default.
- (c) Where a Trust is managed by a manager, it is acknowledged that the manager of the Trust is responsible under the trust deed establishing that Trust for performing a variety of obligations relating to that Trust, including under this document. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this document) will be considered fraud, negligence or wilful default of the Trustee for the purpose of clause 20(b) to the extent to which the act or omission was caused or contributed to by any failure by the manager or any other person to fulfil its obligations relating to that Trust or by any other act or omission of the manager or any other person.
- (d) No attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purpose of clause 20(b).
- (e) The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 20(a)(ii) to 20(d).
- (f) A reference to "wilful default" in relation to the Trustee means any intentional failure to comply with or intentional breach by the Trustee of any of its obligations under this document, other than a failure or breach which:
 - (i)
 - (A) arose as a result of a breach by a person other than the Trustee or any other contemplated by clause 20(c); and
 - (B) the performance of the action (or the non-performance of which gave rise to such breach) is a precondition to the Trustee performing the said obligation;
 - (ii) is in accordance with a lawful court order or direction or required by law; or
 - (iii) is in accordance with a proper instruction or direction given by the manager of the Trust or is in accordance with an instruction

or direction given to it by any person in circumstances where that person is entitled to do so under this document or at law.

This clause 20 will survive the termination or expiry of this document.

21 General

21.1 Consents, approvals or waivers

By giving any approval, consent or waiver the party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

21.2 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

21.3 Partial exercising of rights

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

21.4 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this document.

21.5 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

21.6 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

21.7 Rights and obligations are unaffected

Rights given to the parties under this document and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

21.8 Variation and waiver

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

21.9 Representations and undertakings continue

Each representation, warranty and undertaking in this document is a continuing obligation despite Completion.

21.10 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

21.11 Further steps

Each party agrees, at its own expense, to do anything the other party reasonably requests (such as obtaining consents, signing and producing documents and getting documents completed and signed) as is necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

21.12 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

21.13 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it.

21.14 Counterparts

This document may consist of a number of copies, each signed by 1 or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

21.15 Several liability

The obligations and liabilities of the parties under this document are several and no party shall be liable for any other party unless explicitly stated otherwise.

22 Governing law

22.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document and, to the extent the law permits, all matters in connection with this document including any non-contractual matters. The parties submit to the non-exclusive jurisdiction of the courts of that place.

22.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or

left at that party's address for service of notices under clause 19.2 or with its process agent.

22.3 Appointment of process agent

- (a) Without preventing any method of service allowed under any relevant law, CHAMP Singapore:
- (i) irrevocably appoints CHAMP III Management Pty Ltd ("**CHAMP Singapore Process Agent**") as its process agent to receive any document in an action in connection with this document; and
 - (ii) agrees that failure by a process agent to notify the Investor of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason CHAMP Singapore Process Agent ceases to be able to act as process agent, the Investor agrees to appoint another person acceptable to the Company (acting reasonably) as its process agent in Australia and ensure that the replacement process agent accepts its appointment and confirms its appointment to the Company.

CHAMP Singapore agrees that service of documents on its process agent is sufficient service on it.

- (b) Without preventing any method of service allowed under any relevant law, SK:
- (i) irrevocably appoints the person notified by SK to the Company within 5 Business Days after the date of this document ("**SK Process Agent**") as its process agent to receive any document in an action in connection with this document; and
 - (ii) agrees that failure by a process agent to notify the Investor of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason SK Process Agent ceases to be able to act as process agent, the Investor agrees to appoint another person acceptable to the Company (acting reasonably) as its process agent in Australia and ensure that the replacement process agent accepts its appointment and confirms its appointment to the Company.

SK agrees that service of documents on its process agent is sufficient service on it.

EXECUTED as an agreement.

Investment Agreement

Schedule 1 - Application for RPS

To: Bradken RPS Pty Limited ACN 606 577 084 ("**Issuer**")
20 McIntosh Drive
Mayfield West NSW 2034
AUSTRALIA

Attention: Company Secretary
[date]

Dear Sirs

Application for RPS pursuant to the Investment Agreement dated on or about 26 June 2015

[name] ACN [●] of [address] ("**Investor [●]**"):

- 1 hereby applies for the issue of [●] redeemable preference shares in the capital of the Issuer ("**Subscription Shares**");
- 2 agrees to pay the Subscription Price upon Completion in accordance with the Investment Agreement; and
- 3 agrees to become a member of the Issuer and be bound by the Constitution.

Capitalised terms which are used but not defined in this application have the meaning given to them (if any) in the Investment Agreement.

Yours faithfully

EXECUTED by [INVESTOR] in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)
)

.....)
Signature of director)

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

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)

Investment Agreement

Schedule 2 - RPS Terms

Investment Agreement

Schedule 3 - Accession Agreement

Details

Parties	[●] ACN [●] (" Investor "), [<i>insert details of the transferee</i>] (" Transferee "), Bradken RPS Pty Limited ACN 606 577 084 (" Issuer ") and Bradken Limited ABN 33 108 693 009 (" Company ")
----------------	---

Recitals	<p>A The Investor, the Issuer and the Company, inter alios, are parties to an Investment Agreement dated on or about 26 June 2015 ("Investment Agreement").</p> <p>B The Investor has agreed to sell and the Transferee has agreed to purchase [<i>insert number</i>] RPS in the Issuer.</p> <p>C Under clause 8.3 of the Investment Agreement, before it is registered as a holder of any RPS, a Transferee must become a party to the Investment Agreement, by entering into an agreement in the form of this Accession Agreement.</p> <p>D The Investor wishes to be released from its obligations under the Investment Agreement in respect of the Transfer RPS, as from the Effective Date, to the extent permitted under the Investment Agreement.</p>
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Governing law	New South Wales, Australia
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Investment Agreement

General terms

1 Meaning

1.1 Defined terms

Unless the contrary intention appears these meanings apply:

Effective Date means the date referred to in clause 2(b) of this document.

Transfer RPS means the RPS proposed to be Transferred by the Investor to the Transferee in accordance with clause 8 of the Investment Agreement.

Otherwise, capitalised but undefined terms used in this document have the same meaning as those used in the Investment Agreement.

1.2 Interpretation

Clause 1.2 of the Investment Agreement applies in the interpretation of this document.

2 Transferee to be a party

The Transferee:

- (a) confirms that it has been supplied with a copy of the Investment Agreement; and
- (b) undertakes with the Issuer as from the date that it is registered as a holder of the Transfer RPS ("**Effective Date**") to be bound by the Investment Agreement.

3 Consent

Each of the Investor, the Issuer and the Company:

- (a) consent to the Transferee becoming a party to the Investment Agreement, to the transfer of the Transfer RPS and from the Effective Date, and to the Transferee assuming the obligations of the Investor under the Investment Agreement with effect from the Effective Date;
- (b) agree that the Transferee will be entitled to exercise all of the rights, privileges and benefits of Investor in respect of the Transfer RPS; and
- (c) agree to be bound by the terms of the Investment Agreement as if the Transferee were named in the Investment Agreement as an Investor with effect from the Effective Date.

4 Investment Agreement

The parties agree that, except as provided above, the provisions of the Investment Agreement remain in full force and effect.

5 Notices

For the purposes of the Investment Agreement, the address of:

- (a) the Transferee to which all notices must be delivered is the address set out in the Details or, if the Transferee has notified otherwise, then marked for attention in the way last notified; and
- (b) each of the Investor, the Issuer and the Company is the address set out in the Details section of the Investment Agreement or, if the Investor, the Issuer or the Company (as applicable) has notified otherwise, then marked for attention in the way last notified.

6 Costs

The Costs of the Issuer and the Company arising out of the negotiation, preparation and execution of the Accession Agreement will be borne by the Transferee. In all other respects, each party shall bear its own Costs arising out of the negotiation, preparation and execution of this document.

7 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document and, to the extent the law permits, all matters in connection with this document including any non-contractual matters. The parties submit to the non-exclusive jurisdiction of the courts of that place.

8 Counterparts

This document may consist of a number of copies, each signed by 1 or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

EXECUTED as a deed.

[Insert execution clauses.]

Investment Agreement

Signing page

DATED: _____

EXECUTED by **BRADKEN RPS PTY LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*

*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)

*delete whichever is not applicable

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

.....
Signature of director

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

.....
Signature of director/company secretary*

*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)

*delete whichever is not applicable

Investment Agreement

EXECUTED by **PERPETUAL TRUSTEE COMPANY LIMITED** as trustee for **CHAMP BUYOUT III TRUST** by its attorneys under power of attorney dated 16 September 2014:

.....
Signature of attorney

.....
Name of attorney

In the presence of:

.....
Signature of witness

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

.....
Signature of attorney

.....
Name of attorney

EXECUTED by **PERPETUAL CORPORATE TRUST LIMITED** as trustee for **CHAMP BUYOUT III (SWF) TRUST** by its attorneys under power of attorney dated 16 September 2014:

.....
Signature of attorney

.....
Name of attorney

In the presence of:

.....
Signature of witness

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

.....
Signature of attorney

.....
Name of attorney

Investment Agreement

EXECUTED by **P.T. LIMITED** as
trustee for **CHAMP BUYOUT III (WW)**
TRUST by its attorneys under power of
attorney dated 16 September 2014:

.....
Signature of attorney

.....
Name of attorney

In the presence of:

.....
Signature of witness

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

THE COMMON SEAL of **CHAMP**
BUYOUT III PTE LTD is duly affixed by
authority of its directors in the presence
of:

.....
Signature of authorised person

.....
Office held

.....
Name of authorised person (block
letters)

.....
Signature of attorney

.....
Name of attorney

.....
Signature of authorised person

.....
Office held

.....
Name of authorised person (block
letters)

Investment Agreement

SIGNED by the person named below)
as authorised representative for **SIGDO**)
KOPPERS S.A. in the presence of:)

.....)
Signature of witness)

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

.....)
By executing this document the)
signatory warrants that the signatory is)
duly authorised to execute this)
document on behalf of Sigdo Koppers)
S.A.)

.....)
Name of authorised representative)
(block letters))

RPS terms

1 Issue of RPS

1.1 Terms of Issue

These Terms of Issue set out the rights and restrictions of RPS which may be issued by the Issuer.

1.2 Separate class

The RPS are a separate class of shares in the Issuer.

1.3 Constitution

The provisions of the constitution of the Issuer apply to RPS.

2 Rights and restrictions

2.1 Voting

An RPS does not entitle its holder to receive notice of or to attend or vote at any general meeting of the Issuer.

2.2 Distributions

Each RPS confers on its holder the right to dividends in accordance with paragraph 3 of these Terms of Issue.

2.3 Participation in a winding up

Each RPS confers on its holder, in a winding up and in priority to any other class of shares in the Issuer, the right to any Outstanding RPS Amount.

2.4 No further right to participate in profits

The RPS have no rights to participate in any further distribution of profits or assets of the Issuer.

2.5 Redemption

The RPS are Redeemable by the Issuer in the circumstances and in accordance with paragraph 4 of these Terms of Issue.

3 Distributions

3.1 Distribution Entitlement

The Issuer must pay to each holder of RPS, on each Distribution Payment Date, an amount (subject to paragraph 3.4 of these Terms of Issue) in cash equal to the Distribution Amount for the Distribution Period.

3.2 Interest accrues

If a Distribution Amount for an RPS is not paid in full on or before the applicable Distribution Payment Date, any amount not so paid accrues interest for the period beginning on the Distribution Payment Date and ending on the day when the amount is paid, at the Prescribed Interest Rate. Any such amounts, to the extent not repaid, will compound at the end of each Distribution Period and become part of the Distribution Amount for the following Distribution Period. Notwithstanding any such capitalisation, the unpaid amounts will remain immediately due and payable.

3.3 Company Guarantee

Any payment by the Company pursuant to the Guarantee will satisfy the obligation of the Issuer to pay such amount on the RPS.

3.4 Payment in kind

(a) The Issuer may elect for the purposes of the first and second Distribution Periods following the Issue Date to satisfy payment of the relevant Distribution Amounts (in whole or part) by issuing additional RPS to the holders of the RPS. If the Issuer elects to satisfy payment of a Distribution Amount in this way:

- (i) it must treat all holders of the RPS equally and, if relevant, on a pro-rata basis; and
- (ii) the higher Distribution Rate of 8% per annum will apply.

The additional RPS will be issued for the Issue Price and the number of RPS issued to the holder to discharge the relevant Distribution Amount will be rounded to the nearest whole number if a fraction of an RPS would otherwise be issued.

- (b) In relation to any decision to pay a Distribution Amount by the issue of additional RPS, the directors of the Issuer may authorise any person to make, on behalf of the holders, or a particular holder, entitled to those RPS an agreement (including in writing) with the Issuer which provides as appropriate for the issue of those RPS. Any agreement made under such an authority is effective and binds all holders concerned.
- (c) If the Issuer distributes RPS to holders of RPS, each of those holders appoints the Issuer and any officer of the Issuer nominated on their behalf by the Issuer, as their agent or attorney to do anything needed or desirable to give effect, or assist in giving effect, to that distribution.

4 Redemption

4.1 Merger Redemption

If a Merger Termination Event occurs:

- (a) the Issuer may at any time thereafter elect to Redeem all of the RPS by giving the holders of the RPS 45 days' notice of the Redemption ("**Merger Redemption Notice**"); and
- (a) each holder of RPS will be entitled to give a Conversion Notice (if entitled to do so pursuant to the Investment Agreement) in the 30 days after a Merger Redemption Notice is given by the Issuer under this paragraph 4.1. The holders of the RPS may not thereafter give a Conversion Notice prior to the Redemption taking place. If a Conversion Notice is given as permitted by this paragraph, the Merger Redemption Notice will thereafter be of no force or effect.

4.2 Capital Raising Redemption

- (a) If the Company proposes to undertake a Capital Raising, the Issuer may elect to Redeem all of the RPS by giving the holders of the RPS not less than 20 Business Days' notice of that intention prior to the date of announcement of the Capital Raising which notice must include:
 - (i) details of the then intended terms of the Capital Raising; and

- (ii) a statement whether that Capital Raise is a Redemption Capital Raising,

(“**Raising Redemption Notice**”).

- (b) Each holder of RPS will be entitled to give a Conversion Notice (in accordance with the Investment Agreement) in the 10 Business Days after a Raising Redemption Notice is given by the Issuer under this paragraph 4.2. The holders of the RPS may not thereafter give a Conversion Notice prior to the Redemption taking place or that Raising Redemption Notice ceasing to have force and effect or the condition to that Redemption failing. If a Conversion Notice is given as permitted by this paragraph 4.2, the Raising Redemption Notice will thereafter be of no force or effect.
- (c) Redemption of RPS in connection with a Capital Raising will occur on the date that is 3 Business Days after the settlement date of the Capital Raising (or if the Capital Raising had more than 1 settlement date, the date 3 Business Days after the last settlement date in time). If a Capital Raising is not announced within 25 Business Days of the giving of a Raising Redemption Notice, that Raising Redemption Notice will thereafter be of no force and effect.
- (d) Redemption pursuant to this paragraph 4.2 will be conditional upon completion of the Capital Raising taking place on or before the Redemption Date.
- (e) If a Conversion Notice is given as contemplated by this paragraph 4.2, the Company may then elect not to proceed with the Capital Raising or may elect to proceed with the Capital Raising on different terms to that notified under paragraph 4.2(a) of these Terms of Issue.
- (f) In advising the holder of RPS of a proposed Capital Raising, the Issuer may require the holders of RPS to agree to confidentiality stipulations concerning the details of the Capital Raising and may require such holders to agree to enter into a confidentiality agreement as reasonably proposed by the Company.

4.3 Change of Control Redemption

If an Investor Merger Event occurs, the Issuer may thereafter elect to Redeem all of the RPS by giving the holders of the RPS 30 days’ notice of the Redemption (“**CoC Redemption Notice**”).

4.4 Fifth year Redemption

On or after 30 June 2020, the Issuer may elect to Redeem all of the RPS by giving the holders of the RPS 30 days’ notice of that Redemption (“**5Y Redemption Notice**”).

4.5 Agreed Redemption

The parties may agree any other date on which the Issuer can elect to Redeem all of the RPS. Any such agreed Redemption date must be agreed in writing 30 days prior to the date of such Redemption (“**Agreed Redemption Notice**”).

4.6 Prohibited Transferee Redemption

The Issuer may elect to Redeem all of the RPS held by a holder of RPS in accordance with clause 8.3 of the Investment Agreement by giving the relevant holder of RPS 30 days’ notice of that Redemption within the Offer Period.

4.7 Contents of Redemption Notice

Each notice of Redemption of RPS given in accordance with paragraphs 4.1 to 4.6 of these Terms of Issue ("**Redemption Notice**") must state:

- (a) the date on which the Redemption is to occur, which must comply with the relevant notice period stipulated in paragraphs 4.1 to 4.6 of these Terms of Issue (as relevant) ("**Redemption Date**");
- (b) that from the Redemption Date, Distribution Amounts will cease to be payable on any RPS Redeemed and the holder of the RPS Redeemed will be paid the Redemption Amount;
- (c) whether the Redemption Amount is payable by way of redemption, buy back, reduction of capital or cancellation of the relevant RPS or any combination of them; and
- (d) the place where the certificates for the RPS may be submitted and the method of payment of the Redemption Amount to holders of the RPS Redeemed.

4.8 Effect of Redemption

- (a) On the Redemption Date all rights or restrictions on the RPS Redeemed will no longer have effect upon payment of the Redemption Amount.
- (b) Once given, a Redemption Notice is irrevocable and unconditional, except as provided for in paragraphs 4.1(b) and 4.2(b) of these Terms of Issue.
- (c) If a Redemption Notice is given, a holder of RPS may not thereafter give a Conversion Notice except as provided for in paragraphs 4.1(b) and 4.2(b) of these Terms of Issue and any such Conversion Notice given after a Redemption Notice will be of no force and effect.

4.9 Buy back

If the Redemption involves a buy back of an RPS, the Redemption Notice will, subject to the Corporations Act, constitute a buy back offer for the Redemption Amount payable on the Redemption Date and the holder will be deemed to have accepted that buy back offer for the RPS to which the Redemption Notice relates on the date the Redemption Notice is given and, subject to compliance with the Corporations Act, will be deemed to have sold the RPS to the Issuer on the Redemption Date for a price per RPS equal to the Redemption Amount.

4.10 Payment of Redemption Amount

The Issuer must pay the Redemption Amount to the holder of the RPS on its Redemption. All Redemption Amounts payable for RPS Redeemed at the same time must be paid by the Issuer at the same time.

4.11 Certificates on Redemption

The holder of the RPS must use its reasonable endeavours to deliver the following to the Issuer:

- (a) the certificate for the RPS being Redeemed; or
- (b) reasonable evidence of the destruction or loss of the certificate for the RPS,

on or before the relevant Redemption Date but failure to deliver such certificate or reasonable evidence shall not detract from the Issuer's obligation to Redeem the relevant RPS.

4.12 Interest accrues

If the Redemption Amount for an RPS is not paid in full on or before the Redemption Date, any amount not so paid accrues interest on the amount unpaid for the period beginning on the Redemption Date and ending on the day when the amount is paid, at the Prescribed Interest Rate, unless the relevant holder of the RPS agrees otherwise with the Issuer.

4.13 Consequences of not Redeeming on or before the Step Up Date

If all of the RPS are not Redeemed on or before the date that is the earlier of the date that is:

- (d) the date 5 Business Days after the settlement date of any Capital Raising (or if the Capital Raising has more than 1 settlement date, the date 5 Business Days after the last settlement date in time); or
- (e) 30 June 2020,

("Step Up Date"), the Distribution Rate for each Distribution Period commencing after the Step Up Date must be increased by 5% per annum above the rate set out in the definition of "Distribution Rate" in these Terms of Issue for that Distribution Period.

5 Payments

5.1 Manner of payments

Any money payable in cash in respect of an RPS (including a Distribution Amount or Redemption Amount) must be paid in Australian dollars (unless otherwise agreed with the holder of the RPS) and may be paid by electronic funds transfer to the account nominated by the holder of the RPS or any other method agreed between the Issuer and the holder of the RPS.

5.2 Withholding

The Issuer must deduct or withhold taxes or any other amount from any money payable in respect of an RPS (including a Distribution Amount or Redemption Amount) which the Issuer is required by law to make.

5.3 No gross up

The Issuer is not required to make any additional payment by way of gross-up or otherwise for any deduction or withholding under paragraph 5.2 of these Terms of Issue.

6 Conversion

A holder of RPS has the right to convert RPS into Ordinary Shares in accordance with the Investment Agreement.

7 Interpretation

7.1 Definitions

Unless the contrary intention appears these meanings apply:

5Y Redemption Notice has the meaning given to it in paragraph 4.4 of these Terms of Issue.

Affiliate in relation to:

- (a) any Investor means any Associate of that Investor; and
- (b) any CHAMP Investor means:
 - (i) any other CHAMP Group Member;
 - (ii) any Investor Fund or Investor Fund Entity for which CHAMP or any other CHAMP Group Member is a manager or investment adviser (whether solely or with 1 or more other persons);
 - (iii) any person who is an investor in an Investor Fund within paragraph (iii) above; and
 - (iv) any trustee, nominee, general partner, responsible entity, special purpose vehicle, custodian or other person holds or is to hold securities for any person with paragraphs (i) to (iv) above,

but does not include CHAMP Ventures and its affiliates or Associates or CHI Private Equity (formerly Castle Harlan Inc.).

Agreed Redemption Notice has the meaning given to it in paragraph 4.5 of these Terms of Issue.

Associate has the meaning it has in Part 1.2 Division 2 of the Corporations Act.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales (not being a Saturday, Sunday or public holiday in that place).

Capital Raising means an equity capital markets transaction undertaken by the Company that is either an entitlements offering or a placement to a broad range of institutional investors or a combination thereof.

CHAMP means CHAMP III Management Pty Limited ACN 134 673 162.

CHAMP Group means CHAMP, CHAMP IV Management Pty Ltd ACN 605 734 772 and each of their related bodies corporate and **CHAMP Group Member** is to be construed accordingly.

CHAMP Investor means any of:

- (a) CHAMP Buyout III Trust;
- (b) CHAMP Buyout III (SWF) Trust;
- (c) CHAMP Buyout III (WW) Trust; and
- (d) CHAMP Buyout III Pte Limited (Registration No: 200909086E).

CoC Redemption Notice has the meaning given to it in paragraph 4.3 of these Terms of Issue.

Company means Bradken Limited ABN 33 108 693 009.

Control has the meaning given in section 50AA of the Corporations Act.

Conversion has the meaning given in the Investment Agreement.

Conversion Notice has the meaning given in the Investment Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Distribution Amount for any Distribution Period for each RPS on issue means (subject to paragraph 3.2 of these Terms of Issue) the amount calculated as:

$$DA = \frac{DR \times IP \times N}{365}$$

where:

- DA = Distribution Amount;
- DR = Distribution Rate, expressed as a decimal;
- IP = the Issue Price; and
- N = number of days in the Distribution Period.

Where the Distribution Rate for any Distribution Period increases as a result of the operation of paragraph 4.13 of these Terms of Issue, the calculation of the Distribution Amount will be separately calculated in accordance with the above formula for the period prior to the increase (exclusive of the date of increase) and after the date of increase of the Distribution Rate.

Distribution Payment Date means the first Business Day after the end of the relevant Distribution Period.

Distribution Period for an RPS means:

- (a) for the first Distribution Period, the number of days from the Issue Date until 31 December 2015 (inclusive of that date); and
- (b) for successive Distribution Periods, the number of days from the last day of the prior Distribution Period until the date that is 6 months after that the last day of the prior Distribution Period (inclusive of that date).

Distribution Rate means, subject to paragraph 4.13 of these Terms of Issue:

- (a) for the first and second Distribution Periods, 7.5% per annum, except where the Issuer resolves to satisfy the payment by issuing additional RPS under paragraph 3.4 of these Terms of Issue when that percentage will be 8% per annum for the part of the Distribution Amount satisfied by the issue of RPS;
- (b) for the third and fourth Distribution Periods, 9% per annum;
- (c) for the fifth and sixth Distribution Periods, 11% per annum; and
- (d) thereafter, 13% per annum.

Exclusivity Agreement has the same meaning as in the Investment Agreement.

Exclusivity Period has the same meaning as in the Exclusivity Agreement.

Guarantee means the guarantee of the Company in clause 9 of the Investment Agreement.

Investment Agreement means the investment agreement dated on or about 26 June 2015 between the Company, the Issuer and the Investors.

Investors has the meaning given to it in the Investment Agreement.

Investor Fund means any partnership, limited partnership, venture capital limited partnership, unit trust, investment trust, managed investment scheme, other collective investment scheme, pension fund, insurance company, limited liability company, body corporate or other fund or entity holding securities (directly or through one or more interposed holding entities) for investment purposes.

Investor Fund Entity means any person Controlled by an Investor Fund.

Investor Merger Event means the date on which an Investor or an Affiliate or Associate of an Investor (or a combination of Investors, Affiliates or Associates of Investors or both) acquires Control of the Company through:

- (a) a takeover offer under Chapter 6 of the Corporations Act;
- (b) a scheme of arrangement under Part 5.1 of the Corporations Act; or
- (c) any other transaction or acquisition of shares in the Company.

Issue Date for an RPS means the date on which the RPS is issued.

Issue Price for an RPS means \$100.

Issuer means Bradken RPS Pty Limited ACN 606 577 084.

Merger Redemption Notice has the meaning given to it in paragraph 4.1(a) of these Terms of Issue.

Merger Termination Event has the meaning given in the Investment Agreement.

Offer Period has the meaning given to it in the Investment Agreement.

Ordinary Shares means fully paid ordinary shares in the capital of the Company.

Outstanding RPS Amount for each RPS means the Issue Price and any Unpaid Distribution Amount.

Prescribed Interest Rate means the higher of:

- (a) the sum of:
 - (i) the Distribution Rate applicable to the Distribution Period during which the relevant Distribution Amount is outstanding from time to time; and
 - (ii) 2% per annum; and
- (b) the highest Distribution Rate payable at any time.

Raising Redemption Notice has the meaning given to it in paragraph 4.2(a) of these Terms of Issue.

Redeem for an RPS means to redeem, buy back, reduce the capital of or cancel the RPS (or any combination of such activities) and **Redeemed**, **Redeemable** and **Redemption** have corresponding meanings.

Redemption Amount means:

- (a) in relation to a Redemption Date arising from the events referred to in paragraphs 4.2, 4.4, 4.5 and 4.6 of these Terms of Issue an amount equal to the aggregate of:
 - (i) the Issue Price; plus
 - (ii) the Unpaid Distribution Amount; and
- (b) in relation to a Redemption Date arising from the events referred to in paragraphs 4.1 and 4.3 of these Terms of Issue, an amount equal to the aggregate of:
 - (i) the Issue Price multiplied by 1.02; plus
 - (ii) the Unpaid Distribution Amount.

Redemption Capital Raising means a Capital Raising where the sole purpose of that Capital Raise is to raise funds to Redeem the outstanding RPS.

Redemption Date means the date for Redemption of an RPS as notified under paragraph 4.7 of these Terms of Issue.

Redemption Notice has the meaning given in paragraph 4.7 of these Terms of Issue.

RPS means a redeemable preference share in the capital of the Issuer having the rights set out in these Terms of Issue.

Step Up Date has the meaning set out in paragraph 4.13 of these Terms of Issue.

Terms of Issue means these terms.

Unpaid Distribution Amount for an RPS at any date means the difference (if any) between:

- (a) the amount the holder of the RPS would have received if each Distribution Amount had been paid in full on each Distribution Payment Date up to that date (and if that date is not a Distribution Payment Date, includes the pro rata amount of the Distribution Amount for the number of days that have elapsed since the end of the last Distribution Period and that date); and
- (b) the aggregate amount of any Distribution Amounts actually received by the holder of the RPS or any previous holder of the RPS up to that date, including any Distribution Amount paid by the Company pursuant to the Guarantee.

7.2 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in these Terms of Issue:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;

- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney, New South Wales time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (m) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (n) if a party must do something under these Terms of Issue on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (o) if the day on which a party must do something under these Terms of Issue is not a Business Day, the party must do it on the next Business Day.