

# SUPPLEMENTAL DEED IN RESPECT OF UNSECURED, SUBORDINATED, FIXED RATE 5 YEAR NOTES (SERIES 2022-1, TRANCHE 1)

**Dated:** 4 November 2022

Between

**EASTPACK Limited** as Issuer

And

**PUBLIC TRUST (a Crown entity established under the Public Trust Act 2001)** as Supervisor

## INTRODUCTION

This deed is a supplemental deed (**Supplemental Deed**) entered into as Final Terms in accordance with clause 3.2(b) of the master trust deed dated 4 November 2022 between the Issuer and the Supervisor (**Master Trust Deed**) to provide for the constitution and issue of the Notes described in this Supplemental Deed.

## IT IS AGREED:

### 1. INTERPRETATION

1.1 The terms of the Master Trust Deed (including, without limitation, the definitions, the references, the rules of construction and miscellaneous provisions set out in clauses 1.1 to 1.5 of the Master Trust Deed) shall apply in this Supplemental Deed and to the Notes constituted by this Supplemental Deed except to the extent modified in this Supplemental Deed. To that extent, or in the event of any conflict between the provisions of this Supplemental Deed and those of the Master Trust Deed, the provisions of this Supplemental Deed shall prevail over those of the Master Trust Deed. References to clauses herein are clauses in this Supplemental Deed unless expressed otherwise.

1.2 For the purposes of this Supplemental Deed, the following expressions shall have the following meanings:

**Additional Interest Amounts** has the meaning set out in clause 5.4(d)(i);

**Additional Interest Rate** means the Interest Rate plus 2.00 per cent per annum;

**Capital Reduction** means a reorganisation or restructure of the capital of the Issuer which results in a reduction in the number of Ordinary Shares on issue, and includes an acquisition by the Issuer of its Ordinary Shares made in accordance with the Companies Act;

**Deferred Interest** has the meaning set out in clause 5.4(c)(i);

**Early Redemption Notice** has the meaning set out in clause 5.5(c)(i);

**Equal Ranking Securities** means securities or other financial products or indebtedness that rank or are expressed to rank equally with the Notes in a Liquidation, present or future;

**Extraordinary Resolution** has the meaning set out in Schedule 3 of the Master Trust Deed;

**Interest Deferral Condition** means, in respect of an Interest Payment Date:

- (a) the Issuer would not satisfy the solvency test (as defined in section 4 of the Companies Act) immediately following the payment of accrued but unpaid interest on that Interest Payment Date; or
- (b) in any agreement made with or for the benefit of a Senior Creditor:
  - (i) the Issuer has breached a covenant or undertaking and the breach has not been remedied to the satisfaction of the Senior Creditor;
  - (ii) an event of default (howsoever described) has occurred; or
  - (iii) a breach of covenant or undertaking or event of default (howsoever described) would occur if accrued but unpaid interest on the Notes was paid on the Interest Payment Date;

**Junior Ranking Securities** means:

- (a) all securities or other financial products or indebtedness which rank or are expressed to rank junior to the Notes in a Liquidation, present and future; and
- (b) Ordinary Shares;

**Leverage Ratio** means the leverage ratio as calculated in accordance with the syndicated facility agreement originally dated 16 October 2020 (as amended from time to time) between, amongst others, the Issuer (as borrower) and the Initial Lenders (as defined therein);

**Liquidation** means:

- (a) a final court order is made for the winding up, dissolution or liquidation of the Issuer;
- (b) a final resolution is passed by the shareholders or members for the winding up, dissolution or liquidation of the Issuer; or
- (c) any other winding up, dissolution or liquidation of the Issuer occurs under applicable law, otherwise than for the purpose of, and followed by, an amalgamation in accordance with the Companies Act or a Solvent Reconstruction;

**Ordinary Share** means a fully paid ordinary share in the capital of the Issuer;

**Redemption Date** has the meaning set out in clause 5.5(c)(i);

**Reset Date** means every 12 month anniversary following the Issue Date;

**Senior Creditors** means all present and future creditors of the Issuer, whose claims are:

- (a) entitled to be admitted in a Liquidation; and
- (b) not in respect of Equal Ranking Securities or Junior Ranking Securities;

**Solvent Reconstruction** means a scheme of amalgamation or reconstruction or an arrangement with similar effect, not involving a bankruptcy or insolvency, where the obligations of the Issuer in relation to the outstanding Notes are assumed by a successor entity to which all, or substantially all of the property, assets and undertaking of the Issuer are transferred;

**Tax Event** means a determination by the Issuer, after having received an opinion from a reputable legal counsel or tax adviser who is experienced in such matters, that:

- (a) there has been, or there will be, a change in law, regulation, ruling or directive that applies, or is to apply, after the Issue Date;
- (b) there has been, or there will be, a change in the application, interpretation or administration of any law, regulation, ruling or directive by any authority (including the New Zealand Inland Revenue) that applies, or is to apply, after the Issue Date; or
- (c) the Issuer is or will be required to comply with any change in law, regulation, ruling or directive or changed application, interpretation or administration that applies, or is to apply, after the Issue Date,

as a result of which:

- (d) the interest payable on the Notes, including interest which has been deferred, is not fully deductible under the Income Tax Act 2007; or
- (e) the Issuer would be, or is likely to be, exposed to any other adverse tax consequence in relation to the Notes;

**Test Date** means 30 June and 31 December in each calendar year;

## **2. CONDITIONS OF THE NOTES**

2.1 **Retail Series:** The Notes are part of a Retail Series of Notes.

2.2 **Conditions:** The Conditions of the Notes shall be the terms and conditions set out in Schedule 1 (*Terms and Conditions of the Notes*) to the Master Trust Deed as such terms and conditions are supplemented, modified and/or replaced by this Supplemental Deed.

## **3. CONDITIONS PRECEDENT**

3.1 **Conditions to be satisfied:** The Issuer shall not issue any Notes until the Supervisor has confirmed to the Issuer in writing that it has received the following (in form and substance satisfactory to the Supervisor):

- (a) This Supplemental Deed and the Master Trust Deed duly executed by the Issuer;
- (b) A copy of the Offer Document for this Tranche of the Notes that has been lodged with the Registrar of Financial Service Providers;
- (c) A copy of the certificate of lodgement given by the Registrar of Financial Service Providers under the FMCA in respect of the Offer Document for this Tranche;
- (d) Evidence that this Supplemental Deed and the Master Trust Deed have been lodged with the Registrar of Financial Service Providers under the FMCA;
- (e) A legal opinion from the solicitors for the Issuer confirming the due execution and enforceability of this Supplemental Deed and the Master Trust Deed; and

- (f) Confirmation from the solicitors for the Issuer that this Supplemental Deed, the Master Trust Deed and the Offer Document for this Series comply with the FMCA and all other applicable laws.

#### 4. REPRESENTATIONS AND WARRANTIES

- 4.1 In addition to the conditions precedent set out in clause 3, the Issuer undertakes not to issue any Notes unless the representations and warranties in clause 4.1 of the Master Trust Deed are true and correct in all material respects by reference to the facts and circumstances existing at the Issue Date, provided that the warranty in clause 4.1(e) will only apply and repeat on each Interest Payment Date in relation to the Events of Default set out in Conditions 17.1(a) (Non-payment) and (f) (Insolvency) which are the only Events of Default which apply in respect of this Series of the Notes.

#### 5. ADDITIONAL TERMS AND CONDITIONS OF THE SERIES 2022-1 NOTES

##### 5.1 Events of Default:

- (a) The Events of Default set out in Conditions 17.1(b) (*Other breach*), (c) (*Misrepresentation*), (d) (*Cross-default*), (e) (*Cessation of business or Dissolution*), (g) (*Receiver*), (h) (*Distress or execution*), (i) (*Illegality*) and (j) (*Statutory management*) of the Master Trust Deed do not apply as Events of Default in respect of this Series of the Notes.
- (b) For the avoidance of doubt, it will not be an Event of Default under clause 17.1(a) (*Non-payment*) where the Issuer is entitled to defer interest under the terms of this Supplemental Deed.

##### 5.2 Leverage Ratio:

- (a) The Issuer will provide a certificate to the Supervisor in relation to each Test Date, in the form of the Compliance Report in accordance with clause 5.3(c) of the Master Trust Deed, confirming the Leverage Ratio as at the relevant Test Date. Such certification will set out all reasonably necessary details to demonstrate compliance with this financial ratio (including the full definition of this ratio (as set out in the syndicated facility agreement referred to in the definition of Leverage Ratio above) together with workings which form the basis for the calculation).
- (b) If the Issuer fails to deliver the certificate referred to in clause 5.2(a) above by the date specified for delivery then the Issuer must not, until the failure is rectified (and in all cases subject to clause 5.2(c) below):
  - (i) pay any dividend on, or make any other distribution in respect of, or pay any interest (including, without limitation, a Capital Reduction) on or with respect to, Junior Ranking Securities; or
  - (ii) make any payments on or with respect to any other Equal Ranking Securities (unless the payment is made with respect to such other Equal Ranking Securities and a pro rata payment is made in respect of the Notes at the same time).

- (c) If in respect of any two consecutive Test Dates the Leverage Ratio is greater than 4.50 times the Issuer must not, without the approval of an Extraordinary Resolution until the next following Test Date (where the Issuer certifies that the Leverage Ratio is not greater than 4.50 times):
  - (i) pay any dividend on, or make any other distribution in respect of, or pay any interest (including, without limitation, a Capital Reduction) on or with respect to, Junior Ranking Securities; or
  - (ii) make any payments on or with respect to any other Equal Ranking Securities (unless the payment is made with respect to such other Equal Ranking Securities and a pro rata payment is made in respect of the Notes at the same time).

### 5.3 Subordination:

- (a) **Rights on a Liquidation:** In a Liquidation, a Note confers upon its Holder the right to payment in cash of an amount equal to the Redemption Amount and accrued but unpaid interest in each case on a subordinated basis in accordance with clause (b), but no further or other right to participate in the assets of the Issuer or a return of capital in the Liquidation.
- (b) **Ranking in a Liquidation:** Payment of the Redemption Amount and accrued but unpaid interest will rank in a Liquidation:
  - (i) In priority to the claims of the holders of Junior Ranking Securities;
  - (ii) Equally and without any preference amongst themselves and with the claims of the holders of Equal Ranking Securities; and
  - (iii) Junior to the claims of all Senior Creditors with respect to priority of payment in a Liquidation in that:
    - (1) all claims of Senior Creditors must be paid in full before the claims to the Holders are paid; and
    - (2) until the Senior Creditors have been paid in full, the Holders must not claim in the Liquidation in competition with the Senior Creditors.
- (c) **Agreement as to subordination:** The Supervisor and each Holder irrevocably agrees:
  - (i) That clause 5.3 is an agreement to accept a lower priority in respect of a debt for the purposes of section 313(3) of the Companies Act and that nothing in sections 310 or 313 of the Companies Act will prevent these Conditions from having effect according to their terms;
  - (ii) Not to exercise any voting or other rights as a creditor in a Liquidation in any jurisdiction:
    - (1) until after all Senior Creditors have been paid in full; or
    - (2) otherwise in a manner inconsistent with the subordination contemplated by clause 5.3(b);

- (3) that it must pay or deliver to the liquidator any amount or asset received on account of its claim in a Liquidation in respect of a Note in excess of its entitlement under clause 5.3(b).

#### 5.4 **Deferral of interest:**

(a) **Deferral of Interest:**

- (i) Subject to clause 5.4(e), the Issuer shall not pay interest (including any Deferred Interest and any Additional Interest Amount) on an Interest Payment Date if an Interest Deferral Condition exists on that Interest Payment Date.
- (ii) The Issuer shall notify the Holders and the Supervisor as soon as practicable of any Interest Payment Date on which, pursuant to the provisions of this clause 5.4, interest will not be paid.

- (b) **No deferral of interest on a Redemption Date:** The Issuer shall pay all accrued but unpaid interest on the Notes on the Redemption Date, regardless of whether an Interest Deferral Condition exists.

(c) **Deferred Interest - optional and compulsory payments:**

- (i) Any interest in respect of Notes not paid on an Interest Payment Date by virtue of clause 5.4(a)(i) so long as the same remains unpaid, constitutes "Deferred Interest".
- (ii) All Deferred Interest (together with all corresponding Additional Interest Amounts) will automatically become immediately due and payable in whole upon the earliest of the following dates:
  - (1) the first following Interest Payment Date on which no Interest Deferral Condition exists;
  - (2) the Maturity Date or the date fixed for any purchase or sale of Notes by or on behalf of the Issuer pursuant to Condition 12.3 or 12.4; or
  - (3) in relation to any Note which is to be redeemed, such other date on which the Note is to be redeemed in accordance with the provisions of this Supplemental Deed and the Master Trust Deed.

(d) **Additional Interest Amount:**

- (i) Additional Interest will accrue on the amount of Deferred Interest at the Additional Interest Rate from and including the fourth consecutive Interest Payment Date on which the Interest Deferral Condition is satisfied until (and excluding) the day on which that Deferred Interest is paid in full in accordance with clause 5.4(c)(ii), and such amount of interest (the **Additional Interest Amount**) will become due and payable pursuant to clause 5.4(c)(ii) and shall be calculated by the Issuer by applying the Additional Interest Rate to the amount of Deferred Interest.
- (ii) All Additional Interest Amounts accrue and are payable on the same basis as interest on a Note, subject to deferral on the same basis as interest under clause 5.4(a).

(e) **Restrictions on the Issuer in the case of deferral of interest:**

- (i) If by virtue of clause 5.4(a), interest is not paid in full on an Interest Payment Date the Issuer must not, without the approval of an Extraordinary Resolution:
  - (1) pay any dividend on, or make any other distribution in respect of, or pay any interest (including, without limitation, a Capital Reduction) on or with respect to, Junior Ranking Securities; or
  - (2) make any payments on or with respect to any other Equal Ranking Securities (unless the payment is made with respect to such other Equal Ranking Securities and a pro rata payment is made in respect of the Notes at the same time).

The restrictions in clause 5.4(e)(i) shall apply for so long as any Deferred Interest and Additional Interest Amount remains unpaid.

### 5.5 **Early Redemption:**

- (a) **Early Redemption:** The Issuer may, subject to the provisions of this clause 5.5 and at its sole discretion elect to redeem all or some (on a pro rata basis) of the Notes at any time after the third anniversary of the Issue Date.
- (b) **Redemption for Tax Event:** The Issuer may, subject to the provisions of this clause 5.5 and at its sole discretion elect to redeem all (but not some only) of the Notes outstanding at any time following the occurrence of a Tax Event.
- (c) **Early Redemption Notice:**
  - (i) The Issuer may only redeem under clause 5.5(a) or clause 5.5(b) if the Issuer has given to Holders and the Supervisor a notice in accordance with clause 5.5(c)(ii) of its election to do so (**Early Redemption Notice**) not less than 15 Business Days prior to the proposed redemption date (**Redemption Date**).
  - (ii) The Early Redemption Notice must specify the date on which it is proposed the Redemption will occur, which must be the following Interest Payment Date, unless the Issuer determines an earlier date having regard to the best interests of Holders as a whole and the Tax Event.
- (d) **Redemption:** Notes will be redeemed by payment on the Redemption Date to the Holder of the Redemption Amount together with any accrued but unpaid interest as at the Redemption Date.
- (e) **Effect of Redemption on Holders:** On the Redemption Date the only right Holders will have in respect of Notes will be to obtain the amounts payable under clause 5.5(d) and upon such payment, all other rights conferred, or restrictions imposed, by the Notes will no longer have effect.
- (f) **Condition to early redemption:** No Notes shall be redeemed under clause 5.5(a) or clause 5.5(b) or if an event of default (however described) has occurred under an agreement made with or for the benefit of a Senior Creditor or would occur if the redemption was made.

6. **GENERAL**

- 6.1 **Counterparts:** This Supplemental Deed may be signed in any number of counterparts, all of which together constitute one and the same instrument, and any of the parties may execute this Supplemental Deed by signing any such counterpart.
- 6.2 **Electronic execution:** By signing this Supplemental Deed, each party consents to this Supplemental Deed (or any counterpart of it) being executed in electronic form, being electronically signed (and, where witnessing of a signature is required, the witness's signature being electronically signed), and being delivered in electronic form by means of an electronic communication, all in accordance with sections 222 to 227 of the Contract and Commercial Law Act 2017.
- 6.3 **Governing law:** This Supplemental Deed shall be governed by, and construed in accordance with, New Zealand law.



**EXECUTED** as a **DEED** for and on behalf )  
of **EASTPACK LIMITED** )

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director

**EXECUTED** as a **DEED** for and on behalf )  
of **PUBLIC TRUST** )

by its Attorney )

\_\_\_\_\_  
Signature

in the presence of \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

EXECUTED as a DEED for and on behalf )  
of EASTPACK LIMITED )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

EXECUTED as a DEED for and on behalf )  
of PUBLIC TRUST )

by its Attorney )

\_\_\_\_\_  
Signature

*Elena Vinton*  
\_\_\_\_\_  
Name

in the presence of

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name **Brian Cheow Hin See**  
Senior Manager Client Services  
Public Trust, Auckland

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

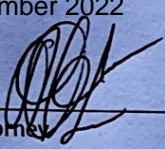
**CERTIFICATE OF NON-REVOCATION  
OF POWER OF ATTORNEY**

I, Elena Vinton, of Auckland, hold the office of Head of Client Services at Public Trust, an entity established under the Public Trust Act 2001, and certify that:

- 1 by deed dated 9 June 2021, Public Trust appointed me its attorney on the terms and conditions set out in the deed of appointment of attorneys which is deposited at Land Information New Zealand under number 12148123.1; and
- 2 at the date hereof I hold the position of Head of Client Services with Public Trust; and
- 3 at the date of this certificate I have not received any notice of the revocation of that appointment.

Date: 4 November 2022

\_\_\_\_\_  
Signature of attorney



## SCHEDULE: FINAL TERMS

1. Issuer: EastPack Limited
2. (a) Series Number: 2022-1  
(b) Tranche Number: 1
3. Wholesale or Retail: Retail Series  
Public Trust is the Supervisor in respect of the Notes
4. Name and address of Registrar and Paying Agent: EastPack Limited
5. Calculation Agent: EastPack Limited
6. Currency: NZ\$
7. Aggregate principal amount of Tranche: Up to NZ\$40,000,000 (comprising an issue amount of \$30,000,000 and over subscriptions of up to an additional NZ\$10,000,000)
8. (a) Issue Date: 16 December 2022  
(b) Interest Commencement Date: Issue Date
9. Maturity Date: 5 years after Issue Date subject to early redemption
10. Issue Price: Par
11. Denomination:
  - (a) Face value of Notes: NZ\$1.00
  - (b) Specified Principal Amounts: NZ\$20,000 and multiples of NZ\$10,000, thereafter.  
EastPack may decline to accept or register a transfer of the Notes if the transfer would result in the transferor or the transferee holding or continuing to hold Notes with a Principal Amount of less than \$20,000 (if not zero) or if the transfer is not a multiple of \$10,000.
12. Interest Basis: Fixed Rate (further particulars specified below)
13. Redemption Basis: Subject to any purchase and cancellation or early redemption, the Notes will be redeemed on the Maturity Date at 100% of their principal amount
14. Status of Notes: Unsecured, Subordinated Notes

## PROVISIONS RELATING TO INTEREST

15. Fixed Rate Notes provisions: Applicable
  - (a) Interest Rate: The Notes will pay a fixed rate of interest from the Issue Date to the next Reset Date.

The initial interest rate will be set on the on the date of the product disclosure statement for the Notes and will be the percentage per annum equal to the sum of the 5-year Government Bond Rate (being the 5-year government bond rate calculated from the average of that rate in the 5 Business Days immediately preceding (but not including) the Rate Set Date (in respect of the initial interest rate) or the relevant Reset Date (in respect of the subsequent interest rates), from The Reserve Bank of New Zealand statistics) plus a margin of 450bps.

The prevailing Government Bond Rate will be reviewed by the Issuer on each 12 month anniversary following the Issue Date during the Term and any change to the interest rate for the Notes will be notified to Holders in writing.

- (b) Interest Payment Dates: 16 February, 16 May, 16 August and 16 November in each year up to and including the Maturity Date. The first Interest Payment Date is 16 February 2023.
- (c) Business Day Convention: Following Unadjusted
- (d) Minimum Interest Rate: 8.5% per annum throughout the term of the Notes (subject to any increased interest rate applicable under clause 5.4(d) of the Supplemental Trust Deed).
- (e) Maximum Interest Rate: Not applicable
16. Floating Rate Notes provisions: Not applicable

#### **PROVISIONS RELATING TO REDEMPTION**

17. Redemption Amount: Outstanding principal amount

#### **GENERAL PROVISIONS APPLICABLE TO THE NOTES**

18. Listing: None
19. Clearing System: Not applicable
20. Other conditions to this Series: As set out in clause 5 of the supplemental deed relating to this Series
21. Selling restrictions: See Master Trust Deed

The Notes are not intended to be offered for sale or subscription in any jurisdiction other than New Zealand. No action has been taken by EastPack, the Arranger or any of their employees, agents or advisers that would permit a public offering of the Notes, or possession or distribution of any offering materials in respect of the Notes, in any country or jurisdiction where action for that purpose is required (other than New Zealand)