

CONVERTIBLE NOTE AGREEMENT – TRANCHE 2

MAGSONS HARDWARE LIMITED

ODIN INVESTMENT LIMITED

Warning

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because there is an exclusion for offers where the amount invested upfront by the investor (plus any other investments the investor has already made in the financial products) is \$750,000 or more. As a result of this exclusion, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for this investment.

Investments of this kind are not suitable for retail investors.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.



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DATED

12 February

2020

PARTIES

- 1 **MAGSONS HARDWARE LIMITED** (company number 413641) ("**Company**")
- 2 **ODIN INVESTMENT LIMITED** (company number 7867480) ("**Noteholder**")

BACKGROUND

The Company has agreed to issue to the Noteholder, and the Noteholder has agreed to subscribe for, secured, interest-bearing convertible loan notes (with a principal amount of \$1 each,) on the terms of this Agreement.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Agreement unless inconsistent with the context or otherwise specified:

"**Act**" means the Companies Act 1993;

"**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in Auckland, New Zealand;

"**Central Assets**" means Central Assets Investment Limited (company number 7807457);

"**Conversion**" means, in respect of any Notes, to convert those Notes to share equity by issuing Conversion Shares to the Noteholder in satisfaction of the Company's obligation to pay the Outstanding Principal in respect of the Notes, and "**Convert**" and "**Converted**" shall have corresponding meanings;

"**Conversion Shares**" means Shares issued, or to be issued, on Conversion;

"**Default Interest Rate**" means 20% per annum;

"**Event of Default**" means any of the events described in clause 9.1;

"**Everest**" means Everest Central Investment Limited (company number 7076235);

"**GAAP**" means New Zealand generally accepted accounting practice applicable to the relevant party at such time;

"**General Security Agreement**" means the general security agreement dated on or about the date of this Agreement between the Company and the Noteholder under which the Company creates security over all its present and after-acquired property;

"**Guarantee**" means any guarantee, indemnity, letter of credit, legally binding letter of comfort or suretyship. It includes any obligation or irrevocable offer to be responsible for a debt or for the insolvency or financial condition of another person. It also includes any other obligation or irrevocable offer to pay a debt or to purchase a debt, to provide funds for the payment or discharge of a debt (whether by the advance of money, the purchase of or subscription for shares, stock or other interests issued by another person, the purchase of assets or services, or otherwise), or to indemnify against the consequences of default in the payment of a debt;

"Interest Payment Date" means the second to last Business Day in a calendar month;

"Interest Rate" means 11.00% per annum;

"Issue Date" means the date the Notes are issued under clause 3.1;

"Land" means the land at 156-160 Central Park Drive, Waitakere City, Auckland;

"Magsons" means Magsons Investments Limited (company number 2035125);

"Material Adverse Effect" in relation to a person includes a material adverse effect:

- (a) on that person's financial condition or business or assets; or
- (b) on the consolidated financial condition or business of that person and that person's Subsidiaries (if any); or
- (c) on that person's ability to perform and comply with that person's obligations under a Transaction Document,

and **"Material Adverse Change"** shall be construed accordingly;

"Maturity Date" means 31 March 2023;

"Notes" means the number of convertible loan notes of \$1 each which are issued under the terms of this Agreement and have the rights and are subject to the provisions set out in this Agreement;

"Outstanding Amount" means, in respect of any Notes, the sum of the Outstanding Principal and Outstanding Interest in respect of those Notes;

"Outstanding Interest" means, in respect of any Notes, the accrued but unpaid interest in respect of those Notes;

"Outstanding Principal" means, in respect of any Notes, the principal amount of those Notes which has not been repaid and remains outstanding;

"Potential Event of Default" means any event which with the giving of notice or the lapse of time or the satisfaction of any other condition could constitute an Event of Default.

"Redemption" means, in respect of any Notes, to redeem those Notes by the Company paying the Outstanding Amount in respect of the Notes to the Noteholder, and **"Redeem"** and **"Redeemed"** shall have corresponding meanings;

"Register" has the meaning given to that term in clause 11.1;

"Security" or **"Securities"** includes all present and future securities, mortgages of land, general security agreements or general security deeds, Guarantees, indemnities, undertakings and assurances by the Company to the Noteholder, or by any other person in respect of the Company's liabilities and obligations to the Noteholder;

"Shares" means shares in the capital of the Company for the time being;

"Solvency Test" has the meaning in Section 4 of the Act;

"Subsidiaries" has the meaning given to it in the Financial Reporting Act 1993;

"Tax" or **"Taxes"** includes:

- (a) any tax, levy, impost, customs duty, excise duty, due, rates, charge, fee, deduction or withholding of any nature imposed, levied, collected, withheld or assessed by any person; and
- (b) all costs, charges, interest, penalties, fines and expenses in respect of any of them;

"Transaction Documents" means this Agreement, each document evidencing or creating a Security and a Deed of Priority between the Noteholder, the Company, Central Assets and Everest (or any combination of those parties that includes the Noteholder) and **"Transaction Document"** means any one of them.

1.2 Interpretation

- (a) references to the Background, clauses, Schedules and Appendices are references to the background, clauses and schedules of and appendices to this Agreement;
- (b) references to **"indebtedness"** includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money;
- (c) references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinated legislation made under them;
- (d) words importing the singular number include the plural and vice versa, and references to any gender include every gender;
- (e) references to a party include that party's successor, permitted assign, executor, administrator and other representative;
- (f) references to persons include corporations and unincorporated bodies of persons, government or semi-government bodies or agencies or political subdivisions of them;
- (g) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (h) references to "dollars" and "\$" are references to New Zealand dollars;
- (i) references to "written" and "in writing" include any means of permanent visible representation;
- (j) references to time are to New Zealand time;
- (k) references to any document include all modifications and replacement documents from time to time;
- (l) referring to anything after the word "including", "include" or "includes" does not limit what else might be included and any such reference is without limitation to what else might be included; and
- (m) where any act, matter or thing is to be done on a day that is not a Business Day, that act, matter or thing may be done on the next succeeding Business Day.

2 CHARACTERISTICS OF NOTES

2.1 Secured debt obligations

The Notes represent secured debt obligations of the Company pursuant to this Agreement and the General Security Agreement and the Notes rank equally among themselves and are convertible into Shares in accordance with the terms of this Agreement.

2.2 Transferable

The Notes may only be transferred or assigned by the Noteholder with the prior written consent of the Company. The rights, options and other provisions set out in this Convertible Note Agreement shall continue to apply any subsequent noteholder.

2.3 Cancellation upon Conversion or Redemption

For the avoidance of doubt, each Note which is Converted or Redeemed in accordance with this Agreement is and will be deemed to be cancelled from the date of such Conversion or Redemption. Neither the Company nor the Noteholder will have any further liabilities or obligations in respect of a cancelled Note.

3 ISSUE OF NOTES

3.1 Issue

The Company will issue and allot the Notes to the Noteholder, and record details of such issue and allotment in the Register. The number of Notes issued will be deemed to be a number that equals the number of shares issued by the Noteholder for its tranche 2 capital raising for the Noteholder's subscription for the Notes of an equivalent number. A certificate by the Noteholder of the number of Notes shall be final and binding on the Company.

3.2 Noteholder Completion obligations

Upon the issue of the Notes and the Company satisfying the conditions precedent and requirements set out in clause 3.3, the Noteholder will pay the principal amount subscribed for in respect of the Notes (being the amount in total determined under clause 3.1) to the Company's nominated bank account in immediately available funds. The amount received by the Company shall only be used for purposes that have the prior written approval of the Noteholder.

3.3 Conditions Precedent and Requirements

The conditions precedent and requirements referred to in clause 3.2 are:

- (a) the Transaction Documents have been signed to the satisfaction of the Noteholder;
- (b) the Noteholder has registered its Security on the Personal Property Securities Register;
- (c) the Company has paid to the Noteholder all the Noteholder's fees, costs and expenses in relation to raising funding for the Company's subscription of the Notes (including for the Product Disclosure Statement that the Noteholder issued for the funding) and the negotiation and preparation of the Transaction Documents;
- (d) the Noteholder has received sufficient funding from its shareholders and that funding is available to the Noteholder to subscribe for the Notes;
- (e) the Noteholder is satisfied that the Company will apply the subscription amount for purposes approved by the Noteholder;
- (f) the Noteholder has received no less than two Business Days' notice of the proposed date the subscription amount will be advanced;
- (g) no Event of Default or Potential Event of Default has occurred or is continuing, or would occur as a result of the Company issuing the Notes or the Noteholder advancing the principal amount to subscribe for the Notes;
- (h) no representation, warranty or statement (whether or not in writing) made by or on behalf of the Company to the Noteholder in any Transaction Document or in relation to the Notes or the advancing of the subscription amount by the Noteholder is untrue, inaccurate or misleading in any respect;
- (i) the Noteholder is satisfied that the Company has passed all necessary resolutions and has all necessary consents for the issue of the Notes and the issue of Shares on Conversion; and

- (j) the satisfaction, in the Noteholder's discretion, of any other conditions (including legal opinions and solicitors' certificates from the Company's solicitors) specified by the Noteholder from time to time.

The Company must use its best endeavours to satisfy the above conditions and requirements by the date the Noteholder receives share subscriptions for the purpose of funding the subscription of the Notes.

4 INTEREST

4.1 Interest on Notes

- (a) Interest shall accrue on the Outstanding Principal of the Notes from the Issue Date at the Interest Rate, provided that if the Company fails to:

- (i) Redeem any Notes in full when required under clause 5; or
- (ii) pay interest on the Notes on the dates required under clause 4.2,

interest shall instead begin to accrue, from the first day following the date on which Redemption or the interest payment was required (as the case may be), on the Outstanding Principal of those Notes at the Default Interest Rate;

- (b) Interest will be calculated on a daily basis (on the basis of a 365 day year) and will not be compounded.

4.2 Monthly interest payments

The Outstanding Interest in respect of the Notes will be payable by the Company to the Noteholder in full on each Interest Payment Date. Outstanding Interest for a calendar month shall be paid on the Interest Payment Date that falls in the relevant calendar month (and with payment for a broken period if Notes are subscribed for part way through a calendar month) and on the dates provided for in clauses 4.3 and 4.4.

4.3 Payment of interest as part of Redemption

For the avoidance of doubt, where any Note is Redeemed, or required to be Redeemed, under clause 5, the Outstanding Interest in respect of that Note will be payable by the Company to the Noteholder in full as part of such Redemption.

4.4 Payment of interest on Conversion

The Outstanding Interest in respect of any Note will be payable by the Company to the Noteholder in full at the time the Note is Converted under clause 6.

5 REDEMPTION

- 5.1 **No Early Redemption at Company's election:** Magsons will not be able to elect an earlier redemption date for the Notes.

5.2 Redemption on Maturity Date

On the Maturity Date the Company must Redeem all of the Notes unless the Notes are to be Converted.

5.3 Redemption following Event or Default

Upon the occurrence of an Event of Default the Company must, unless the Noteholder agrees otherwise (in its absolute discretion) in writing, immediately Redeem all of the Notes.

6 CONVERSION

6.1 Circumstances where Notes may be Converted

Notes shall be Converted if the Noteholder elects to Convert such number of Notes as determined by the Noteholder. The Noteholder must supply the Company with the information necessary to ensure that the relevant number of Notes are Converted at the times required.

6.2 Conversion of Notes

Where any Notes are required to be Converted under clause 6.1 ("**Conversion Notes**"), on the applicable date specified in clause 6.3 ("**Conversion Date**"):

- (a) the Company shall issue to the Noteholder (as fully paid up) the relevant number of Conversion Shares determined under clause 6.4;
- (b) the Company shall update the Register and the Company's Share register to reflect the Conversion; and

6.3 Conversion Date

The Conversion of the Conversion Notes shall take place on the Maturity Date if the Notes are required to be Converted under clause 6.1.

6.4 Number of Conversion Shares issued upon Conversion

The number of Conversion Shares to be issued to the Noteholder will be the quotient (rounded up or down to the nearest whole number) of the Conversion Amount \div the Conversion Price, where:

- (a) the "**Conversion Amount**" is the Outstanding Principal in respect of the Conversion Notes as at the end of the day immediately preceding the Conversion Date; and
- (b) the "**Conversion Price**" is the price per Share at which the Conversion Shares will be issued, calculated as:
 - (i) the quotient of (Value – Net Debt) \div Share Capital;
- (c) "**Valuation**" is a valuation of the Company 90 days prior to the Maturity Date but excluding Net Debt. The valuation method will be in accordance with standard industry practice in place at the time for valuing retail businesses of the Company's size as determined by a valuer to be agreed upon between the Noteholder and the Company at the time. If they fail to agree on the valuer, the valuer will be appointed by the President of the New Zealand Law Society. The valuation by the valuer shall be final and binding on the Company.
- (d) "**Net Debt**" is the difference of:
 - (i) the total borrowings and indebtedness owing by the Company, including amounts owing to its bankers, shareholders and third party financiers, the Outstanding Amounts in respect of the Notes; less
 - (ii) the total amount of cash in the Company's bank accounts,in each case as at the end of the day which is at the date of the valuation under this clause 6; and
- (e) "**Share Capital**" is the total number of Shares on issue at the end of the day which is five Business Days prior to the Conversion Date.

The maximum number of Shares that can be issued on Conversion must not exceed 20% of the total issued share capital of the Company immediately on Conversion. If, in applying

the formula set out above in this clause 6, the 20% threshold would be exceeded, the amount of Shares that can be issued shall be scaled back so that the 20% threshold is not exceeded. In calculating the 20% threshold account must be taken of the other two tranches of notes issued by the Company to the Noteholder under two separate convertible note agreements so that the 20% threshold and scaling applies to all three tranches of such notes.

6.5 **Full satisfaction of Outstanding Principal**

Conversion of the Conversion Notes in accordance with clause 6 will be in full satisfaction of the Company's obligation and liability to pay the Outstanding Principal in respect of the Conversion Notes.

7 REPRESENTATIONS AND WARRANTIES

7.1 The Company represents and warrants to the Noteholder, except where otherwise agreed in writing by the Noteholder, as follows:

- (a) **Status:** It is incorporated and duly existing under the laws of New Zealand.
- (b) **Valid Obligations:** Its obligations under the Transaction Documents are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application.
- (c) **Power and Authority:** It has the corporate power to enter into and perform its obligations under the Transaction Documents and has taken all corporate action necessary to authorise its entry into execution, delivery and performance of the Transaction Documents.
- (d) **No Breach:** Its entry into, and the exercise of its rights and performance of and compliance with its obligations under, the Transaction Documents, do not and will not:
 - (i) contravene any law to which it is subject; or
 - (ii) contravene any of the documents constituting it; or
 - (iii) exceed any limitation on, or constitute an abuse of, the powers of its directors or officers; or
 - (iv) contravene any agreement to which it is a party or which is binding on any of its assets.
- (e) **Indebtedness:** Other than as disclosed to and accepted in writing by the Noteholder, it is not in default under:
 - (i) any agreement relating to indebtedness for borrowed money, or any Guarantee; or
 - (ii) any other agreement to an extent or in a manner which has or could have a Material Adverse Effect.
- (f) **Solvency Test:** It satisfies the Solvency Test.
- (g) **No Security:** No Security Interest exists over or affects, nor is there any agreement to give or permit to exist any Security Interest over or affecting, any assets of the Company.
- (h) **Financial Statements:** Its latest financial statements (and, if it has Subsidiaries, its latest group financial statements) as delivered to the Noteholder:
 - (i) were prepared in accordance with GAAP; and

- (ii) give a true and fair view of its financial position and the consolidated financial position of it and its Subsidiaries as at the date and for the period to which they relate.
- (i) **Material Adverse Effect:** Other than as disclosed to and accepted in writing by the Noteholder, there has been no change that would have a Material Adverse Effect since the last date as at which any of the financial statements referred to in the preceding paragraph were made up.
- (j) **Litigation:** No litigation, arbitration or administrative proceeding is current or pending or, to its knowledge, threatened that has or could have a Material Adverse Effect, or could limit or restrict the Noteholder's ability to exercise or enforce its rights under any Transaction Document.
- (k) **Noteholder's Information:**
 - (i) All information provided by it to the Noteholder in connection with the Transaction Documents was true in all material respects as at the date when that information was provided and, in respect of information provided prior to the date of this Agreement, remains so at such date; and
 - (ii) There are no facts or circumstances that have not been disclosed to the Noteholder that would make that information untrue or misleading in any material respect.
- (l) **No Default:** No Event of Default or Potential Event of Default has occurred and is continuing or would occur as a result of the Company issuing the Notes on the terms of this Agreement.
- (m) **Transaction Documents:** Each representation and warranty made by it in the Transaction Documents is true in all material respects.
- (n) **Tax Returns and Payments:** It has filed all tax returns which are required to be filed and has paid all Taxes shown to be due and payable on those returns or on any assessments made against it or any of its property by a government agency (other than where liability is contested in good faith and adequate reserves have been set aside to meet such liability).
- (o) **Consents:** Everything required by law to be done (including obtaining any necessary consents) to enable the lawful entry into, exercise of its rights and performance of its obligations under each Transaction Document, and to ensure that the Transaction Documents and those obligations are legally valid, binding and enforceable has been done.
- (p) **Ownership:** As at the date of execution of any Security to which it is expressed to be a party it will have good title to, and be the sole legal and beneficial owner of, all the assets described in that Security, free of any Security Interest (other than in favour of the Noteholder or as disclosed to, and accepted by, the Noteholder in writing).
- (q) **Pari Passu Ranking:** Its payment obligations under the Transaction Documents rank, by virtue of the Securities, in priority of the claims of its other creditors, except for creditors whose claims are mandatorily preferred by law.

7.2 Representations and Warranties Continuing

Each of the representations and warranties in clause 7.1 shall survive execution of this Agreement and the advancing of the subscription amount for the Notes and will be deemed to be repeated on the date the Notes are subscribed for and on each date interest is payable under this Agreement by reference to the facts and circumstances then existing, except that each reference to financial statements is to be construed as a reference to the latest available financial statements of the relevant person.

7.3 Reliance on Representations

The Company acknowledges that the Noteholder has been induced to enter into this Agreement and will be induced to subscribe for the Notes in reliance on the representations and warranties in clause 7.1.

8 COVENANTS

8.1 Company's Covenants

The Company covenants that, except where the Noteholder gives its prior written consent otherwise, the Company shall, during the continuance of this Agreement:

- (a) **Comply with Laws:** Comply with all applicable laws in respect of any of the Company's assets.
- (b) **Insurance:** Maintain at all times insurance with reputable insurers acceptable to the Noteholder for all the Company's assets for full replacement value covering all risks against which the Company is prudent to insure and all such other risks as the Noteholder may from time to time require, and pay all premiums due in respect of such policies when they fall due for payment, and ensure the Noteholder's interest is accurately noted on each such policy.
- (c) **Maintain Property and Carry On Business:** Maintain and preserve all assets subject to any Security and, subject to the terms of any Security, not dispose of all or any part of the Company's assets except in the ordinary course of business and for full commercial value and shall carry on business in a prudent and proper manner and according to standards of commercial practice appropriate to the Company's businesses, property and assets.
- (d) **Notice of Event of Default:** Notify the Noteholder forthwith in writing upon the occurrence of an Event of Default or Potential Event of Default, and provide a detailed statement of steps being taken to remedy such.
- (e) **No Prejudicial Act:** Not do any thing, or suffer anything to be done, or suffer any circumstance to arise or continue, which could give rise to an Event of Default or otherwise prejudice the Noteholder's rights, interest or position under any Transaction Document or in respect of the Notes.
- (f) **Consents:** Do all things in order to obtain, maintain, renew and preserve in full force and effect (and not dispose of) all consents required by the Company to enter into any Transaction Document or which are required or desirable for the business the Company conducts or proposes to conduct or in respect of any of the Company's assets, and duly and punctually comply with all conditions and stipulations in those consents and promptly forward copies of such to the Noteholder if requested by the Noteholder.
- (g) **Perform Obligations:** Perform all of the Company's obligations under each Transaction Document.
- (h) **Further Assurance:**
 - (i) Promptly at the Company's own cost execute and deliver to the Noteholder all transfers, assignments, deeds and other agreements, and do all acts in addition to and in respect of each Transaction Document, as in the opinion of the Noteholder may be necessary or desirable to assure or secure to the Noteholder the full benefit of each Transaction Document; in particular, if the Noteholder has a Security over personal property the Company shall sign any documents and do any other thing to ensure that the Noteholder has perfected security interests under the Personal Property Securities Act 1999 and in the priority required by the Noteholder.
 - (ii) If requested by the Noteholder, immediately procure from any person the Noteholder considers relevant to its security position any agreements and waivers which the Noteholder requires.

- (i) **Negative Pledge:** Not create any Security Interest over any of its assets other than the security interest created in favour of the Noteholder or consented to by the Noteholder in writing and in respect of which the priority of the relevant Security Interest has been established to the satisfaction of the Noteholder.
- (j) **Amalgamation:** Not propose or be a party to any amalgamation under the Act or amend or propose any amendment to the Company's constitution which in the Noteholder's opinion would or might materially and detrimentally affect any of the Noteholder's rights under this Agreement or any of the Securities.
- (k) **Change in Circumstances:** Inform the Noteholder in writing of any Material Adverse Effect or Material Adverse Change of the Company that may materially affect the Company's ability to meet its obligations under this Agreement. On receipt of such advice the Noteholder may confer with the Company in good faith with a view to determining what action (if any) should be taken to protect its interests. Nothing in this clause shall prejudicially affect the Noteholder's rights under a Security.
- (l) **Financial Information:** No later than 10 Business Days after the end of each month the Company must deliver to the Noteholder its management accounts for the relevant month and such other financial information as the Noteholder may require from time to time to monitor the Company's financial performance and to update the Noteholder's shareholders at times required by the Noteholder.
- (m) **Maintain capital:** Not without the prior written consent of the Noteholder:
 - (i) issue shares or other capital, or acquire shares in another company or any interest in a limited partnership;
 - (ii) reduce the capital contributed by its shareholders;
 - (iii) enter into any arrangement with any of its shareholders limiting its ability to call up or obtain payment of any moneys payable in respect of the Shares;
 - (iv) cancel, consolidate or subdivide any of its Shares;
 - (v) offer to acquire or acquire any of the Shares;
 - (vi) give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security, or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any of the Shares, or, where it is a subsidiary company, the shares of its holding company; or
 - (vii) make any distribution except:
 - (A) out of net profits after payment of income tax; and
 - (B) if an Event of Default has not occurred or will not occur as a result of declaring or making the distribution; or
 - (viii) do anything which may give any of its shareholders a right to require it to purchase their Shares; or
 - (ix) cancel or reduce the liability of a shareholder to the Company in respect of Shares held by that shareholder;

and will at all times ensure that it satisfies the solvency test;
- (n) **No further indebtedness:** not, without the prior written consent of Noteholder, incur any indebtedness except for trade indebtedness incurred in the ordinary course of the Company's business;

- (o) **Budgets:** Following a request by the Noteholder, the Company must deliver to the Noteholder:
 - (i) an up-to-date budget for the Noteholder to consider; and
 - (ii) such other information as the Noteholder may require for the Noteholder to assess the trading results and financial position of the Company;
- (p) **Due Diligence Information:** For the purpose of determining whether or not the Notes should be Converted the Company must provide to the Noteholder, at the Company's cost and at the times requested by the Noteholder, such due diligence information as the Noteholder may request from time to time. Without limitation, the Noteholder may request reports from experts acceptable to the Noteholder on the business and financial affairs of the Company.

9 EVENTS OF DEFAULT

9.1 Default

Each of the following shall be an event of default:

- (a) **Failure to Comply:** The Company fails to pay any amount (whether principal, interest or otherwise) due under any Transaction Document or fails to comply with any other term, obligation, undertaking, covenant or term contained in any Transaction Document.
- (b) **Default Under Security:** Any event of default or enforcement event (however described) occurs or arises under any Transaction Document.
- (c) **Representations:** Any representation, warranty, covenant or statement (whether or not in writing) made by or on behalf of the Company in any Transaction Document or otherwise in relation to or for the purposes of the subscription of the Notes is or becomes incorrect, inaccurate or misleading when made or deemed to be made or repeated.
- (d) **Insolvency:** Except where otherwise previously consented to in writing by the Noteholder, a resolution is proposed or passed, or any order is made or sought, for the liquidation of the Company or Magsons; or any step is taken for the removal of the Company or Magsons from the register of companies under the Act; or the Company or Magsons is, or is deemed under the Act to be, unable to pay its debts; or the Company or Magsons proposes, seeks or makes any moratorium, compromise or assignment or other arrangement for the benefit, or in respect, of its creditors generally or any of them or stops or threatens to stop payment of any indebtedness; or the Company or Magsons commits any act of bankruptcy or is the subject of any order placing the whole or any part of its assets under the control of any other person or an order is made against the Company or Magsons requiring it to contribute to payment of the debts of any other person.
- (e) **Appointment:** A receiver, receiver and manager or manager, trustee, statutory inspector or investigator, statutory manager, liquidator, interim liquidator, assignee or any similar person is appointed (or the appointment thereof is requested by the Company or Magsons) in respect of, or any distraint or legal process is levied against, respectively, the Company or Magsons or any of their respective assets, or any step is taken or proposed by any person for such.
- (f) **Judgment/Enforcement:** Any judgment against the Company or Magsons is not paid or otherwise settled within two Business Days of such judgment, or any holder of a Security Interest granted by the Company or Magsons enforces, or takes any step to enforce, the Security Interest.
- (g) **Cessation Of Business/Disposal Of Assets:** The Company or Magsons ceases or threatens to cease to carry on all or a substantial part of its business, or disposes of or threatens to dispose of a substantial part of its assets or any asset becomes susceptible to forfeiture, or is seized or otherwise confiscated or compulsorily acquired for inadequate consideration (as determined by the

Noteholder in its discretion) or the Company or Magsons resolves or agrees to do or permit any such thing.

- (h) **Material Adverse Change:** A Material Adverse Change occurs in respect of the Company.
- (i) **Enforceability:** Any provision of any Transaction Document shall for any reason be invalid, illegal, unlawful or unenforceable, or any consent or approval in respect of any Transaction Document shall cease, or the Company shall so allege or the Company shall seek to discontinue the Company's liability to the Noteholder under any Transaction Document.
- (j) **Control:** There shall be, or be proposed, any change in the effective ownership, management or control of the Company or Magsons without the prior written consent of the Noteholder.
- (k) **Commencement of Trading:** The Company does not commence trading on the Land:
 - (i) on a "soft opening" basis no later than 31 March 2020; or
 - (ii) on a full trading basis no later than 12 June 2020.
- (l) **Pearlfisher:** The loan by Pearlfisher Trustee Limited to Everest of \$25,075,000 (or any replacement or substituted loan) for Everest to carry out the development being undertaken on the Land has become enforceable by Pearlfisher Trustee Limited or any security held by Pearlfisher Trustee Limited for such loan has become enforceable.
- (m) **Central Assets:** There is a default under any document (including, without limitation, any default in payment of interest) by the Company under its loan arrangements with Central Assets or under any Security Interest Central Assets holds for any such loan.

9.2 **Consequences of an Event of Default:** Upon the occurrence of an Event of Default clause 5.3 shall apply.

10 PAYMENTS

10.1 Payments to Noteholder

Any payments by the Company to the Noteholder under this Agreement shall be made to the Noteholder's nominated bank account from time to time or, if not so nominated, may be made by cheque sent to the last known address for the Noteholder.

10.2 No Deductions

All payments to be made by the Company under this Agreement and the General Security Agreement shall be made by no later than 3.00 pm on the due date in immediately available, freely transferable funds in a manner and to the account specified by the Noteholder from time to time, free of any withholding or deduction (whether by set-off, counterclaim or otherwise or in respect of Taxes) unless the Company is compelled by law to deduct or withhold the same. In such case the Company shall gross up the relevant payment to the Noteholder, so that after any such withholding or deduction the Noteholder receives the full amount which would otherwise have been received had the deduction or withholding not been made.

10.3 Taxes

If the Noteholder is at any time required to pay any Tax, or to make any deduction or withholding, in respect of amounts received by it under this Agreement or the General Security Agreement or amounts raised by it to fund the Notes, the Company shall pay to the Noteholder forthwith upon demand the amount of such Tax, deduction or withholding.

10.4 **Certificate of Exemption**

The Company shall apply to the Inland Revenue Department for a certificate of exemption in respect of resident withholding tax on the interest payments under this Agreement.

10.5 **Set-off**

The Company may set off any amount payable by the Noteholder to the Company (whether under this Agreement or otherwise) against any sum due and payable by the Company to the Noteholder under this Agreement.

11 **REGISTER OF NOTES**

11.1 **Register**

The Company must establish and maintain a register ("**Register**") recording all issues and allotments, Conversions and Redemptions of the Notes.

11.2 **Access to Register**

The Company must promptly provide an up-to-date copy of the Register to the Noteholder whenever requested to do so by the Noteholder.

11.3 **Registered Noteholder**

The Company may treat the person named in the Register as the holder of any Notes as the legal owner of those Notes and the only person which has, or is entitled to exercise, any rights in respect of the Notes, including rights to receive interest payments, Redemption payments and/or Shares upon a Conversion.

12 **SURVIVING PROVISIONS**

12.1 **Surviving provisions**

Clauses 12.1 and 15.8, together with such other provisions of this Agreement which are incidental to, and required in order to give effect to, that clause, will survive any termination of this Agreement.

12.2 **Without prejudice**

Any termination of this Agreement will be without prejudice to a party's rights and remedies in respect of any breach of this Agreement by the other party, where the breach occurred before the termination of this Agreement.

13 **NOTICES**

13.1 **Procedure for Delivery:** Any letter, notice, demand, consent, approval or other communication (in this clause 13 called a "communication") to be given or made under any Transaction Document shall be in writing and may be given or made by facsimile, post, delivery or email, at the facsimile number, address or email of the recipient and marked for the attention of the person (if any) designated for that purpose by the relevant party to the other or others from time to time.

13.2 **Deemed Delivery:** Communications are effective only upon receipt, however communications to the Company are deemed to be received:

(a) **Delivery:** When delivered to the Company at its address below;

18 Stathnaver Crescent, Lynfield

(b) **Post:** In the case of a letter given by post, at 9.00am, on the third Business Day after posting to the Company at its address above.

- (c) **Facsimile:** In the case of a facsimile, when despatched to the facsimile number designated by the Company for that purpose, and the receipt by the Noteholder of a confirmation from the sending machine that the facsimile has been sent in its entirety shall be conclusive evidence of receipt,

provided that in respect of a communication by delivery, post or facsimile a communication received or deemed received after 5.00 pm on a Business Day, or on a day which is not a Business Day, shall be deemed not to have been received until 9.00 am on the next Business Day;

- (d) **Email:** In the case of an email at the email address below:

vinod@nidoliving.co.nzEmail

Email communications are effective at the end of two hours after despatch if despatched before 3.00 pm on a Business Day and in any other case at 10.00 am on the first Business Day after the date of despatch, provided that the email message is not returned undelivered or as an error or an automatically generated "out of office" message (or other indication on non-receipt) is received by the sending party.

- 13.3 **Signature:** Any communication to be given or made by the Noteholder to the Company under any Transaction Document shall be sufficient if it is signed by the Noteholder or on behalf of the Noteholder by any officer, employee, solicitor, manager or agent of the Noteholder.
- 13.4 **Authenticity of Notices:** Where any communication is given or appears to be given by the Company to the Noteholder, the Noteholder shall have no obligation to make any enquiry or require any evidence as to the authenticity, validity or legality of any such communication, notwithstanding that the communication may subsequently be proven not to be authorised or not to have been signed or given by the person who appears to have signed or given it. The Noteholder is entitled to rely on any communication given under this clause where it appears that the communication has been signed by a director or an authorised signatory of the Company.

14 POWER OF ATTORNEY

- 14.1 **Appointment:** The Company hereby irrevocably and unconditionally appoints the Noteholder, and any officer or manager of the Noteholder, and the Noteholder's assignees or transferees, severally to be the Company's attorney and in its name and as its agent and at its expense in all things to do everything which the Company has undertaken or agreed to do under any of the provisions of any Transaction Document and has failed to do so. For the purposes of this clause this Agreement shall be deemed to be executed as a deed.

15 GENERAL

15.1 Relationship between parties

Nothing in this Agreement shall be deemed to constitute a partnership between the parties or constitute a party the agent of the other party for any purpose.

15.2 Costs

The Company shall pay its and the Noteholder's costs, charges and expenses incurred by both parties in connection with negotiating, preparing and implementing this Agreement and the transactions contemplated by it, including after the Notes have Converted. The Company shall also pay, on a full indemnity basis, all the Noteholder's ongoing accounting, audit, legal, valuation (of the Company) fees, costs and expenses and all other operating costs of the Noteholder (including costs payable by the Noteholder to any of its advisers).

This clause 15.2 shall survive Redemption, Conversion and termination of this Agreement so that the obligations and liabilities of the Company under in this clause 15.2 shall be ongoing and continuing obligations and liabilities until such time as the Noteholder signs a discharge of this clause 15.2.

Any amount payable by the Company under this clause 15.2 shall be paid on demand by the Noteholder.

15.3 Assignment

None of the rights or obligations of a party under this Agreement may be assigned or transferred without the prior written consent of the other party.

15.4 Entire agreement

This Agreement and the documents referred to in it constitute the entire agreement between the parties relating to their subject matter, and supersede all previous agreements between the parties relating to that subject matter.

15.5 Amendments

No amendment to this Agreement will be effective unless it is in writing and signed by or on behalf of each party.

15.6 Governing law

This Agreement shall be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.

15.7 Partial invalidity

If any provision of this Agreement, or any part of a provision of this Agreement, is found to be illegal, invalid or unenforceable the remaining provisions, or the remainder of the provision concerned, shall continue in effect.

15.8 No waiver

- (a) Any waiver of any term of this Agreement shall not be binding unless set out in writing and signed by or on behalf of the party granting the waiver.
- (b) A failure or delay in enforcing compliance with any term of this Agreement shall not be a waiver of that or any other term of this Agreement.

15.9 Counterparts

This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each party may enter into this Agreement by executing a counterpart. The parties acknowledge that this Agreement may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of this Agreement by that means is valid and sufficient execution.

15.10 Further assurances

Each party shall execute such further documents and perform and do such further acts as may be reasonably required in order to give effect to the provisions and intent of this Agreement.

15.11 Cumulative remedies

The rights, powers and remedies provided in this Agreement are cumulative and are in addition to any rights, powers or remedies provided by law.

15.12 Replacement document

This Agreement replaces the Convertible Note Agreement – Tranche 2 dated 5 February 2020 between the Noteholder and the Company and such agreement shall be of no force or effect.

EXECUTED by the parties on the date specified at the beginning of this Agreement.

SIGNED for and on behalf of
MAGSONS HARDWARE LIMITED

)
)

Signature of director

Vinod Kumar
Name of director

in the presence of:

Witness signature

Witness address

Witness occupation

Sharat Parshotam
Barrister & Solicitor
Auckland

SIGNED for and on behalf
of ODIN INVESTMENT
LIMITED

)
)

Signature of director

Name of director

Michelle Tane Kumar

Michelle Tane Kumar

Odin Investment Limited confirms that it understands that -

- the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and
- It may not receive a complete and balanced set of information about this investment; and
- It has fewer legal protections for this investment; and
- This investment is not suitable for retail investors; and
- It has been advised to ask questions, read all documents carefully, and seek independent financial advice.

Signed on behalf of ODIN INVESTMENT LIMITED