



Business Lending Terms & Conditions

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Business Lending Terms & Conditions

1. Introduction

1.1 Facility Documents

- (a) The terms and conditions upon which the Credit Provider enters into the Facilities with the Borrower and the Guarantor (if any) are contained in the Facility Documents.
- (b) The Facility Documents comprise:
 - (i) the Agreement;
 - (ii) the Security;
 - (iii) any agreement relating to the priority of any Security;
 - (iv) any other document or agreement which the Credit Provider and the Borrower agree is a Facility Document; and
 - (v) any agreement or instrument created under or contemplated by the above documents or agreements.
- (c) The Facility Documents should be read together.

1.2 Right of Review

- (a) The Credit Provider has a right to review the Facilities and the terms & conditions on which the Facilities are provided, including pricing and securities, in accordance with this clause:
 - (i) annually; or
 - (ii) upon the occurrence of a change in a circumstance which is warranted or taken to be warranted under a Facility Document to exist, or a change in the business or in the assets, financial condition or prospects of the Borrower, which, in the reasonable opinion of the Credit Provider, may have a material adverse impact on the Borrower's ability to meet its financial obligations to the Credit Provider or the effectiveness, value, priority or enforceability of any Security, (each a "Facility Review").
- (b) If, following a Facility Review, the Credit Provider determines, acting reasonably, that there has been a material adverse change in the Borrower's ability to meet its financial obligations to the Credit Provider or the effectiveness, value, priority or enforceability of any Security, the Credit Provider may give the Borrower written notice:
 - (i) informing it of the revised terms & conditions which will apply to the Facilities limited to clauses 5 (Payments), 6 (Repayments) and 7 (Payment of Interest and Fees);
 - (ii) advising it that the Credit Provider requires additional security to secure the Outstanding Amount; or
 - (iii) terminating the Facilities and specifying a Termination Date not less than 30 days after the date of the notice from the Credit Provider, although the Credit Provider will not terminate the Facilities unless there is material risk to the Credit Provider of a monetary default or of the Credit Provider being unable to enforce its rights against the Security and the Credit Provider has given the Borrower three (3) months' prior written notice.

For the avoidance of doubt the Credit Provider may issue notices under both paragraphs (b)(i) and (b)(ii).

- (c) If the Borrower does not agree with the revised conditions contained in any notice

given by the Credit Provider under clause 1.2(b)(i) ("Conditions Notice"), the Borrower must notify the Credit Provider within 30 days of the date of the Conditions Notice and the Credit Provider and the Borrower shall negotiate in good faith to agree the revised terms & conditions which are to apply to the Facilities.

- (d) If the Borrower does not give a notice under clause 1.2(c) within 30 days of the date of the Conditions Notice, the Borrower will be deemed to have accepted the revised terms & conditions as set out in the Conditions Notice and the revised terms & conditions will apply with effect from the date of the Conditions Notice.
- (e) If the Credit Provider gives a notice under clause 1.2(b)(ii) ("Security Notice"), the Borrower and the Credit Provider shall negotiate in good faith to agree the nature and terms of the additional security.
- (f) If the Credit Provider and the Borrower fail to reach agreement on the revised conditions or additional security within 30 days of the date of a Conditions Notice or Security Notice, or if, notwithstanding clause 1.2(d), the Borrower fails to accept the revised terms of the Facilities, the Credit Provider may give the Borrower written notice terminating the Facilities and specifying a Termination Date not less than 30 days after the date of the notice from the Credit Provider.
- (g) Nothing in this clause 1.2 affects:
 - (i) the obligations of the Borrower under the Agreement during any negotiation pursuant to this clause; or
 - (ii) any rights the Credit Provider has if an Event of Default has occurred.
- (h) The Borrower must pay the Outstanding Amount to the Credit Provider on the Termination Date specified in any notice given under clause 1.2(b)(iii) or clause 1.2(f).

1.3 Multi Option Facility

- (a) This clause 1.3 applies if the Facility Terms specify that some or all of the Facilities are provided as a Multi Option Facility.
- (b) The Borrower may use any combination of the Facilities comprising the Multi Option Facility (each a "Relevant Facility") so long as:
 - (i) the Principal Outstanding in relation to all the Relevant Facilities does not exceed the Credit Limit applicable to the Multi Option Facility; and
 - (ii) the Principal Outstanding in relation to any Relevant Facility does not exceed any applicable Sublimit.

1.4 Borrower as Trustee

If the Borrower enters into this Agreement as trustee of a Trust, this Agreement is binding on the Borrower personally and in its capacity as trustee of the Trust.

2. Conditions Precedent

The obligation of the Credit Provider to make the Facilities available to the Borrower is conditional upon the fulfilment of the conditions precedent specified in the Facility Terms to the satisfaction of the Credit Provider (acting reasonably) and upon receipt by the Credit Provider, in form and substance satisfactory to it, of the following:

- (a) **(Facility Terms)** the Facility Terms accepted by the Borrower and each Guarantor;
- (b) **(Constitution)** if requested by the Credit Provider, a certified copy of the constitution of the Borrower and of any Guarantor which is a corporation; **(Fees)** payment of all fees and

charges due and payable to the Credit Provider;

- (c) **(Security)** the Security executed, stamped and in registrable form together with all documents of title, transfers and other documents required by the Credit Provider;
- (d) **(Insurance)** copies of all policies of insurance required by the Credit Provider together with certificates of currency, if applicable, noting the Credit Provider's interest as mortgagee;
- (e) **(Trusts)** if the Borrower or any Guarantor enters into any Facility Document as trustee of a trust and, if requested by the Credit Provider, a copy of the trust deed together with satisfactory evidence that the trust deed is complete, correct, fully in force and not subject to amendment or revocation;
- (f) **(Accounts)** duly completed account opening authorities and any other documentation required to establish all necessary accounts with the Credit Provider;
- (g) **(Authorised Officers)** specimen signatures of each Authorised Officer of the Borrower; and
- (h) **(Other)** any other documents or authorisations which the Credit Provider or its solicitors believe are necessary or desirable in relation to the Facilities.

Each condition to drawdown in the Agreement is for the sole benefit of the Credit Provider and may be waived by it.

3. Conditions of Drawdown

3.1 General Details

- (a) The Borrower need not use any Facility. However, if the Borrower wants to use a Facility then, unless the Facility is a line of credit or overdraft, it must give to the Credit Provider a Drawdown Notice by 10 am on the second Business Day before the day it wants the drawdown.
- (b) The Credit Provider need not provide any financial accommodation unless:
 - (i) the term of that Drawing does not extend beyond the relevant Facility Expiry Date;
 - (ii) the Credit Provider is satisfied that, after providing the accommodation, no Credit Limit or Sublimit would be exceeded;
 - (iii) the Credit Provider is satisfied that no Event of Default or a Potential Insolvency Event is subsisting or would result from the accommodation being provided;
 - (iv) the Credit Provider is satisfied that the proceeds of the Drawing will be applied for a relevant Purpose; and
 - (v) the Credit Provider has received all other documents and other information it reasonably requests.

3.2 Drawdown Notices -General

Any Drawdown Notice provided by the Borrower to the Credit Provider must contain the following details:

- (a) the Facility or Facilities to be drawn;
- (b) the proposed Drawdown Date which must be a Business Day;
- (c) the details set out in clause 3.3 required in respect of each Facility which the Borrower

- wishes to utilise on the Drawdown Date;
- (d) when relevant, the Credit Provider account or accounts to which payment is to be made; and
- (e) contain a representation and warranty that the representations and warranties set out in the Facility Documents are correct and not misleading on the date of the Drawdown Notice;

and is effective when the Credit Provider actually receives it. An effective Drawdown Notice is irrevocable.

3.3 Drawdown Notice

A Drawdown Notice must comply with clause 3.2, be signed by an Authorised Officer of the Borrower and in relation to a proposed Drawing:

- (a) under a Loan Facility, must also include the principal amount.
- (b) under a Contingent Instrument Facility, must also include:
 - (i) the type of Contingent Instrument required;
 - (ii) the maximum liability of the Contingent Instrument;
 - (iii) the proposed beneficiary;
 - (iv) the purpose for which the Contingent Instrument is required;
 - (v) unless the Credit Provider otherwise agrees, specify a term for the Contingent Instrument (which must be a period ending on a Business Day on or before the relevant Facility Expiry Date); and
 - (vi) the place to which and the person to whom the Contingent Instrument is to be delivered.

4. Contingent Instruments

4.1 Drawings

Any obligation of the Credit Provider to provide a requested Contingent Instrument under a Contingent Instrument Facility is subject to and conditional on agreement between the Credit Provider and the Borrower as to:

- (a) the terms and conditions on which the Credit Provider will issue or provide the requested Contingent Instrument; and
- (b) the terms and conditions of the Contingent Instrument.

Unless the Credit Provider otherwise agrees, the terms and conditions referred to in paragraphs (a) and (b) must be settled prior to the Borrower giving a Drawdown Notice relating to the proposed Drawing.

4.2 Authority to make payments

The Borrower irrevocably authorises the Credit Provider to pay immediately any amount for which a demand or request is made at any time under a Contingent Instrument without reference to or further authority from the Borrower. The Credit Provider need not investigate or enquire whether a claim or demand on the Credit Provider has been properly made and may meet any claim or demand on the Credit Provider notwithstanding that the Borrower may dispute the validity of the claim or demand.

4.3 Termination of liability

The Credit Provider may (in its reasonable discretion) terminate its liability under a Contingent

Instrument at any time by paying to the relevant beneficiary an amount not more than the maximum outstanding liability under that Contingent Instrument.

4.4 Borrower's undertaking to reimburse

The Borrower agrees to pay to the Credit Provider promptly on demand an amount equal to each amount demanded from or paid by the Credit Provider under any Contingent Instrument. Interest will accrue on each amount paid by the Credit Provider under a Contingent Instrument in accordance with clause 7.1 and the Facility Terms from the date the Credit Provider makes payment to the relevant beneficiary to the date the amount is repaid to the Credit Provider in full by the Borrower (whether or not the Credit Provider has demanded payment).

4.5 Indemnity

- (a) As a separate obligation, the Borrower indemnifies the Credit Provider against all actions, proceedings, claims and demands brought or made against the Credit Provider and against all reasonable losses, Costs and damages which the Credit Provider incurs or sustains or for which the Credit Provider becomes liable, directly or indirectly, because of the issue of any Contingent Instrument.
- (b) Nothing in this clause requires the Borrower to indemnify the Credit Provider for any liability or loss arising from, or any Costs incurred in connection with, fraud, negligence or wilful misconduct of the Credit Provider, the Credit Provider's officers, employees, contractors and agents, or any receiver appointed by the Credit Provider over any property of the Borrower.

4.6 Documentary Letters of Credit

- (a) This clause 4.6 applies to any Contingent Instrument which is a documentary letter of credit and in this clause and clause 4.7(g):
 - (i) "Documents" means any invoice, bill of lading, transport document, insurance policy or other document received under the Contingent Instrument;
 - (ii) "Goods" means any goods to which the Contingent Instrument or the Documents relate.
- (b) The Borrower agrees that the Goods and the Documents and the proceeds of any sale of the Goods are pledged to the Credit Provider as security for the Borrower's obligations and liabilities to the Credit Provider or its correspondents in respect of the relevant Contingent Instrument.
- (c) If the Borrower defaults in the performance of any of its obligations under or in connection with a Contingent Instrument, the Credit Provider is authorised at its reasonable discretion to land, store, transport and warehouse the Goods and, for such purposes, to make arrangements directly with sellers, shippers, carriers, warehouse keepers, insurers or other third parties. At the Credit Provider's reasonable discretion, the Credit Provider may pay all freight, warehousing, dock, insurance and other charges and debit the account of the Borrower.
- (d) In addition to any other rights it may have, the Credit Provider may, acting reasonably, sell, dispose of or otherwise deal with the Goods in such manner and upon such terms as the Credit Provider thinks fit in order to reimburse itself for all Costs incurred by it or its correspondents for the account of the Borrower. The Credit Provider will only exercise this right once notice or demand is provided to the Borrower and a reasonable period for the Borrower to reimburse any costs incurred by the Credit Provider has elapsed.
- (e) To the maximum extent allowed by law, the Credit Provider is not liable in any manner whatsoever for the default of any person employed to sell, dispose of or otherwise deal with the Goods and shall not be responsible to the Borrower for any loss

arising from any sale, disposal or other dealing, except to the extent that any loss is caused by the fraud, negligence or wilful misconduct of the Credit Provider, the Credit Provider's officers, employees, contractors or agents, or any receiver appointed by the Credit Provider.

- (f) If any of the Goods or Documents are either:
 - (i) delivered by the Credit Provider to the Borrower (or its agent); or
 - (ii) received by the Borrower (or its agent),before the Borrower has fully discharged all of its obligations (contingent or otherwise) to the Credit Provider or its correspondents under or in connection with the Contingent Instrument, then:
 - (iii) the Borrower will receive and hold the Goods or Documents and any proceeds from the sale of them on trust for the Credit Provider; and
 - (iv) the Borrower will not dispose of or deal with the Goods or the Documents except as directed by the Credit Provider.
- (g) The Borrower is responsible for insuring the Goods. If the Credit Provider requests insurance cover the Borrower shall arrange such cover to the Credit Provider's reasonable satisfaction. If the Borrower fails to arrange such satisfactory cover the Credit Provider may effect further insurance at the Borrower's expense. The Credit Provider will retain the relevant insurance policy.
- (h) The Borrower will promptly on demand by the Credit Provider:
 - (i) cause the Credit Provider's interest in the Goods to be noted in all insurance policies relating to the Goods; and
 - (ii) deposit with the Credit Provider all such insurance policies held by the Borrower.
- (i) The Borrower irrevocably authorises the Credit Provider to collect all amounts due under any insurance policies and to hold amounts so collected and apply them in or towards satisfaction of the Borrower's obligations to the Credit Provider (contingent or otherwise) under or in connection with the Agreement.
- (j) The Borrower will, upon reasonable demand by the Credit Provider and at the Borrower's expense, promptly execute and deliver to the Credit Provider all documents and do all other things which the Credit Provider may require to:
 - (i) vest the title to the Goods and Documents and ensure their delivery to the Credit Provider;
 - (ii) enable the Credit Provider to collect any amount payable under any insurance policies relating to the Goods; or
 - (iii) otherwise assure to the Credit Provider the benefit of and enable the Credit Provider to exercise its rights under or in connection with the Contingent Instrument.

4.7 Preservation of Borrower's liability and rights of Credit Provider

The liabilities of the Borrower and the rights of the Credit Provider are not affected by anything which might otherwise have that effect at law or in equity including one or more of the following (whether occurring with or without the consent of a person):

- (a) any inaccuracy, insufficiency or forgery of or in any certificate or other instrument which purports to be made, issued or delivered under the Agreement or under any Contingent Instrument;
- (b) the Credit Provider or another person granting time or other indulgence (with or

without the imposition of an additional burden) to, compounding or compromising with or wholly or partially releasing the Borrower or another person in any way;

- (c) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Credit Provider (excluding fraud, or negligence or wilful misconduct on the part of the Credit Provider) or another person;
- (d) any variation or novation of a right of the Credit Provider or another person, or alteration of document, in respect of the Borrower or another person;
- (e) the invalidity or unenforceability of an obligation or liability of a person;
- (f) invalidity or irregularity in the execution of the Facility Documents by the Borrower or any deficiency in the powers of the Borrower to enter into or observe its obligations under any Facility Document; or
- (g) in the case of a Contingent Instrument which is a documentary letter of credit:
 - (i) the existence of or the description, quality, condition, value or utility of any Goods;
 - (ii) any Goods not being delivered by or to any person or any delay in the delivery of any goods by or to any person or any restriction or prohibition on the importation of any Goods; or
 - (iii) any loss of or damage to any Goods, any failure by any person to properly or adequately pack, load or unload, transport, store, protect or insure any goods or anything else affecting or relating to the Goods.

5. Repayments

5.1 Repayment of Facilities

The Borrower agrees to repay the Facilities in accordance with the Facility Terms and as follows:

- (a) **(Scheduled Repayments)** the Borrower must make all Scheduled Repayments in the amounts and on the dates specified in the Facility Terms;
- (b) **(Credit Limits and Sublimits)** the Borrower must pay to the Credit Provider such amounts as are necessary to ensure that the Principal Outstanding in relation to a Facility does not exceed the applicable Credit Limit or any applicable Sublimit;
- (c) **(Repayment on Facility Expiry Date)** the Borrower must pay the Outstanding Amount relating to a Facility on the relevant Facility Expiry Date and, on the Facility Expiry Date relating to a Contingent Instrument Facility, the Borrower must procure the cancellation and return to the Credit Provider of each outstanding Contingent Instrument; and
- (d) **(Repayment on Termination Date)** the Outstanding Amount must be repaid in full on the Termination Date and the Borrower must procure the cancellation and return to the Credit Provider of each outstanding Contingent Instrument.

5.2 Request for Outstanding Amount

If you ask us to confirm the Outstanding Amount, we will provide it to you within 7 Business Days.

6. Payments

6.1 Manner of payments

To the extent permitted by law, all payments to the Credit Provider under the Facility Documents must be made:

- (a) in Australian dollars in immediately available funds;
- (b) on the due date (or, if that is not a Business Day, on the next Business Day unless that day falls in the following month or after the relevant Facility Expiry Date, in which case, on the previous Business Day);
- (c) to the account nominated by the Credit Provider to the Borrower or in such other manner as the Credit Provider directs from time to time; and
- (d) in full without set-off or counter claim and without any deduction in respect of Taxes unless prohibited by law.

6.2 Amounts payable on demand

If any amount payable under a Facility Document is not expressed to be payable on a specified date, that amount is payable on demand by the Credit Provider.

7. Payment of Interest and Fees

7.1 Payment of Interest

The Borrower agrees to pay to the Credit Provider interest at the rate and calculated in the manner set out in the Facility Terms.

7.2 Payment of fees

The Borrower agrees to pay to the Credit Provider the fees specified in the Facility Terms on the dates and in the manner specified in the Facility Terms and, if no manner is specified, in a manner reasonably determined by the Credit Provider. To the extent permitted by law, fees, once paid, are not refundable for any reason.

7.3 Early repayment of loan, prepayments and variations during fixed rate periods

- (a) The Borrower agrees to pay to the Credit provider a Break Cost Fee calculated in accordance with this clause 7.3 if a Break Event occurs (as defined in clause 7.3(b)).
- (b) A Break Event occurs when, during any period in which the Annual Percentage Rate specified in the Facility Terms for a Facility is fixed:
 - (i) the Borrower repays the Outstanding Amount prior to the relevant Facility Expiry Date (i.e. earlier than it would have been repaid if the Borrower had only made the repayments required by the Agreement);
 - (ii) the Credit Provider agrees, at the Borrower's request, to change the Annual Percentage Rate or change the Annual Percentage Rate from a fixed rate to a variable rate or vice versa, change the duration of any period for which the Annual Percentage Rate is fixed, change a relevant Facility Expiry Date, change a relevant Credit Limit or Facility Type or otherwise change the terms and conditions applying to a Facility; or
 - (iii) the Borrower makes repayments to the Credit Provider, in any 12 month period, exceeding the Threshold Amount. For the purpose of this clause 7.3, the "Threshold Amount" for any 12 month period is the amount of repayments

the Borrower is required to pay by the Agreement during that period plus \$10,000.00.

- (c) For the purposes of this clause 7.3, the Credit Provider's Wholesale Interest Rate is the rate at which the Credit Provider determines it can get fixed rate funds from the money market on the relevant day. The Wholesale Interest Rate does not include any applicable member margin.
- (d) The Borrower will be required to pay the Credit Provider a Break Cost Fee if the Credit Provider's Wholesale Interest Rate for the remainder of the fixed rate period, calculated at the time of the Break Event, is lower than the Credit Provider's Wholesale Interest Rate at the start of the fixed rate period.
- (e) The Break Cost Fee payable by the Borrower in relation to a Break Event is a sum equal to the Credit Provider's estimate of the loss it will suffer as a result of the Break Event and is calculated using a formula which takes into account (amongst other factors):
 - (i) the Wholesale Interest Rate that applied on the first day of the fixed rate period ('the Original Wholesale Interest Rate') being:
 - A. if the Borrower drew down a Facility with a locked in fixed interest rate, the rate that applied on the day you locked in your rate;
 - B. for other fixed interest rate loans, the rate that applied on the day the Borrower first drew down on the Facility;
 - (ii) the Wholesale Interest Rate for the remaining part of the fixed interest rate period, using rates which apply at the time of the break event ('the Current Wholesale Interest Rate');
 - (iii) the amount of Principal Outstanding that was prepaid since the Borrower told the Credit Provider that the Borrower wanted a fixed rate and selected agreed the fixed rate period or the amount of Principal Outstanding at the time the Borrower varied;
 - (iv) the Threshold Amount the Credit Provider allows the Borrower to repay before a Break Cost Fee is imposed;
 - (v) the amount of any unpaid interest, fees and charges and any default interest which has been debited to any relevant Facility Account;
 - (vi) the timing, dollar amount and frequency of repayments required under the Agreement; and
 - (vii) the remaining fixed interest rate period.
- (f) The Break Cost Fee formula referred to above compares the values of the foregone payments at the original Wholesale Interest Rate and at the current Wholesale Interest Rate.
- (g) When applying the Break Cost Fee formula and calculating a Break Cost Fee amount, the Credit Provider may assume that the Wholesale Interest Rate which applies on the date of calculation is the current rate applicable on the date of the break event.
- (h) The Credit Provider will provide a copy of the formula it uses to calculate the Break Cost Fee to the Borrower:
 - (i) with the Borrower's Facility Terms; and
 - (ii) at the Borrower's request if a Break Cost Fee becomes payable by the Borrower or is anticipated to become payable by the Borrower.
- (i) The Borrower acknowledges and agrees:
 - (i) the Break Cost Fee is calculated to compensate the Credit Provider for the estimated economic loss suffered by the Credit Provider of the Break Event.

- (ii) a Break Event may reduce the future interest payments the Credit Provider will receive.
 - (iii) the Credit Provider's Break Cost Fee formula is complex due to the many variables involved in the calculation of the Credit Provider's loss.
- (j) Notwithstanding the above provisions, the Borrower will not be required to pay a Break Cost Fee in relation to the Scheduled Repayments specified in the Facility Terms during a period in which the Annual Percentage Rate is fixed if:
 - (i) the Borrower has made arrangements with the Credit Provider to make the Scheduled Repayments more frequently than monthly and the total amount the Borrower is repaying during a month is not materially in excess of the amount the Borrower would repay if it was only making the repayments required by the Agreement; or
 - (ii) the Credit Provider consents in writing to the Borrower making regular Scheduled Repayments higher than those required under the Facility Terms.

8. Costs

8.1 Reimbursement of Facility Costs

The Borrower agrees to pay or reimburse:

- (a) the reasonable Costs of the Credit Provider in connection with:
 - (i) the negotiation, preparation, execution, stamping, registration and completion of the Facility Documents;
 - (ii) the Credit Provider being satisfied that conditions to drawdown have been met; and
 - (iii) the Credit Provider giving and considering consents, waivers, variations, discharges and releases and producing title documents;

however, nothing in this clause 8.1(a) requires the Borrower to pay or reimburse the Credit Provider for any Costs to the extent caused by the fraud, negligence or wilful misconduct of the Credit Provider, its officers, employees, contractors and/or agents, or any receiver appointed by it;
- (b) the Costs of the Credit Provider in otherwise acting in connection with the Facility Documents such as exercising, enforcing or preserving rights (or considering doing so), or doing anything in connection with any enquiry by a Governmental Agency involving the Borrower or any of its Related Entities, except to the extent that any Costs are caused by the fraud, negligence or wilful misconduct of the Credit Provider, its officers, employees, contractors or agents, or any receiver appointed by it;
- (c) Taxes and fees (including registration fees) and fines and penalties in respect of fees, which may be payable or determined to be payable in connection with any Facility Document or a payment or receipt or any other transaction contemplated by any Facility Document, except to the extent that any taxes and fees are incurred by the fraud, negligence or wilful misconduct of the Credit Provider, its officers, employees, contractors or agents, or any receiver appointed by it;
- (d) the Costs of the Credit Provider if the Facilities are abandoned or terminated for any reason by the Borrower in accordance with the Facility Terms;
- (e) any other Costs which the Credit Provider reasonably incurs pursuant to any Facility Document; and
- (f) the Costs of any valuation undertaken or arranged by the Credit Provider over assets of the Borrower or any Guarantor (the Credit Provider is not obliged to provide a copy of any valuation to the Borrower or any Guarantor and neither the Borrower nor any Guarantor is entitled to rely on any valuation obtained by the Credit

Provider).

The Borrower agrees to pay amounts payable under this clause promptly on demand from the Credit Provider. Where the Borrower has failed to pay any amount payable under the Facility Documents by the due date for payment, the Credit Provider may debit any of these amounts to the Facility Account. The Credit Provider will tell the Borrower in writing if it does this.

8.2 Illegality

If the Credit Provider determines, acting reasonably, that:

- (a) a change in a Directive;
- (b) a change in the interpretation or administration of a Directive by a Governmental Agency; or
- (c) a Directive,

makes it unlawful, impossible or impracticable for the Credit Provider to maintain or give effect to its obligations under the Agreement, the Credit Provider may by giving reasonable notice of not less than 30 days to the Borrower nominate a date as the Termination Date and the Outstanding Amount must be paid in full to the Credit Provider on or before that date and the Borrower must procure the cancellation and return to the Credit Provider of each outstanding Contingent Instrument.

9. Representations and Warranties

9.1 General Representations and Warranties

The Borrower represents and warrants to the Credit Provider that:

- (a) **(Facility Terms)** all representations and warranties made by the Borrower specified in the Facility Terms are true and correct and not misleading;
- (b) **(Authorisation)** it has power to enter into and observe its obligations under the Facility Documents and has all authorisations (internal and external) necessary to ensure its obligations are valid and binding and are enforceable and its obligations under the Facility Documents are valid and binding and are enforceable against it in accordance with their terms;
- (c) **(No contravention)** by entering into the Facility Documents and carrying out its obligations under them, the Borrower does not contravene:
 - (i) its constitution or other constituent documents (if any) (or limit any powers under those documents);
 - (ii) any law, government regulation or official directive; or
 - (iii) any agreement which binds the Borrower or to which any of its assets are subject;
- (d) **(Full disclosure)** it has fully disclosed in writing to the Credit Provider all material facts of which it is aware which may:
 - (i) have an adverse effect on the ability of the Borrower or any Guarantor to perform its obligations under the Facility Documents or anything in connection with them;
 - (ii) impact on the Borrower's or Guarantor's business, assets or financial condition; or
 - (iii) affect the assessment of the nature and amount of risk undertaken by the Credit Provider in entering into the Facility Documents;
- (e) **(Financial statements)** the most recent accounts of the Borrower and the most recent consolidated accounts of the Borrower and its Related Entities:
 - (i) are a true, fair and accurate statement of their respective financial positions;
 - (ii) reflect all actual and contingent liabilities; and

- (iii) are prepared in accordance with any applicable law,

and that there has been no material adverse change in the financial position or credit worthiness of the Borrower and its Related Entities since the date of the financial statements;
- (f) **(No default)** no Event of Default or Potential Insolvency Event has occurred and is subsisting;
- (g) **(Benefit)** the Borrower and each Guarantor benefits by executing the Facility Documents to which each is a party;
- (h) **(No undisclosed litigation)** no litigation, dispute resolution process or administrative proceeding current, pending or threatened exists which may have a material adverse effect on:
 - (i) the assets or financial condition of the Borrower or a Guarantor; or
 - (ii) the rights and powers of the Credit Provider under the Facility Documents;
- (i) **(Trusts)** unless otherwise stated in the Agreement, neither the Borrower nor any Guarantor is executing any document as trustee of any trust and if it is stated in the Agreement that the Borrower is acting as a trustee of a trust, then the Borrower represents:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) it has disclosed full particulars of the terms of the Trust (including, if requested by the Credit Provider, provision of a true copy of the current Trust Deed) and any relevant documents (including the most recent true and accurate accounts relating to the Trust);
 - (iii) there has been no material change in the financial position of the Trust since the date of its most recent accounts;
 - (iv) it has power, and all necessary action has been taken, under the Trust Deed to own its property and assets, to carry on its business, and to execute and perform its obligations under the Facility Documents;
 - (v) the Facility Documents are executed as part of the due and proper administration of the Trust and are or will be for the benefit of the beneficiaries of the Trust;
 - (vi) it has an unrestricted and unlimited right to be fully indemnified out of the Trust fund and is otherwise not in default under the Trust Deed or will not be in default (including breaching its fiduciary duties) by entering into the Facility Documents;
 - (vii) that there has been no change and there will not, without the Credit Provider's consent, be any variation in the terms of the Trust (including any change to the trustees of the trust, the vesting date, existing assets of the Trust and the right of indemnity of the Trustee); and
 - (viii) no notice has been published calling for creditors to give notice of their claims against the Trust;
- (j) **(Payment of debts)** there are no reasonable grounds to suspect that the Borrower or any of its Related Entities are unable to pay their debts as and when they become due and payable; and
- (k) **(No benefit to related party)** no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into any Facility Document or participating in any transaction in connection with a Facility Document.

9.2 Repetition

These representations and warranties are taken to be also made on each Drawdown Date and the Borrower will notify the Credit Provider if there is any material change to any of these

representations or warranties.

10. Undertakings

10.1 Positive Undertakings

The Borrower undertakes:

- (a) **(Facility Terms)** to comply with all undertakings specified in the Facility Terms;
- (b) **(Business)** to conduct and maintain the business carried on by it in a proper, orderly and efficient manner including:
 - (i) complying with laws and paying Taxes when due;
 - (ii) not changing its business operations in any material way that may have an adverse affect on the Borrower's creditworthiness or the Borrower's ability or will to observe its obligations under the Facility Documents without the consent of the Credit Provider, which will not be unreasonably withheld;
 - (iii) preparing proper and adequate books of account and ensuring that each of its Subsidiaries do the same; and
 - (iv) ensuring that its business and all of its assets are fully insured and that all terms and conditions of the insurance policies are complied with;
- (c) **(Authorisations)** to obtain, renew and comply with each authorisation (internal and external) necessary to:
 - (i) enter into the Facility Documents; and
 - (ii) observe the obligations under the Facility Documents and allow them to be enforced;
- (d) **(Incorporation)** to maintain its corporate existence and not transfer its place of incorporation or enter into any merger, amalgamation or consolidation;
- (e) **(Compliance)** to comply on time with all its obligations in connection with the Facility Documents and take all reasonable steps to ensure that no Event of Default or Potential Insolvency Event occurs and ensure that each of its Subsidiaries does the same;
- (f) **(Insurance)** to maintain with insurers acceptable to the Credit Provider, on terms reasonably acceptable to the Credit Provider, insurance over any property used in connection with the Borrower's business, any insurance which a prudent person would have if involved in the Borrower's business and any other insurance which the Credit Provider reasonably directs the Borrower to maintain;
- (g) **(Purpose)** to use the proceeds of any Drawing for a Purpose; and
- (h) **(Trustee undertakings)** if the Borrower is trustee of a Trust, not to:
 - (i) do or suffer or omit to do any act or thing in breach of the Trust;
 - (ii) exercise or permit or allow to be exercised any power to change the vesting date of the Trust, determine the Trust early or transfer, set aside or resetttle any Trust asset or allow any Trust asset to be mixed with other property; or
 - (iii) release or otherwise cause or permit to be lost or diminished the rights of indemnity which the Borrower may now or in the future have against the Trust fund or against the beneficiaries of the Trust.
- (i) **(Additional trustee undertakings)** if the Borrower is trustee of a Trust, not to:
 - (i) vary the Trust Deed;
 - (ii) retire as trustee of the Trust or appoint any new or additional trustee; or

- (iii) make any distribution of the capital of the Trust,
unless the Borrower has first obtained the Credit Provider's written consent to do so,
which will not be unreasonably withheld.

10.2 Information undertakings

The Borrower will:

- (a) **(Facility Terms)** give to the Credit Provider all information specified in the Facility Terms;
- (b) **(Annual accounts)** provide to the Credit Provider as soon as practicable (and in any event not later than 120 days) after the end of each financial year copies of the consolidated and unconsolidated audited balance sheet and profit and loss account of the Borrower and each Guarantor;
- (c) **(Half yearly accounts)** if the Credit Provider reasonably considers it necessary and makes a request in writing, provide to the Credit Provider as soon as practicable (and in any event not later than 90 days) after the end of each financial half year copies of the consolidated and unconsolidated unaudited balance sheet and profit and loss account of the Borrower and each Guarantor;
- (d) **(Cashflow projections)** if the Credit Provider reasonably considers it necessary and requests it, provide to the Credit Provider, annual cashflow projections broken into monthly accounting periods prior to the commencement of each financial year;
- (e) **(Management accounts)** if the Credit Provider reasonably considers it necessary and requests it, provide to the Credit Provider actual to projected cashflow analysis, aged creditors and debtors list and management accounts within 30 days of the end of each quarter;
- (f) **(General)** give the Credit Provider on demand the information and documents which the Credit Provider reasonably considers necessary and requests from time to time in connection with:
 - (i) the Facilities and the Facility Documents; and
 - (ii) the business, property or financial condition of the Borrower and its Related Entities (including copies of tax returns);
- (g) **(Notification on default)** notify the Credit Provider of the occurrence of any Event of Default or Potential Insolvency Event;
- (h) **(Certificate)** if requested by the Credit Provider, provide the Credit Provider with a certificate signed by a director of the Borrower which states that an Event of Default or Potential Insolvency Event has not occurred or the full details of an Event of Default or a Potential Insolvency Event and the steps taken to remedy it;
- (i) **(Litigation)** give the Credit Provider prompt notice of any litigation, dispute resolution process or administrative proceeding threatened against it or its assets and of a default under any other financial facilities;
- (j) **(Insurance)** notify the Credit Provider immediately when:
 - (i) an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance held by the Borrower; or
 - (ii) any policy of insurance held by the Borrower is cancelled;
- (k) **(Notify interests in land)** give the Credit Provider details about all land and interests in land (such as leases) the Borrower acquires; and
- (l) **(Guarantors)** on demand by the Credit Provider, procure that each Guarantor gives such information and documents in respect of its business and financial affairs as the Credit Provider reasonably requests.

11. Indemnities

- (a) To the extent permitted by law, the Borrower indemnifies the Credit Provider upon demand against any liability (including Taxes) or loss arising from and any Costs incurred in connection with:
 - (i) financial accommodation requested under a Facility Document not being provided in accordance with the request for any reason;
 - (ii) a failure by the Borrower or the Guarantor to comply with any obligation under any Facility Document;
 - (iii) an Event of Default or Potential Insolvency Event;
 - (iv) the Credit Provider exercising or attempting to exercise a right or remedy under the Facility Documents or any law;
 - (v) any Facility Document;
 - (vi) any indemnity the Credit Provider gives a controller or administrator of the Borrower; or
 - (vii) the Credit Provider acting in connection with a Facility Document in good faith on telephone, e-mail or other electronic instructions purporting to originate from the offices of the Borrower or purporting to be given by an Authorised Officer of the Borrower.
- (b) Nothing in this clause requires the Borrower to indemnify the Credit Provider for any liability or loss arising from, or any Costs incurred in connection with, fraud, negligence or wilful misconduct of the Credit Provider, the Credit Provider's officers, employees, contractors and agents, or any receiver appointed by the Credit Provider over any property of the Borrower.

12. Events of Default

12.1 Events

An Event of Default occurs, whether or not it is in the Borrower's power to prevent it, if:

- (a) **(Non-payment)** the Borrower does not pay on time any amount payable by it under any Facility Document in the manner required under it;
- (b) **(Credit Limit exceeded)** at any time the Principal Outstanding in relation to a Facility exceeds the applicable Credit Limit or any applicable Sublimit;
- (c) **(Other default)** early repayment is required under any Facility Document, or default based action is taken against the Borrower or a Guarantor by the Credit Provider due to an event of default (however described) in any other Facility Document and it has a material impact on the Borrower or a Guarantor's ability to meet their financial obligations to the Credit Provider;
- (d) **(Insolvency and legal capacity)** an Insolvency Event occurs in respect of the Borrower or a Guarantor (and the Credit Provider is not prevented from enforcing its rights under this Facility Document by a provision of the Corporations Act) or the Borrower or a Guarantor no longer has legal capacity or, if the Borrower or a Guarantor is a company, any step is taken to deregister the company;
- (e) **(Other creditor enforcement)** distress is levied or a judgment, order or Security Interest is enforced, or becomes enforceable, against any property of the Borrower or the Guarantor by another creditor;
- (f) **(Cross monetary default)** any present or future monetary obligation of the Borrower to the Credit Provider is not satisfied on time (or at the end of any applicable period of grace) or becomes prematurely payable or can be rendered prematurely payable, by the giving of notice, lapse of time or fulfilment of a condition;
- (g) **(Unlawful)** the Credit Provider believes on reasonable grounds that the Borrower or

a Guarantor has not complied with the law or any requirement of a statutory authority, or it becomes unlawful for the Borrower or the Credit Provider to continue with a Facility;

- (h) **(Misrepresentation)** a representation or warranty made or taken to be made by or on behalf of the Borrower or a Guarantor in connection with a Facility Document is, materially incorrect or misleading (including by omission);
- (i) **(Use of loan for non-approved purposes)** the Borrower uses a Facility for a purpose other than an approved Purpose without the Credit Provider's consent, which will not be unreasonably withheld;
- (j) **(Dealing with assets improperly or without consent)** the Borrower's assets or a Guarantor's assets are dealt with, or attempted to be dealt with, in breach of a Facility Document without the Credit Provider's consent, which will not be unreasonably withheld;
- (k) **(Failure to provide financial information)** the Borrower or a Guarantor does not provide financial information it is required to provide by a Facility Document;
- (l) **(Failure to maintain licence or permit to conduct business)** the Borrower or a Guarantor fails to maintain a licence or permit necessary to conduct its business;
- (m) **(Failure to maintain insurance)** the Borrower or a Guarantor fails to maintain insurance required to be maintained by a Facility Document;
- (n) **(Change in ownership or control)** legal or beneficial ownership, or management control of the Borrower or a Guarantor or their business changes without the Credit Provider's consent, which will not be unreasonably withheld;
- (o) **(Change in status, capacity or composition)** the status, capacity or composition of the Borrower or a Guarantor changes without the Credit Provider's consent;
- (p) **(Facility Terms)** an event specified as an "Event of Default" in the Facility Terms occurs; or
- (q) **(Act or omission)** the Borrower or a Guarantor does something material it agrees not to do or doesn't do something material it agrees to do under a Facility Document.

12.2 Consequences

Subject to clause 12.3, if an Event of Default has occurred the Credit Provider may declare at any time by reasonable notice to the Borrower that:

- (a) the Outstanding Amount is either:
 - (i) payable on demand; or
 - (ii) immediately due for payment;
- (b) the Credit Provider's obligations to provide financial accommodation to the Borrower are terminated.

The Credit Provider may make either or both these declarations. The making of either of them gives immediate effect to its provisions. The Credit Provider may also take any other action it is entitled to take under the Facility Documents following the occurrence of an Event of Default (including the enforcement of any rights or powers in respect of the Security).

12.3 Acting on Events of Default

- (a) The Credit Provider may only act on the Events of Default identified in clauses 12.1(c), (e), (g), (h), (i), (j), (k), (l), (m), (n) or (o) if the Credit Provider reasonably considers the event has had, or is likely to have, a material adverse impact on:
 - (i) the Borrower or a Guarantor's ability to meet their financial obligations to the Credit Provider;

- (ii) the Credit Provider's credit or security risk or the Credit Provider's ability to assess either of these risks (including, without limitation, a material impact on the effectiveness, value, priority or enforceability of any Security); or
 - (iii) in the case of the Events of Default identified in clauses 12.1(g), (h) and (i), the Credit Provider's legal or reputational risk.
- (b) If an Event of Default has occurred and the Event of Default is capable of being remedied, before the Credit Provider may make a declaration pursuant to clause 12.2 or exercise any rights that may only be exercised by the Credit Provider if an Event of Default occurs, the Credit Provider must give the Borrower a notice specifying what the Event of Default is and specifying a period of at least:
- (i) for an Event of Default identified in clause 12.1(a), 30 days; or
 - (ii) for any other Event of Default, 3 months,

during which the Event of Default may be remedied, unless one of more of the following circumstances applies :

- (iii) the Borrower or a Guarantor goes into bankruptcy or voluntary administration;
- (iv) the Credit Provider has required the Borrower to make early repayment, or taken enforcement proceedings under a separate financing arrangement the Borrower has with the Credit Provider;
- (v) it becomes unlawful to continue with the Agreement;
- (vi) enforcement proceedings are taken against the Borrower or Guarantor by another creditor, and the Credit Provider reasonably considers that this is likely to have a material impact on the Borrower's ability to meet the Borrower's financial obligations to the Credit Provider;
- (vii) the Borrower deals with the Security in breach of this Agreement or security documents without the Credit Provider's consent (which will not be unreasonably withheld), and the Credit Provider reasonably considers that this is likely to have a material impact on the Borrower's ability to meet the Borrower's financial obligations to the Credit Provider; or
- (viii) the Borrower has breached the law, and the Credit Provider reasonably considers that this is likely to have a material impact on the Borrower's ability to meet the Borrower's financial obligations,

in which case, and notwithstanding a notice the Credit Provider has already given the Borrower, the Credit Provider does not have to give the Borrower notice or may give the Borrower a shorter notice period.

12.4 Investigation of default

If the Credit Provider reasonably believes that there is or may be an Event of Default the Credit Provider may request a person to investigate, report to and advise the Credit Provider on the financial and trading condition of the Borrower, the Guarantor and any of their Related Entities. The Borrower agrees to co-operate with the person and comply with every reasonable request they make. The Borrower agrees to pay all Costs in connection with the investigation.

13. Variations to Terms & Conditions

13.1 Variations

- (a) There may be times when the Credit Provider needs to make changes to the Agreement. When the Credit Provider make changes, the Credit Provider will always act fairly and honestly towards the Borrower.
- (b) If the Credit Provider is required to give the Borrower notice of a change, the Borrower will receive notice personally, or by advertisement in the national or local media (and, after the change takes effect, the Credit Provider shall provide particulars of the change before or when the next statement of account is provided to the Borrower). The period of notice the Credit Provider will provide is set out in the Notification of Change Table below.
- (c) Where permitted by law, the Credit Provider may give the Borrower a notice period that is shorter than set out in the Notification of Change Table below, or no notice, of an unfavourable change if the Credit Provider reasonably considers urgent action is necessary to avoid or reduce a material increase in its credit, security, regulatory or reputational risk or an immediate or material financial risk.
- (d) The Borrower may choose to terminate a Facility early due to a change made by the Credit Provider under this clause. If the Borrower does so, then the Borrower must give the Credit Provider reasonable notice and repay the balance of the Facility. The Credit Provider will not charge the Borrower any fees to discharge, except where a fixed interest rate applies to the Borrower's Facility, in which case the Credit Provider may still charge the Borrower break costs in accordance with the Agreement.
- (e) Subject to clause 13(f) below, the changes the Credit Provider may make, and how the Credit Provider will notify the Borrower of these changes, is set out in the Notification of Change Table below:

Notification of Change Table

Type of change		Notice of change
Interest rates	Changing the method of calculating interest, or frequency of crediting or debiting interest	45 days
	When the Annual Percentage Rate is expressed as a reference rate plus or minus the margin – changing the margin	45 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower in writing before, or with, the Borrower's next statement
	Increasing the default rate of interest	The Credit Provider will give the Borrower notice no later than the day the change takes effect by publishing a notice in a newspaper (and, after the change takes effect, providing particulars of the change before or when the next statement of account is provided to the Borrower) or giving the Borrower written notice
	Changing the method of calculating default interest, or frequency of crediting or debiting default interest	45 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower, in writing before, or with, the Borrower's next statement

Repayments	Changing the amount of a repayment	30 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower, in writing before, or with, the Borrower's next statement
	Changing the method of calculating repayments, or the number or frequency of repayments, or the time for making repayments	45 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower, in writing before, or with, the Borrower's next statement
	Changing the method of calculating the minimum repayment amount	45 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower, in writing before, or with, the Borrower's next statement
Credit fees and charges	Changing the amount of any credit fee or charge	45 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower, in writing before, or with, the Borrower's next statement
	Adding a new credit fee or charge	45 days
	Changing the method of calculating, or the time or frequency of payment, of any credit fee or charge	45 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower, in writing before, or with, the Borrower's next statement
Government fees and charges	Adding a new fee or charge set by the government changing an existing fee or charge set by the government	No later than the day on which the change takes effect, unless: - the Credit Provider reasonably considers that the change is not adverse to the Borrower, in which case the Credit Provider will notify the Borrower no later than in or with the Borrower's next statement; or - it is publicised by the government, in which case the Credit Provider does not need to notify the Borrower.

Type of change	Notice of change
Other changes In addition to the Credit Provider's ability to make the changes outlined above, the Credit Provider can change any term of the Agreement: • if the Credit Provider reasonably consider that the change is not adverse to the Borrower; • to comply with any law, standard, regulator guidance, decision of a court or ombudsman; • if the Credit Provider considers it reasonably necessary to manage its regulatory, credit, security, reputational or financial risk; • if the Credit Provider considers it reasonably necessary to reflect current industry or market products or conditions; • if the change is administrative or minor, or to correct a mistake, inconsistency, ambiguity or omission; • if the change reflects changes to the Credit Provider's business or technological systems • to introduce a new service or feature, or to modify or remove a service or feature; • if a product or service has been discontinued, to provide the Borrower with a product or service which is substantially similar to the discontinued product or service; • to protect the Credit Provider or any other person from the risk of fraud or illegal activity; • if the change is otherwise reasonably necessary to protect the Credit Provider's legitimate interests.	45 days, or where the Credit Provider reasonably considers that the change is not adverse to the Borrower, the Credit Provider will notify the Borrower, in writing before, or with, the Borrower's next statement

- (f) If a fixed interest rate applies to a Facility, the Credit Provider will not:
- (i) change the Annual Percentage Rate (including any margin); or
 - (ii) increase the amount of a credit fee or charge, or vary the method of calculating any credit fee or charge so as to increase the amount of the credit fee or charge payable on:
 - A. early termination of the Facility; or
 - B. prepayment of an amount in any period during which Item 7 of the Facility Terms states that the Annual Percentage Rate is fixed.

14. Attorney

14.1 Appointment

The Borrower irrevocably appoints the Credit Provider and each Authorised Officer of the Credit Provider as its attorney with the power:

- (a) at any time to:
 - (i) do everything which in the attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Credit Provider in relation to the Facility Documents;

- (ii) complete the Facility Documents; and
 - (iii) appoint substitutes and otherwise delegate its powers (including this power of delegation); and
- (b) after any Event of Default has occurred and the Borrower has failed to remedy the Event of Default, to do all acts and things which the Borrower is obliged to do under the Facility Documents although no person dealing with the attorney need satisfy itself of such occurrence.

14.2 General

- (a) The Borrower ratifies anything done or not done by the Attorney pursuant to the power of attorney.
- (b) The power of attorney is granted:
 - (i) to secure compliance by the Borrower with its obligations to the Credit Provider under the Facility Documents; and
 - (ii) for valuable consideration (receipt of which is acknowledged) which includes entry into the Facilities by the Credit Provider at the Borrower's request.
- (c) An Attorney may exercise the Attorney's powers for our benefit, even if it is not for the Borrower's benefit.

15. Miscellaneous

15.1 Debiting of Accounts

The Credit Provider is irrevocably authorised by the Borrower, at the discretion of the Credit Provider, to debit any amounts including interest, fees and Costs due to it actually or contingently to any Facility Account, regardless of whether the account balance is put in debit and regardless of whether a Credit Limit or Sublimit is exceeded. Exceeding a Credit Limit or Sublimit will still constitute an Event of Default. The Credit Provider will tell the Borrower in writing if it does this.

15.2 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of any Facility Document) except:

- (a) with the consent of the party who provided the information;
- (b) if required by any law or Stock Exchange or allowed by or under any law or code of practice with which financiers carrying on business in Australia generally comply;
- (c) to any Related Entity of any party to the Agreement provided the recipient agrees to act consistently with this clause;
- (d) to any person in connection with an exercise of rights or a dealing with rights or obligations under a Facility Document (including in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with the Credit Provider in connection with a Facility Document); or
- (e) to officers, employees, legal and other advisers and auditors of the Borrower or the Credit Provider; or
- (f) to any Guarantor.

Each party consents to disclosures made in accordance with this clause 15.2.

15.3 Assignment

- (a) The Borrower may not assign or otherwise dispose of, novate or create any Security

Interest over any of its rights or obligations under the Facility Documents without the consent of the Credit Provider, which will not be unreasonably withheld.

- (b) The Credit Provider may assign, novate, sub-participate or sell-down by whatever form (including securitisation) or otherwise deal with its rights under the Facility Documents without the consent of any person. The Credit Provider will notify the Borrower in writing as soon as reasonably practical if it is reasonable to do so. If the Credit Provider's rights under the Facility Documents are assigned to another person, or pass by law to another person, the Borrower will have (and may exercise) the same rights in respect of the Facility Documents against the assignee as the Borrower has against the Credit Provider.

15.4 Applicable law

The Agreement is governed by and shall be interpreted in accordance with the laws in force in the Relevant State and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts in that state.

15.5 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Borrower in connection with the Facility Documents with the result that the Credit Provider's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

15.6 Further Assurance

The Borrower agrees to do anything the Credit Provider reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the Borrower any other person intended to be bound under the Facility Documents; and
- (b) to show whether the Borrower is complying with the Facility Documents.

15.7 Counterparts

Each Facility Document may consist of a number of copies, each signed by one or more parties to that Facility Document. If so, the signed copies are treated as making up one document.

15.8 Partnership

If the Borrower enters into the Agreement as partners:

- (a) each partner as a separate, independent, principal and personal obligation must pay to the Credit Provider the Outstanding Amount whether or not the Credit Provider may recover any sum from the partnership assets;
- (b) and the partnership is dissolved:
 - (i) the Borrower must promptly give written notice of that event to the Credit Provider;
 - (ii) each partner must act in relation to the administration of the partnership assets in the manner (if any) directed by the Credit Provider;
 - (iii) a retiring partner is not discharged from any liability to the Credit Provider as a result of an agreement between the then existing partners; and
 - (iv) the obligations of a retiring partner to the Credit Provider under any relevant document are not affected by anything which might otherwise affect them at law or in equity.

15.9 Set-Off

The Credit Provider may, acting reasonably and in accordance with its legitimate business

interests, combine any account that the Borrower holds with the Credit Provider or set off any amount due for payment by the Credit Provider to the Borrower against any amount due for payment by the Borrower to the Credit Provider under the Facility Documents. The Credit Provider will tell the Borrower in writing if it does these things.

15.10 Discretion in exercising rights

The Credit Provider may, acting reasonably, exercise a right or remedy or give or refuse its consent under a Facility Document in any way it considers appropriate (including by imposing conditions).

The Borrower agrees to comply with all conditions in any consent the Credit Provider gives in connection with a Facility Document.

15.11 Partial exercising of rights

If the Credit Provider does not exercise a right or remedy under a Facility Document fully or at a given time, the Credit Provider may still exercise it later.

15.12 No liability for loss

The Credit Provider 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 a Facility Document except to the extent any such loss is caused by the fraud, negligence or wilful misconduct of the Credit Provider, its officers, employees, contractors or agents, or any receiver appointed by the Credit Provider.

15.13 Conflict of interest

The Credit Provider's rights and remedies under any Facility Document may be exercised even if this involves a conflict of duty or the Credit Provider has a personal interest in their exercise.

15.14 Remedies cumulative

The rights and remedies of the Credit Provider under any Facility Document are in addition to other rights and remedies given by law independently of the Facility Document.

15.15 Rights and obligations are unaffected

Rights given to the Credit Provider under a Facility Document and the Borrower's liabilities under it are not affected by anything which might otherwise affect them at law.

15.16 Inconsistent law

To the extent permitted by law, each Facility Document prevails to the extent it is inconsistent with any law.

15.17 Time of essence

Time is of the essence in any Facility Document in respect of an obligation of the Borrower to pay money.

15.18 Waiver

Rights under the Agreement may not be waived except in writing.

15.19 Commission

The Borrower acknowledges that:

- (a) the Credit Provider may have paid or be paying a commission in relation to the

Facilities;

- (b) the Credit Provider may have been paid or be receiving a commission in relation to the Facilities.

15.20 Customer Owned Banking Code of Practice

If the Customer Owned Banking Code of Practice applies to the Facility, the relevant terms of the Code are incorporated into the Agreement and the Credit Provider will comply with those terms.

15.21 Severance

If any part of the Agreement is invalid or unenforceable, the Agreement does not include it. The remainder of this agreement continues in full force.

15.22 Statement of Account

The Credit Provider will provide the Borrower with a statement of account at least every 6 months.

15.23 Resolving Complaints

If you are unhappy with your People First Bank experience and would like to make a complaint, there are a number of ways to let us know:

- Visit your nearest branch and talk to our staff
- Phone us on 1800 961 687 (free call)
- Email us at complaints@peopleschoice.com.au
- Write to us at GPO Box 1942, Adelaide SA 5001
- Go to peoplefirstbank.com.au/feedback to submit online
- Go to our Facebook, Instagram, LinkedIn or any other social media channels on which People First Bank is active, to submit via direct message

What happens when you make a complaint?

We will acknowledge your complaint promptly, either verbally or in writing, and do our best to resolve it straight away.

We aim to resolve all complaints within 21 days, especially if it involves financial hardship, a default notice or notice to postpone enforcement proceedings. However, in some cases it may take up to 30 days.

Your complaint may take a little longer to assess if we need more information or if your complaint is complex. In all cases we'll keep you updated on the progress.

If we can't resolve your complaint within 5 Business Days our final response will be provided in writing.

We may refer your complaint to our Complaints Resolution Team who will work with you to provide an outcome. If this happens, we'll let you know and give you the direct contact details for the staff member who will be managing your complaint.

Accessibility

We can provide you with information about how we manage complaints in alternative formats and languages upon request.

If you have a hearing or speech impairment, you can access additional support through the National Relay Service on 1300 555 727.

The Australian Financial Complaints Authority (AFCA)

If you are not satisfied with our response, you may lodge a complaint with the Australian Financial Complaints Authority (AFCA). AFCA provides free and independent financial services complaint resolution and can be contacted on:

- Website: www.afca.org.au
- Email: info@afca.org.au
- Phone: 1800 931 678 (free call)
- Mail: GPO Box 3, Melbourne VIC 3001

Time limits may apply to complaints to AFCA and so you should act promptly or otherwise consult the AFCA website to find out if or when the time limit relevant to your circumstances expires.

16. Notices

16.1 General

All notifications, notices, demands, certificates, consents, approvals, waivers and other communications in connection with a Facility Document (all "Communications" for the purposes of this clause 16) must be in writing.

16.2 Delivery of Communications to the Credit Provider

Communications to the Credit Provider may be:

- (a) left at, or sent by pre-paid post to, the address for the Credit Provider set out or referred to in the Facility Terms or such other address as the Credit Provider may advise the Borrower in writing from time to time;
- (b) if from time to time the Credit Provider notifies an address, sent to that address; or
- (c) delivered in such other manner as is allowed by law.

16.3 Delivery of Communications to the Borrower

The Borrower agrees that Communications to the Borrower may be:

- (a) if the Borrower has provided the Credit Provider with an email address, sent electronically to that email address;
- (b) if the Borrower has access to the Credit Provider's online banking facility, made available for the Borrower to view by using the Credit Provider's online banking facility;
- (c) left at, or sent by pre-paid post to, the address for the Borrower set out or referred to in the Facility Terms or such other address as the Borrower may advise the Credit Provider in writing from time to time;
- (d) left at the address of any real property that is, or forms part of, the Security;
- (e) by newspaper advertisement where provided for in the Facility Terms;
- (f) if the Borrower has downloaded one of the Credit Provider's Mobile Banking apps, notification or message sent to the Borrower in the app;
- (g) by including them in or giving them with a statement of account; or
- (h) if the Borrower has provided a mobile number to the Credit Provider, sent by

SMS; subject to any law that requires otherwise, or

- (i) delivered in such other manner as is allowed by law.

16.4 Service

If a Communication is given by:

- (a) post, it will be deemed received seven Business Days after posting;
- (b) email, it will be deemed received at the time shown in the sender's email system as the time that the email was sent;
- (c) being made available for the Borrower to view by using the Credit Provider's online banking facility, it will be deemed received at the time it is posted on that facility;
- (d) newspaper advertisement, it will be deemed received at the time it appears in the newspaper;
- (e) notification or message sent to the Borrower in the Credit Provider's Mobile app, it will be deemed received at the time it is sent by the Credit Provider;
- (f) SMS, it will be deemed received at the time it is sent by the Credit Provider;
- (g) being left at the address of any real property that is, or forms part of, the Security, it will be deemed received at the time it is left by the Credit Provider.

16.5 Service after hours

If a Communication to the Credit Provider is received by it:

- (a) after 5 pm; or
- (b) on a day which is not a Business Day;

it will be deemed to have been received on the next Business Day.

16.6 Obligation to keep contact details updated

The Borrower must promptly notify the Credit Provider of any change to the Borrower's contact details and notify the Credit Provider if the Borrower becomes aware that the Credit Provider has or may have incorrect or outdated contact details for the Borrower.

17. Definitions

In the Agreement the following words have these meanings unless a contrary intention appears:

"Advance" means the principal amount of a Drawing made under a Loan Facility and, where the context requires, so much of the principal amount as remains outstanding;

"Agreement" means the agreement constituted by the acceptance by the Borrower of the Facility Terms, including these terms & conditions and the Fees & Charges booklet;

"Authorised Officer" means:

- (a) in the case of the Credit Provider, a director, secretary or an officer whose title contains the word "Manager", a person performing the functions of any of them or any solicitor acting for the Credit Provider; and
- (b) in the case of the Borrower, a person appointed by the Borrower to act as an Authorised Officer for the purposes of the Facilities;

"Borrower" means the borrower referred to in the Facility Terms;

"Business Day" means a week day including local public holidays but excluding holidays observed on a national basis;

"Contingent Instrument" means, any contingent instrument which the Credit Provider agrees to issue under a Contingent Instrument Facility including a letter of credit (standby or documentary), "Credit Union Guarantee" (no longer available for sale), performance or deposit guarantee or performance bond;

“Contingent Instrument Facility” means any contingent instrument facility specified in the Facility Terms;

“Corporations Act” means the *Corporations Act 2001* (Cth);

“Costs” means reasonable costs, charges and expenses and includes:

- (a) legal costs (including internal legal costs) on a solicitor and own client basis or, if greater, a full indemnity basis;
- (b) amounts paid or that the Credit Provider reasonably believes are payable, to persons engaged by the Credit Provider (such as consultants) in connection with the Facility Documents or the transactions contemplated by the Facility Documents; and
- (c) the Credit Providers internal administration costs at the rate and on the basis reasonably determined by the Credit Provider from time to time;

“Credit Limit” means, in relation to a Facility, the maximum limit of financial accommodation which may be drawn under that Facility. In relation to Multi Option Facilities, this definition applies to the Multi Option Facility but does not apply to a Facility which forms part of a Multi Option Facility, where the definition of Sublimit is applicable;

“Credit Provider” means Heritage and People’s Choice Ltd ACN 087 651 125 trading as People First Bank;

“Directive” means a treaty, a law, an official directive or request having the force of law, and an official directive, request, guideline or policy with which financiers carrying on business in Australia generally comply;

“Drawdown Date” means in relation to any Facility, a date on which a Drawing is made under the Facility;

“Drawdown Notice” means a notice to be given under clause 3;

“Drawing” means utilisation of a Facility;

“Event of Default” means an event or circumstance specified in the Facility Documents to be an event of default;

“Facility” means each facility specified in the Facility Terms to be provided by the Credit Provider to the Borrower and includes any Multi Option Facility and each Facility which forms part of any Multi Option Facility;

“Facility Account” means the account which the Credit Provider maintains in relation to each Facility.

“Facility Documents” means the documents and agreements specified in clause 1.1(b);

“Facility Expiry Date” means any date specified in the Facility Terms as the expiry date for a Facility and if none specified, the Termination Date or any later date agreed between the Credit Provider and the Borrower or otherwise the date a Facility ceases to be available and is repayable;

“Facility Review” has the meaning given in clause 1.2(a);

“Facility Terms” means the “Facility terms” document which refers to these terms & conditions;

“Governmental Agency” means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

“Guarantor” means the person or persons referred to in the Facility Terms as guarantor and each person (except the Borrower) who grants a Security Interest in respect of the Facilities;

“Insolvency Event” means the happening of any of these events:

- (a) in relation to a natural person, becoming a bankrupt or committing an act of bankruptcy under the *Bankruptcy Act 1966* (Cth);
- (b) an application is made to a court for an order or an order is made that a body corporate be wound up;
- (c) an application is made to a court for an order appointing a liquidator or provisional

liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;

- (d) except to reconstruct or amalgamate while solvent on terms approved by the Credit Provider, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Credit Provider or is otherwise wound up or dissolved;
- (f) a person is or states that he is unable to pay his debts when they fall due;
- (g) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;
- (h) a body corporate is, or makes a statement from which it may be reasonably deduced by the Credit Provider that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (i) a person takes any step to obtain protection or is granted protection from his creditors, under any applicable legislation or an administrator is appointed to a body corporate;
- (j) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction,

and “**Insolvent**” and “**Insolvency**” have a corresponding meaning;

“**Loan Facility**” means any Facility specified in the Facility Terms which is to be provided by way of loan or cash advance;

“**Multi Option Facility**” means any Multi Option Facility specified in the Facility Terms;

“**Outstanding Amount**” means the total of all amounts which are then due for payment, or which will or may become due for payment, in connection with any Facility Document (including transactions in connection with them) by the Borrower to the Credit Provider and includes the Principal Outstanding, interest and fees;

“**Potential Insolvency Event**” means an event which with the giving of notice, lapse of time or fulfilment of a condition, would be or would be likely to be an Insolvency Event;

“**Principal Outstanding**” means, at any time, the sum of:

- (a) all outstanding Advances; and
- (b) the maximum amount which can be claimed under outstanding Contingent Instruments;

at that time;

“**Purpose**” means, in relation to a Facility, the purpose or purposes for which Drawings under the Facility must be used as specified in the Facility Terms;

“**Related Entity**” has the same meaning as in section 9 of the Corporations Act;

“**Relevant State**” means the state specified in the Facility Terms;

“**Replacement Bills**” means, in respect of a Rollover Date, Bills having a face value equal to the sum of the face value of Bills which mature on that Rollover Date less the sum of the face value of those Bills which are retired on that day under clause 5.6;

“**Scheduled Repayment**” means any payment of principal and, where applicable, interest required to be made by the Borrower to the Credit Provider as specified in the Facility Terms.

“**Security**” means the security described in the Facility Terms together with any other present or future Security Interest given by the Borrower or any other person securing amounts

payable by the Borrower to the Credit Provider;

“Security Interest” means any bill of sale, mortgage, charge, encumbrance, lien, right of set off or right to withhold payment of a deposit or other money, pledge, hypothecation, title retention arrangement, easement, covenant, caveat or similar restriction over property, negative pledge, guarantee, indemnity, surety, letter of comfort, agreement, trust or power or an arrangement to create any of them or to allow any of them to exist as or in effect as security for the payment of a monetary obligation or the performance or observance of any obligation and any right or arrangement with any person to have that person's claims satisfied prior to the claims of others;

“Sublimit” means, in relation to a Facility which is part of a Multi Option Facility, any sublimit relating to that Facility which is specified in the Facility Terms;

“Subsidiary” of an entity means another entity which is a subsidiary of the first within the meaning of the Corporations Act or is a subsidiary of or otherwise controlled by the first within the meaning of any approved accounting standard;

“Taxes” means any tax, levy, impost, deduction, charge, withholding and duty (including stamp and transaction duty and GST) imposed by any Government Agency together with any related interest, penalty, fine, costs and expenses except if imposed on the overall net income of the Credit Provider;

“Termination Date” means the date specified as such in the Facility Terms or any notice given pursuant to clauses 1.2(b)(iii), 1.2(f) or 8.2, the last Facility Expiry Date or any earlier date when the Facilities cease to be available and are repayable; **“Trust”** means any trust referred to in the Agreement or any other undisclosed trust on behalf of which the Borrower enters into the Agreement or any other Facility Document; and

“Trust Deed” means any document relating to the constitution, creation or formation of the Trust as varied from time to time including any amendments.

18. Interpretation

18.1 General

In the Agreement, unless the context otherwise requires:

- (a) every person described as the Borrower who accepts the Facility Terms shall be bound even if any other person described as the Borrower does not accept or if the Facility Documents are void or voidable against them;
- (b) if there is a conflict between the Agreement and any other of the Facility Documents, the Agreement will prevail and if there is a conflict between the Facility Terms and these terms & conditions the Facility Terms will prevail;
- (c) a reference to the Agreement or another instrument includes any supplement, variation, novation or replacement of any of them;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the singular includes the plural and vice versa;
- (f) where two or more parties comprise the Borrower or the Guarantor:
 - (i) a reference to that entity includes each and any two or more of them; and
 - (ii) the obligations on the part of that entity bind them jointly and severally;
- (g) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (h) a reference to a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;

- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the Corporations Act, the Corporations Regulations and, if not inconsistent with those accounting standards, generally accepted principles and practices in Australia consistently applied over time;
- (l) a reference to any thing (including the Outstanding Amount, the Principal Outstanding, any other amount, the Security or a Security Interest) is a reference to the whole and each part of it and a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (m) “including” or “includes” when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (n) a reference to time is to local time in the Relevant State, unless the Credit Provider specifies otherwise in writing from time to time; and
- (o) a reference to a clause in these terms & conditions is a reference to that clause in these terms & conditions.

18.2 Headings

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

18.3 Prohibitions

If the Borrower is prohibited from doing anything, it is also prohibited from:

- (a) allowing or causing it to be done; and
- (b) doing or omitting to do anything which results in it happening.

You can contact us in any of the following ways:

- T: 13 11 82
- peoplefirstbank.com.au
- Post: People First Bank, GPO Box 1942 Adelaide SA 5001
- In person: At any of our branches