



**Commonwealth  
Bank**

# **Stream Working Capital**

**Working Capital Loan Agreement  
Standard Terms**

November 2023



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## Section 1 Interpretation

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this document, the following terms have the following meanings unless a contrary intention appears:

**Account Balance** means the aggregate (from time to time) of all:

- a. Drawdowns;
- b. Interest; and
- c. all Fees and Charges,

less all monetary amounts received by the Financier in repayment of the amounts owing under this document.

**Accounting Records** means all accounting records and other books and records, receipts, invoices, orders, statements, correspondence, ledgers and financial information of each Obligor (other than the Personal Guarantor).

**Additional Conditions Precedent to Financial Close** means each document or other condition specified as such in the Details Schedule.

**Additional Undertaking** means any undertaking or condition specified as such in the Details Schedule.

**Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

**Agency Termination Event** means:

- a. any event which has a Material Impact;
- b. without limiting paragraph (a) any event which in the reasonable opinion of the Financier means that the value or collectability of the Purchased Receivables has been or is likely to be materially adversely impacted, including without limitation, any of the following events for which the Financier forms that reasonable opinion:

- i. any change in the invoicing procedures of the Company (in relation to the Purchased Receivables) which has not been approved by the Financier;
  - ii. any change in the monitoring or collection procedures of the Company (in relation to the Purchased Receivables) which has not been approved by the Financier (including any failure to pursue unpaid receivables in accordance with the procedures provided to the Financier prior to the date of this document);
  - iii. any event occurs which results in Purchased Receivables not being paid into the Company Bank Account;
  - iv. any event occurs which has the effect, in the reasonable opinion of the Financier, that the Company will no longer be able to generate, issue or collect Purchased Receivables in a manner comparable to the way it does so as at the date of this document; or
  - v. any conduct of the Company which is reasonably likely to result in any of the Purchased Receivables not being enforceable or otherwise ceasing to comply with the eligibility criteria set out in this document;
- c. unless the Company has selected "Manual Reporting" in the Details Schedule for Information Exchange, a breach of clause 20.16 (Financier Software) occurs; or
  - d. the occurrence of any event or circumstance that causes the Financier to believe that:
    - i. an Obligor or a Fraud Indemnifier has acted in a manner that constitutes fraud or wilful misconduct: or
    - ii. any employee or agent of an Obligor has acted in a manner



that constitutes fraud or wilful misconduct where that fraud or misconduct has or is likely to have a material adverse impact on the value or collectability of the Purchased Receivables.

**Anti-terrorism laws** means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and all other applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or sanctions.

**Approved Currency** means, in respect of any Receivable, Australian dollars.

**Approved Territory** means Australia.

**Associated Rights** means in respect of anything referred to in the definition of Receivable, any of the following:

- a. all of the Company's rights as an unpaid vendor, supplier, service provider or otherwise or which arise under the Contract of Sale;
- b. all evidence of the Contract of Sale or its performance, or any disputes arising;
- c. all documents of title to Goods, warehouse keepers' receipts, bills of lading, shipping documents, airway bills or similar documents;
- d. the benefit of all insurances and all rights under the insurance policies;
- e. all proceeds of the Receivable including all Remittances;
- f. all securities and Security Interests;
- g. all Accounting Records in relation to the Receivables; and
- h. all Returned Goods and their proceeds of sale.

**ASX Benchmarks** means ASX Benchmarks Pty Limited ACN 616 075 417.

**Auditors** means the auditors disclosed to and approved by the Financier prior to the date of this document, or any other firm approved in advance by the Financier (such approval not to be unreasonably withheld or delayed).

**Authorisation** means:

- a. an authorisation, consent, approval, resolution, licence, exemption, filing or registration; or
- b. in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Authorised Officer** means:

- a. in respect of an Obligor (other than the Personal Guarantor), any person holding any position from time to time nominated as an Authorised Officer by that Obligor by notice to the Financier, which notice must be accompanied by certified copies of the signatures of all new persons so appointed and any other such identification or verification documents required by the Financier, and if no such notice is given, means any person who is an "officer" of the Obligor within the meaning given in the Corporations Act; and
- b. in respect of the Financier, any authorised signatory of the Financier.

**Availability Period** means the period from and including the date of this document to and including the Termination Date, unless the Credit Limit is cancelled in full or permanently reduced to zero under this document.

**BBSY** is the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) for the relevant period displayed on page BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the

Financier may specify another page or service displaying the relevant rate after consultation with the Company.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general banking business in Sydney.

**Calculation Date** means each 31 March, 30 June, 30 September and 31 December of each year, or such other dates as are specified in the Details Schedule.

**Calendar Month** means each calendar month of each year.

**Chattel Paper** has the meaning given to "chattel paper" in the PPSA.

**Code** means the current version of the Banking Code of Practice.

**Collateral** means, in relation to a Grantor:

- a. all present and after acquired property in respect of which that Grantor has at any time sufficient rights to grant a security interest, including all of the following:
  - i. the assets, undertaking and goodwill of the business of that Grantor; and
  - ii. the uncalled and called but unpaid capital of that Grantor; and
- b. where that Grantor is the trustee of any Trust, all Trust Assets of each relevant Trust.

**Company** means each person specified as a "Borrower" in the Details Schedule.

**Company Bank Account** means the bank account established and maintained with Commonwealth Bank of Australia in accordance with clause 6(b).

**Company Records** means all books and records of the Company and any Obligor (other than the Personal Guarantor) relating in any way to the Receivables, including without limitation all computerised or electronic financial, accounting and banking data and records of the Company and including details of all Receivables.

**Concentration Limit** has the meaning given in clause 17.24.

**Conditions Precedent** means:

- a. the Conditions Precedent to Financial Close; and
- b. the Conditions Precedent to all Drawdowns.

**Conditions Precedent to Financial Close** means the conditions precedent to financial close listed in Schedule 2 (Conditions Precedent).

**Conditions Precedent to all Drawdowns** means the conditions precedent to each Drawdown set out in clause 4.2.

**Contract of Sale** means a contract or agreement in any form, including a purchase order, between the Company and any person for the sale or hire of goods, or the provision of services or work.

**Control** means any of the following:

- a. the meaning given in section 50AA of the Corporations Act; or
- b. the power to directly or indirectly govern the financial and operating policies of an entity to obtain benefits from its activities, as defined in Accounting Standard AASB 1024: Consolidated Accounts (or, if applicable, Australian Accounting Standard AAS 24: Consolidated Financial Reports); or
- c. in respect of an "entity" (as defined in the Corporations Act), the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in marketable securities, bonds or instruments of the entity or otherwise); or

- d. owning or controlling, directly or indirectly, more than 50% of the shares or units in an entity.

**Control Event** means:

- a. in respect of any Collateral that is, or would have been, a Revolving Asset:
  - i. the relevant Grantor breaches, or attempts to breach clause 2.1 of Schedule 1 (Security Schedule) in respect of that Collateral or takes any step which would result in it doing so; or
  - ii. a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral created by this document; or
  - iii. distress is levied or a judgment, order or Security is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security over the Collateral; or
  - iv. the Secured Party gives a notice to the relevant Grantor that the Collateral is not a Revolving Asset, provided that the Secured Party may only give such a notice if an Event of Default is continuing; or
- b. in respect of all Collateral that is or would have been Revolving Assets:
  - i. a voluntary administrator, liquidator or provisional liquidator is appointed in respect of the relevant Grantor or the winding up of the relevant Grantor begins; or
  - ii. a controller is appointed to all or a material part of the relevant Grantor's property; or
  - iii. something having a substantially similar effect to paragraph (b)(i) or (b)(ii) happens under any law.

**Corporate Guarantor** means each person specified as such in the Details Schedule.

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

**Cost** means any cost, expense, charge, liability or disbursement.

**Counterparty** means a third party who is not an Obligor or a Related Entity of an Obligor.

**Credit Insurance Policy** means an Insurance Policy which insures against non-payment of any of the Receivables or otherwise in respect of any credit risk in respect of any of the Debtors.

**Credit Limit** means the amount determined by the Financier in accordance with clause 6 but in any event not more than the "Maximum Credit Limit" specified in the Details Schedule.

**Credit Limit Excess** means the monetary amount determined pursuant to clause 7.2(a).

**Daily Period** means the time-period consisting of the twenty-four (24) hours between midnight and midnight of each day.

**Deal** means sell, convey, assign, transfer, lease, licence or otherwise dispose of, or part with possession of, make any bailment over, grant any options over or create or permit to exist any other interest in, any part of the Collateral.

**Debtor** means a person who incurs or may incur any Receivable.

**Deed of Release** means, if applicable, a deed of release and each other document executed or delivered pursuant to such deed of release in form and substance satisfactory to the Financier in terms of which each Obligor (other than the Personal Guarantor) is released from all debts and liabilities (of any nature whatsoever) to and Security Interests granted to any existing financier and any trustee for any of them in relation to any existing financial indebtedness.

**Default** means an Event of Default or any event or circumstance specified in clauses 23 (Events of Default - all

companies) or 24 (Further Events of Default) (including by reference) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**Delegate** means any agent, attorney or other delegate appointed under this document by the Secured Party or by any receiver or receiver and manager appointed under this document, and includes a reference to any officer, agent, attorney, contractor or employee of any of them.

**Delivered** means in respect of Goods:

- a. their removal from the Company's control and from its premises, carriers and agents;
- b. their physical delivery in an Approved Territory to the Debtor or to its order;
- c. the assumption of risk in the Goods by the Debtor; and
- d. complete performance of the Contract of Sale,

and in relation to services, their complete performance. **Deliver** and **Delivery** must be construed accordingly.

**Details Schedule** means a schedule designated as such and signed by the Company, the Corporate Guarantors (if applicable) and the Personal Guarantors (if applicable) which identifies and incorporates the terms of this document and (subject to the Financier accepting its terms by making the Facility available to the Company) sets out the commercial terms of the agreement between the parties.

**Dilutions** means credit notes, Discounts, volume rebates, early settlement discounts, warranty claims or other rebates or matters which may reduce or dilute the amount recoverable in respect of Eligible Receivables.

**Discount** means any settlement discount or other discount off the face value of

a Receivable that may be offered to or claimed by the Debtor in respect of that Receivable, including any allowances, returns or rebates available to or asserted by or on behalf of any Debtor.

**Disposal** means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

**Disruption Event** means either or both of:

- a. a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the parties; or
- b. the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a party preventing that, or any other party:
  - i. from performing its payment obligations under the Finance Documents; or
  - ii. from communicating with other parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the party whose operations are disrupted.

**Drawdowns** and **Drawdown** means any monetary amount debited by the Company against the Company Bank Account and provided by the Financier to the Company by way of an overdraft under the Facility.

**Eligible Receivable** means each Purchased Receivable that is not an Ineligible Receivable.

**Excluded Receivable** means a Receivable that the Financier determines the purchase of would, in its reasonable judgment, contravene the Financier's Sanctions, anti-money-laundering or similar policies.

**Event of Default** means any event or circumstance specified in clauses 23 (Events of Default - all companies) or 24 (Further Events of Defaults).

**Facility** means the revolving working capital facility made available under this document as described in clause 2 (The Facility).

**Fees and Charges** means all costs, fees, charges and expenses for which the Company may be liable to the Financier under the Finance Documents.

**Finance Document** means:

- a. this document;
- b. the Details Schedule;
- c. each Transaction Security Document;
- d. any Priority Deed;
- e. any Subordination Agreement;
- f. any Fraud Limited Indemnity; and
- g. any other document designated as such by the Financier and the Company.

**Financial Close** means the date on which the Financier confirms to the Company that each of the Conditions Precedent to Financial Close have been satisfied or waived, in accordance with clause 4 (Conditions of Drawdown).

**Financial Indebtedness** means any indebtedness for or in respect of:

- a. moneys borrowed and any debit balance at any financial institution;
- b. any amount raised under any acceptance credit, bill acceptance or bill endorsement facility or dematerialised equivalent;
- c. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

- d. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- e. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- f. any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- g. any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- h. consideration for the acquisition of assets or services payable more than 90 days after acquisition;
- i. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- j. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- k. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

**Financial Statements** includes:

- a. a cash flow statement, profit and loss statement and balance sheet; and
- b. statements, reports and notes attached to, or intended to be read with, any documents referred to in paragraph (a) including auditor's reports and directors' reports,

and all Financial Statements will be prepared on a consolidated basis.

**Financial Year** means the financial year of each Obligor (other than the Personal Guarantor).

**Financier Online Portal** means, if the Company has selected “Financier Software” in the Details Schedule for Information Exchange, the online web-based portal as provided by the Financier to the Company pursuant to the operation of the Financier Software which:

- a. indicates pertinent accounting and transactional information to the Company in relation to the provision of; and
- b. allows for the interactive operation as between the Company and the Financier,

of these facility arrangements.

**Financier Software** means if the Company has selected “Financier Software” in the Details Schedule for Information Exchange, the computerised software package that has been custom built to provide a receivables purchase facility pursuant to this document.

**Fraud Indemnifier**, if any, means each person that enters into a Fraud Indemnity in favour of the Financier and includes each “Fraud Indemnifier” specified in the Details Schedule from time to time.

**Fraud Limited Indemnity** means a deed of indemnity in favour of the Financier in respect of any direct or indirect loss arising from any fraud or wilful misconduct in connection with the Finance Documents or the transactions they contemplate.

**GAAP** means generally accepted accounting principles, standards and practices in Australia.

**Goods** means any merchandise or materials, or where the context admits, any work or services that are the subject of a Contract of Sale entered into in the normal course of the Company’s business.

**Governmental Agency** means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

**Grantor** means the Company and each Guarantor other than each Personal Guarantor.

**Gross Receivables Value** means the aggregate face value of the Purchased Receivables before deducting the amount of any rebates or other Discounts to which the Debtor may be entitled.

**Group** means the Company and its Subsidiaries for the time being.

**GST** means any goods and services tax or similar tax together with any related additional tax, interest, penalty, fine or other charge.

**Guarantee** means the guarantee, undertaking and indemnity given under clause 15 (Guarantee).

**Guarantor** means:

- a. each Corporate Guarantor; and
- b. each Personal Guarantor,

**Holding Company** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**Increased Costs** means:

- a. a reduction in the rate of return from the Facility or on the Financier’s (or its Affiliate’s) overall capital (including as a result of any reduction in the rate of return on capital as more capital is required to be allocated);
- b. an additional or increased cost; or
- c. a reduction of any amount due and payable under any Finance Document,

which is reasonably incurred or suffered by the Financier or any of its Affiliates to the extent that it is attributable to the Financier having agreed to provide the Facility or Maximum Credit Limit or funding or performing its obligations under any Finance Document.

**Indirect Tax** means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

**Ineligible Receivable** means a Purchased Receivable that is a Receivable:

- a. that does not arise from the sale of Goods or the performance of services by a Company in the ordinary course of its business;
- b. in respect of which the Company's right to receive payment is not absolute or is contingent or which is not a true and correct statement of bona fide indebtedness incurred in the amount of the Receivable for Goods Delivered or services Delivered and accepted by the Debtor;
- c. in respect of which any right, Claim, defence, counterclaim, set-off or dispute (valid or alleged) exists or is asserted, that may reduce or extinguish the value of the Receivable or affect the Financier's ability to collect the Receivable in full;
- d. that is subject to any right, Claim, Security interest or other interest of any other person (other than the Financier) or in respect of which the Company does not have the absolute right to transfer to the Financier without the consent of any party, or which is subject to a prohibition or restriction on assignment, transfer or other dealing, whether by contract or otherwise;
- e. that arises from Goods supplied by the Company on approval, trial, evaluation, sale or return or similar terms in each case by reason of which the payment by the Debtor may be conditional;
- f. that arises from Goods supplied by the Company on consignment;
- g. that arises from any bill-and-hold or other sale of Goods which remain in the Company's possession or control;
- h. that is owing by a Debtor to whom the Company is or may be liable for Goods sold or services rendered by the Debtor to the Company, to the extent of the Company's liability to the Debtor (a Contra Account);
- i. that is not legally enforceable against the Debtor in an Approved Territory for payment in full, or in respect of which the Company is not able to bring suit or otherwise enforce its remedies against the Debtor through judicial process in an Approved Territory;
- j. that arises from a sale to any Obligor or to any officer, other employee, Related Entity or Affiliate of an Obligor, or to any entity that has any common officer with an Obligor;
- k. in respect of which an invoice, acceptable to the Financier, has not been sent to the Debtor;
- l. in respect of which the Receivable remains unpaid for a period that is longer than the Maximum Trade Credit Term;
- m. which is payable in a currency other than an Approved Currency;
- n. owing by a Debtor which is Insolvent or is otherwise in breach of its payment obligations to the Company or is expected to breach its payment obligations to the Company;
- o. that is regulated by consumer credit legislation;
- p. owing by a Debtor which has not purchased the Goods or services for its business or that is either a consumer or an individual;
- q. in respect of which the Financier is not satisfied that it has or will have first priority to or over including if, required by the Financier, pursuant to section 64 of the PPSA;
- r. that arises with respect to Goods which are delivered on a cash-on-delivery basis;
- s. that represents interest, service charges or other fees owing to the Company;

- t. as to which any of the representations or warranties pertaining to Receivables set forth in any Finance Document is untrue;
- u. that is owed by a Debtor where more than 50% of the total value of the Receivables owed by that Debtor are more than 90 days past the date of the invoices for that Debtor;
- v. that is owing by a Debtor or any of its Affiliates or related bodies corporate to the extent that Receivable results in all Receivables owing by a Debtor and its Affiliates and related bodies corporate exceeding the Concentration Limit;
- w. that is an Excluded Receivable; or
- x. that is otherwise unacceptable to the Financier in its reasonable credit judgment.

**Insolvent**, in relation to an entity, means:

- a. any of the following has occurred or occurs in relation to that entity if it is a corporation:
  - i. an application is made, proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding up the entity or placing it or any part of its undertakings under administration;
  - ii. a Receiver, liquidator, provisional liquidator, controller or administrator is appointed to the entity or any of its assets;
  - iii. a compromise or arrangement of the kind referred to in Part 5.1 of the Corporations Act is proposed;
  - iv. the entity is or becomes deregistered, or an application is made or an action is initiated with a view to cancelling its registration or appointing an inspector or other officer to investigate any of its affairs pursuant to any law;
  - v. the entity is, or may be deemed within the meaning of any applicable law to be, insolvent or

unable to pay its debts; or

- vi. circumstances exist which would enable a court upon application to order the entity's winding up pursuant to section 461 of the Corporations Act;
- b. any of the following has occurred or occurs in relation to that entity if the entity is an individual:
  - i. he or she is an insolvent under administration as defined in section 9 of the Corporations Act, or a receiver is appointed to any of his or her assets;
  - ii. he or she is, or may be deemed within the meaning of any applicable law to be, insolvent or unable to pay his or her debts; or
  - iii. he or she dies, is of unsound mind or becomes incapable of managing his or her own affairs; and
- c. the occurrence of any event analogous to or having a similar effect to any of the events described in paragraphs (a) or (b) under the laws of any relevant jurisdiction.

**Insurance Policy** means a contract or policy of insurance of any kind from time to time which is required to be taken out or effected by or is actually taken out or effected by, on behalf of or in favour of each Obligor (other than the Personal Guarantor) with one or more insurers in accordance with the terms of this document.

**Interest** means all amounts on account of interest or in the nature of interest accruing or for which the Company may be liable to the Financier from time to time under the Finance Documents.

**Management Accounts** means all or some (at the Financier's option) of the following (in each case on a consolidated basis):

- a. balance sheet and profit and loss statement for the relevant period; and
- b. any of the records the Financier notifies the Company in writing that



the Financier requires for the relevant period.

**Margin** means the percent per annum set out in the Details Schedule.

**Material Impact** means where, in the reasonable opinion of the Financier, there is, or is likely to be, a material impact on:

- a. the ability of an Obligor to pay on the due date any amount payable pursuant to a Finance Document (or the Financier's ability to assess this credit risk); or
- b. the validity or enforceability of, or the effectiveness or ranking or value or collectability of any Security Interest or Collateral or Purchased Receivable granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of the Financier under any of the Finance Documents (or the Financier's ability to assess this security risk).

**Maximum Trade Credit Term** means 90 days from the date of issue of the invoice or such other period as is agreed to by the Financier in writing.

**Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- a. (subject to paragraph (b) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- b. if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

**Net Receivables Value** means the Gross Receivables Value of all Purchased Receivables minus the aggregate amount of any rebates or other Discounts due or

which may become due to the relevant Debtors in respect of any or all such Purchased Receivables.

**Obligor** means the Company or a Guarantor.

**OFAC** means the US Department of the Treasury's Office of Foreign Assets Control.

**Original Financial Statements** means:

- a. in relation to the Company, the audited consolidated financial statements of the Group for the Financial Year ending immediately prior to the date of this document; and
- b. in relation to each Guarantor, its audited financial statements for its Financial Year ending immediately prior to the date of this document,

or any other financial statements that the Financier and the Company designate in writing as Original Financial Statements.

**Other Insolvency Process or Arrangement** means any corporate action, legal proceedings or other procedure or step is taken in relation to:

- a. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not an Obligor except an application made to a court for the purpose of winding up such a person which is disputed by an Obligor acting diligently and in good faith and dismissed within 10 Business Days;
- b. a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
- c. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its

assets except on application made to a court for the purpose of appointing such a person which is disputed by an Obligor acting diligently and in good faith and dismissed within 10 Business Days; or

- d. enforcement of any Security Interest over any assets or other property of any member of the Group,

or any analogous procedure or step is taken in any jurisdiction.

**Permitted Disposal** means any sale, lease, licence, transfer or other disposal which, except in the case of paragraph (b), is on arm's length terms:

- a. of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
- b. of any asset (other than shares, businesses, real property, intellectual property, plant and machinery or Receivables) by a member of the Group (the "Disposing Company") to another member of the Group (the "Acquiring Company"), but if:
  - i. the Disposing Company is an Obligor (other than the Personal Guarantor), the Acquiring Company must also be an Obligor (other than the Personal Guarantor);
  - ii. the Disposing Company had given Transaction Security over the asset, the Acquiring Company must have given equivalent Transaction Security over that asset;
  - iii. the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;
- c. of assets (other than shares, businesses, real property, intellectual property, plant and machinery or

Receivables) in exchange for other assets comparable or superior as to type, value and quality (other than an exchange of a non cash asset for cash);

- d. arising as a result of any Permitted Security Interest; or
- e. with the prior written consent of the Financier (not to be unreasonably withheld).

**Permitted Distribution** means:

- a. the payment of a dividend to the Company or any Obligor (other than the Personal Guarantor) by a subsidiary of that entity; or
- b. the payment of any other dividend to which the Financier has given its prior written consent (not to be unreasonably withheld).

**Permitted Financial Indebtedness** means Financial Indebtedness:

- a. incurred under the Finance Documents;
- b. arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade, but not a foreign exchange transaction for investment or speculative purposes;
- c. arising under a Permitted Loan;
- d. which has been subordinated pursuant to a Subordination Agreement; or
- e. incurred with the written consent of the Financier, which shall not unreasonably be withheld or delayed.

**Permitted Loan** means:

- a. trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities, not exceeding 90 days;
- b. a loan made by an Obligor (other than the Personal Guarantor) to another Obligor (other than the Personal

Guarantor) or made by a member of the Group which is not an Obligor to another member of the Group; or

- c. any other loan made by a member of the Group to which the Financier has given its prior written consent, which shall not unreasonably be withheld or delayed.

**Permitted Security Interest** means:

- a. any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of Obligors and credit balances of members of the Group;
- b. any lien arising by operation of law and in the ordinary course of trading so long as the debt it secures is paid when due or contested in good faith and appropriately provisioned;
- c. any Security Interest in respect of inventory arising under any retention of title arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms (or on terms more favourable to the members of the Group) so long as:
  - i. the debt it secures is paid when due or contested in good faith; or
  - ii. sufficient reserves of liquid assets have been set aside to pay the debt if the contest is unsuccessful;
  - iii. the retention of title arrangements have been fully disclosed to and approved by the Financier;
- d. any Security Interest arising as a result of a disposal which is a Permitted Disposal;
- e. any Security Interest entered into under any Finance Document; or
- f. any Security Interest to which the Financier has given its prior written consent, which shall not unreasonably be withheld or delayed.

**Personal Guarantee Limit** means the amount, if any, so specified in the Details Schedule.

**PMSI** means a purchase money security interest as defined in the PPSA.

**Power** means a power, right, authority, discretion, remedy or privilege which is conferred on a person:

- a. under any Finance Document; or
- b. by law in relation to any Finance Document.

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

**PPSR** means the register established under the PPSA.

**Priority Deed** means, in relation to any Permitted Security Interest, a priority deed between the relevant Obligor (other than the Personal Guarantor), the Financier and the third party holder of the Permitted Security Interest.

**Proscribed Person** means a person who in the Financier's reasonable opinion is any of the following:

- a. a proscribed person or entity under the Charter of the United Nations Act 1945 (Cth) or the Autonomous Sanctions Act 2011 (Cth) or associated regulations;
- b. in breach of the laws of any jurisdiction relating to money-laundering or counter-terrorism;
- c. a person with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or
- d. acting on behalf of, or for the benefit of, a person above.

**Purchase Price** means the price payable by the Financier for a Purchased Receivable calculated in accordance with clause 5.4.

**Purchased Receivable** means any Receivable purchased by the Financier in accordance with clause 5.

**Quarter** means the period from (but excluding) each Calculation Date to (and including) the next Calculation Date.

**Receivable** means any account, book debt, money or chose in action (present, future or contingent) of an entity including any existing or future right to receive payment for Goods sold by that entity or services performed by that entity and any Chattel Paper, and it includes:

- a. interest, costs and other amounts recoverable from or payable by a debtor; and
- b. all Associated Rights.

**Receivables Advance Rate** is the maximum percentage of the value of the Eligible Receivables that can be made available to borrow against. The rate is advised in the Details Schedule and may be amended from time to time by the Financier (acting reasonably) and notified to the Company in advance of any such amendment.

**Receiver** means a receiver or receiver and manager appointed by the Secured Party under this document and, if more than one, then each of them and also any Delegate of any receiver or receiver and manager.

**Related Entity** means a related body corporate or related entity as defined in the Corporations Act.

**Remittances** means cash, cheques, bills of exchange, negotiable and non-negotiable instruments, letters of credit, electronic payments and any other remittance or instrument of payment or payment in whatever form received by the Financier or the Company.

**Returned Goods** means any Goods relating to or purporting to comply with a Contract of Sale that any Debtor rejects or returns, or attempts to reject or return to the Company for any reason or which the Company or the Financier recovers from a Debtor.

**Related Party** means any entity that any time:

- a. has Control or significant influence over an Obligor (other than the Personal Guarantor);
- b. is subject to Control or significant influence by an Obligor (other than the Personal Guarantor);
- c. is subject to the Control of the entity which has Control over an Obligor (other than the Personal Guarantor);
- d. is subject to the Control of the same entity which has a significant influence on an Obligor (other than the Personal Guarantor); or
- e. is subject to significant influence by the same entity that has Control over an Obligor (other than the Personal Guarantor).

For the purposes of this definition:

- a. a trust may be a Related Party; and
- b. significant influence means the capacity of an entity to affect substantially the financial or operating policies or both of another entity.

**Relevant Market** means in relation to Australian dollars, the Australian interbank market for bank accepted bills and negotiable certificates of deposits.

**Repeating Representations** means each of the representations set out in clause 17 (Representations).

**Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

**Review Event** means each event or circumstance, if any, specified as a "Review Event" in the Details Schedule.

**Revolving Asset** means any part of the Collateral:

- a. which is:
  - i. inventory;
  - ii. a negotiable instrument;
  - iii. machinery, plant or equipment which is not inventory and has a value of less than \$1,000 or its equivalent;

- iv. money (including money withdrawn or transferred to a third party from an account of a Grantor with a bank or other financial institution) other than money in any account which is blocked under the terms of a Finance Document; and
- b. in relation to which no Control Event has occurred, subject to clause 2.4 of Schedule 1 (Security Schedule).

**Right of Entry Deed** means, if so required by the Financier in relation to any premises on which a Grantor's assets are located, a right of entry deed between the relevant landlord (or tenant, as the case may be) and the Financier, permitting the Financier to enter the premises to inspect and remove any assets of the Grantor, as permitted under the Finance Documents.

**Sales Proceeds** means, in respect of a Grantor, the proceeds of any sale, assignment, transfer, disposal or other dealing with any of the Collateral of that Grantor which is not a Revolving Asset at the time of that sale, assignment, transfer, disposal or other dealing and which are not immediately applied in permanent repayment of the Secured Money.

**Sanctioned Country** means a country or territory to the extent that such country or territory is the subject of any Sanctions.

**Sanctioned Person** means a person or entity:

- a. named as a Specially Designated National and Blocked Person on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list;
- b. which otherwise is, by public designation of the United Nations Security Council or US or European Union government authority, the subject of any Sanction;
- c. listed as an export restricted party by BIS or State, designated under the Iran Sanctions Act by State, or appearing on

a Sanctions list published by the United Nations Security Council (the Council as a whole and not its individual members), European Union (the Union as a whole and not its member states) or United Kingdom, including any asset freeze list or investment ban list designating specific persons, entities or bodies under any such Sanctions.

**Sanctioning Authority** means:

- a. the United Nations Security Council;
- b. the European Union;
- c. the US;
- d. the Commonwealth of Australia;
- e. New Zealand; or
- f. the United Kingdom,

including, in each case, any other governmental institution of any of the foregoing.

**Sanctions** means:

- a. any law or regulation of any applicable jurisdiction relating to bribery and corruption, terrorism or money laundering administered or enforced by a Sanctioning Authority;
- b. any regulation or measure of a Sanctioning Authority or one of its institutions which:
  - i. restricts the export of goods (whether directly or indirectly) to or the rendering of services in a country; or
  - ii. imposes other economic or financial sanctions or trade embargoes on a country; or
- c. any other economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any Sanctioning Authority.

**Secured Money** means all money which an Obligor (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of the Secured Party (whether alone or not) for any reason whatever under or in

connection with a Finance Document whether or not currently contemplated.

It includes money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with a Finance Document, or as a result of a breach of or default under or in connection with a Finance Document.

Where an Obligor would have been liable but for its deregistration, or a compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy or a set-off claimed by it, or in the case of the Personal Guarantor, death or incapacitation, it will be taken still to be liable.

**Secured Property** means all of the property and assets of the Obligors which from time to time are the subject of the Transaction Security and includes the Collateral.

**Security Interest** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, including any "security interest" as defined in sections 12(1) or (2) of the PPSA.

**Security Schedule** means the Security Schedule set out in Schedule 1 (Security Schedule).

**Statement of Financial Position** means, in relation to a Personal Guarantor, a statement of financial position setting out that Personal Guarantor's assets and liabilities in a form and substance reasonably satisfactory to the Financier.

**Subordination Agreement** means an agreement between the Financier, one or more Obligors and one or more creditors of the Obligors which is agreed to be a Subordination Agreement for purposes of this document.

**Subsidiary** has the meaning given in the Corporations Act, but as if body corporate includes any entity. It also includes an entity required by current accounting practice to be included in the consolidated annual financial statements of that entity or would be required if that entity were a corporation.

**Supporting Documents** means such supporting documentation for all Eligible Receivables as may be required by the Financier from time to time.

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**Tax Act** means the Income Tax Assessment Act 1936.

**Tax Consolidated Group** means a Consolidated Group or an MEC Group as defined in the Income Tax Assessment Act 1997.

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**Tax Event** means:

- a. any Obligor ceases for any reason to be an Australian tax resident;
- b. any Obligor is for any reason overdue in any material respect with the filing of any of its Tax returns (including BAS statements);
- c. any Obligor is for any reason overdue in the payment of any amount in respect of Tax; and
- d. any claims are being made or are reasonably likely to be made against any Obligor with respect to Taxes.

**Termination Date** means the date (falling not less than 90 days' after the date of such written notice) notified in writing by the Financier to the Company.

**Transaction Report** means, if the Company has selected "Manual Reporting"

for Information Exchange in the Details Schedule, a report in a form approved by the Financier.

**Transaction Security** means the Security Interests created or expressed to be created in favour of, or held for the benefit of, the Financier pursuant to the Transaction Security Documents.

**Transaction Security Documents** means this document and any other documents creating a Security Interest in favour of the Financier.

**Trust** means a trust in respect of which an Obligor is the trustee.

**Trust Assets** means, in respect of a Trust, all present and after acquired property in respect of which a Grantor from time to time has sufficient rights to grant a security interest as trustee of the Trust.

**Trust Deed** means, in relation to any Trustee Obligor, the trust deed or other instrument establishing the Trust as set out in the Details Schedule.

**Trustee** means, in respect of an Obligor that enters into this document in its capacity as trustee of a Trust, the trustee of that Trust.

**Trustee Obligor** means any Obligor which is trustee of a Trust.

**Unpaid Sum** means any sum due and payable but unpaid by an Obligor under the Finance Documents.

**US** means the United States of America.

## 1.2 Construction

a. Unless a contrary indication appears, any reference in this document to:

- i. the Financier, any **Obligor** or any **party** shall be construed so as to include its executors, administrators, successors, substitutes (including by novation) and assigns to, or of, its rights and/or obligations under the Finance Documents;
- ii. **assets** includes present and future properties, revenues and rights of every description;

- iii. a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- iv. **guarantee** means (other than in clause 15 (Guarantee)) (A) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or (B) any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- v. **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- vi. a **person** or **entity** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality) or two or more of them and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;
- vii. a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory,

- self-regulatory or other authority or organisation and if not having the force of law, with which responsible entities in the position of the relevant party would normally comply;
- viii. a provision of law or a regulation is a reference to that provision as amended or re-enacted;
  - ix. a time of day is a reference to Sydney time;
  - x. the words **including, for example** or **such as** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
  - xi. a reference to a **party** or the **parties** means each person that signs the Details Schedule and, if the Financier has accepted the terms set out in the Details Schedule by making the Facility available to the Company on the terms set out in the Details Schedule and this document, the Financier.
- b. Section, Clause and Schedule headings are for ease of reference only.
  - c. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this document.
  - d. A Default (other than an Event of Default), Agency Termination Event or Review Event is **continuing** if it has not been remedied to the reasonable satisfaction of the Financier or waived and an Event of Default is **continuing** if it has not been remedied to the reasonable satisfaction of the Financier or waived.
  - e. A reference to “property” of an Obligor includes a reference to any PPSA

retention of title property as defined in section 51F of the Corporations Act and a reference to the “assets” of an Obligor includes a reference to any such property.

### 1.3 Currency symbols and definitions

**A\$, AUD and Australian dollars** denote the lawful currency of Australia.

### 1.4 Obligors’ agent

- a. All communications and notices under the Finance Documents to and from the Obligors may be given to or by the Company and each Obligor irrevocably authorises the Financier to give those communications to the Company.
- b. Each Obligor (other than the Company) irrevocably appoints the Company to act on its behalf as its agent in connection with the Finance Documents and irrevocably authorises the Company on its behalf to:
  - i. supply all information relating to itself as contemplated by any Finance Document to the Financier;
  - ii. give and receive all communications and notices and instructions under the Finance Documents; and
  - iii. agree and sign all documents under or in connection with the Finance Documents (including any amendment, novation, supplement, extension or restatement of or to any Finance Document) without further reference to, or the consent of, that Obligor.
- c. An Obligor shall be bound by any act of the Company under this clause 1.4 irrespective of whether the Obligor knew about it or whether it occurred before the Obligor became an Obligor under any Finance Document.
- d. To the extent that there is any conflict between any communication or notice



by the Company on behalf of an Obligor and any other Obligor, those of the Company shall prevail.

- e. This clause 1.4 does not apply with respect to Personal Guarantors if the Facility is regulated by the Code.

## **1.5 Ratification**

Each Obligor which is a shareholder in any other Obligor or a beneficiary of a trust of which any other Obligor is a trustee, ratifies and confirms the entry by that other Obligor into, and the performance by that other Obligor of all its obligations under, each Finance Document to which the other Obligor is a party.

## **1.6 Additional Provisions and Conflicts**

- a. The Details Schedule may set out such additional provisions or replace or amend any of the provisions of this document.
- b. In the event of a conflict between the terms set out in the document and the terms of the Details Schedule, the terms set out in the Details Schedule will prevail.
- c. Any reference to "this document" includes the main body of this document and includes a reference to the Details Schedule.

## **1.7 Small Business**

The Company will be a Small Business for the purposes of this document if either:

- a. the Company falls within the definition of "Small Business" in the Code; or
- b. where the Maximum Credit Limit specified for the Facility as at the date of entry into this document was \$5,000,000 or less, any party to this document is a Small Business that employs fewer than 100 persons or has turnover of less than \$10,000,000.

## **Section 2 The Facility**

### **2. The Facility**

- a. Subject to the terms of this document, the Financier makes available to the Company an Australian dollar revolving working capital receivables purchase facility in an aggregate amount equal to the Credit Limit.
- b. The Financier is only required to provide any Drawdown under the Facility if the Conditions Precedent to Finance Close and the Conditions Precedent to all Drawdowns have been satisfied.

### **3. Purpose**

#### **3.1 Purpose**

The Company shall apply all amounts borrowed by it under the Facility for general working capital purposes or for any other purpose specified under "Additional Facility Purposes" in the Details Schedule.

#### **3.2 Monitoring**

The Financier is not bound to monitor or verify the application of any amount borrowed or utilised pursuant to this document.

### **4. Conditions of Drawdown**

#### **4.1 Conditions precedent to Financial Close**

The Company may not request a Drawdown unless the Financier has received all of the documents and other evidence listed as Conditions Precedent to Financial Close in form and substance satisfactory to the Financier (acting reasonably)). The Financier shall notify the Company promptly upon being so satisfied.

#### **4.2 Further conditions precedent**

The Financier will make remittances in accordance with clause 6 (Credit Limit and Drawdowns) if on the date of the request and on the date of the proposed Drawdown:

- a. the Account Balance will not exceed the Credit Limit and no Default or Review Event is continuing or would result from the proposed Drawdown; and
- b. if the Company has selected “Manual Reporting” for Information Exchange in the Details Schedule, the Financier has received the most recent Transaction Report and weekly reporting of Eligible Receivables required by this document and the Financier’s trade team has vetted and signed off on the request for the remittance; and
- c. the Repeating Representations to be made by each Obligor are true in all material respects and not misleading.

## **5. Ownership of Receivables**

### **5.1 Transfer of Receivables**

- a. By signing and delivering to the Financier this document, with effect from Financial Close the Company assigns and transfers to the Financier absolutely and not by way of security the ownership of any and all of its Receivables (other than Excluded Receivables) outstanding as at the date of Financial Close and all of its Receivables (other than Excluded Receivables) created on or after the date of Financial Close.
- b. In consideration of the assignment and transfer of all of the Company’s interest in, to, under and derived from such Receivables, the Financier:
  - i. makes the Facility available to the Company on and with effect from Financial Close; and
  - ii. agrees to pay the Purchase Price for each Purchased Receivable to the Company in the manner contemplated by clause 5.4.

### **5.2 Passing of title**

- a. The Company’s entire beneficial interest in each Purchased Receivable will pass to the Financier on and from Financial Close.

- b. The parties acknowledge and agree (and intend) that:
  - i. the assignment of Receivables in accordance with clause 5.1 will, subject to the provisions of this document, occur by way of equitable assignment; and
  - ii. after any such assignment, the beneficial interest in the relevant Receivables will not form part of the assets of the Company, including if the Company becomes Insolvent.
- c. The Company will not have the benefit of any Security Interest or other Interest, over or in, any Purchased Receivable, other than legal title to any Purchased Receivable, which the Company will hold on behalf of the Financier until such time as legal title is transferred to the Financier in accordance with this document or otherwise.
- d. The parties acknowledge that the Financier acquires each Purchased Receivable for new value, and the Company acknowledges that new value has been provided by the Financier for each such acquisition.
- e. All Associated Rights are assigned and transferred to the Financier in the same manner and at the same time as the relevant Purchased Receivable.
- f. The parties acknowledge and agree that the Financier may, while an Agency Termination Event or an Event of Default is continuing, give notice of the assignment of a Purchased Receivable to the relevant Debtor.

### **5.3 No assumption of obligations by the Financier**

An assignment effected in accordance with this document does not result in any assumption by the Financier of any obligation of the Company to any person in connection with the Purchased Receivables.

#### 5.4 Purchase Price

The Purchase Price of any Purchased Receivable will be the amount actually received by the Financier in immediately available funds in respect of such Purchased Receivable and the Financier will not be required to pay any amount on account of the Purchase Price for a Purchased Receivable except to the extent it receives such amount. Any amount payable by the Financier to the Company or the Company may be set-off by the Financier against any amount actually due by the Company and each other Obligor under any Finance Document such that the Financier is not required to make any payment to the Company in respect of the Purchase Price of the Purchased Receivables until the Account Balance has been fully and finally paid to the Financier.

### Section 3 Drawdowns

#### 6. Credit Limit and Drawdowns

##### a. Determination of Credit Limit and Availability of Drawdowns

The monetary amount, and availability, of the Drawdowns shall be determined by the Financier by determining the Credit Limit on a real time basis by applying various assessment criteria and factors as determined in the Financier's discretion (from time to time) acting reasonably including, without limitation, the Gross Receivables Value or Net Receivables Value (as determined by the Financier, acting reasonably) and the Receivables Advance Rate, and including with regard to any exposures the Financier may have to the Obligors from time to time on account of any other facilities or financial accommodation provided to any of them.

##### b. Company Bank Account

The Company must have an acceptable transaction account that is held by the Company with the Financier and operated in the Company's name as the "Company Bank Account" for the purpose of Drawdowns by the Company. The Company Bank Account must be capable of operating as an overdraft account.

##### c. Overdraft facility

The Company may draw an overdraft on such account by an amount not exceeding the Credit Limit and such overdraft shall be taken to be a Drawdown advanced by the Financier to the Company and form part of the Account Balance.

## Section 4 Repayment

### 7. Repayment

#### 7.1 Application of funds in reduction of the Account Balance

The Company must (and do all things reasonably required by the Financier to) ensure that all of the Purchased Receivables are deposited into the Company Bank Account (in reduction of the Account Balance) and not into any other bank account during the term of this Facility.

#### 7.2 Mandatory Repayment

- a. If, for any reason (including as a result of the reduction of the Credit Limit), on any day, the Account Balance is greater than the Credit Limit (the difference between such amounts being the Credit Limit Excess) then the Company must (or must procure that the Obligors) make a repayment in an amount sufficient to reduce the aggregate Account Balance under the Facility by an amount equal to the Credit Limit Excess.
- b. Any repayment or deposit required under clause 7.2(a) must be made:
  - i. in the case of a Credit Limit Excess that arises as a result of a change in the face value of the Eligible Receivables, by no later than the next Business Day after the date on which the Financier notifies the Company that the Account Balance is greater than the Credit Limit; and
  - ii. in the case of a Credit Limit Excess that arises as a result of any other change, including a change in the Financier's assessment criteria or other factors, by no later than the date specified by the Financier (acting reasonably) in a notice to the Company that the Account Balance is greater than the Credit Limit, such date not to be less

than 3 Business Days from the date such notice is given.

- c. The monetary amount of the Credit Limit Excess is determined by applying the lowest Credit Limit and the highest Account Balance as determined and occurring in the relevant Daily Period.

### 8. Illegality

If, in any applicable jurisdiction, it becomes unlawful (or impossible as a result of a change in law or regulation) for the Financier to perform any of its obligations as contemplated by this document or to fund any amount or maintain the Account Balance or it becomes unlawful or impossible as a result of a change in law or regulation for any Affiliate of the Financier to do so:

- a. the Financier shall promptly notify the Company upon becoming aware of that event;
- b. upon the Financier notifying the Company, the Credit Limit will be immediately cancelled;
- c. the Company shall repay the Account Balance on the date specified by the Financier in the notice delivered to the Company (being no earlier than the last day of any applicable grace period required or permitted by law), or in the absence of any applicable grace period, being, no earlier than 30 days after the Financier provides the notice in clause 8(a) and the Credit Limit shall be cancelled.

## **Section 5**

### **Interest And Fees**

#### **9. Interest**

##### **9.1 Calculation of interest**

The rate of interest on the Account Balance for each day is the percentage rate per annum which is the aggregate of the:

- a. Margin; and
- b. BBSY.

##### **9.2 Excess Drawing interest**

Excess drawing interest will be charged at the prevailing Excess Drawing interest rate (see below) for business accounts (including the Stream Working Capital Transaction Account) on any amount drawn that exceeds the Maximum Credit Limit (the Overdrawn Amount). Excess drawing interest is calculated and charged daily on the Overdrawn Amount from the date it became overdrawn until the Overdrawn Amount is repaid.

The variable Excess Drawing interest rate can be found on the Commbank website and is updated from time to time at: <https://www.commbank.com.au/business/loans-and-finance/stream-working-capital.html>

##### **9.3 Notification of rates of interest**

The Financier shall promptly notify the Company of the determination of a rate of interest under this document. Such determination shall be notified by the Financier to the Company in accordance with the notification methods and timing set out in clause 45.

#### **10. Fees**

##### **10.1 Line fee**

- a. The Company shall pay to the Financier a line fee computed at the rate specified in the Details Schedule on the Maximum Credit Limit for the Availability Period.

- b. The line fee is payable in arrears on the first day of each Quarter until the Facility has been cancelled or on such other basis as specified in the Details Schedule or as otherwise agreed with the Financier. On cancellation of the Facility, the Line Fee is payable up to the cancellation date and charged in arrears on the first day of the Quarter (or such other basis as is contemplated above for payment of the line fee) following cancellation of the Facility.
- c. If the Account Balance exceeded the Maximum Credit Limit during the previous period, the line fee for each day on which the Account Balance exceeds the Maximum Credit Limit is calculated on the Account Balance on that day (and for all other days is calculated on the Maximum Credit Limit).

##### **10.2 Establishment Fee**

The Company shall pay to the Financier an establishment fee in the amount specified in the Details Schedule on the date of this document.

## Section 6

### Additional Payment Obligations

#### 11. Tax Gross Up and Indemnities

##### 11.1 Definitions

In this clause 11:

- a. **Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.
- b. **Tax Payment** means either the increase in a payment made by an Obligor to the Financier under clause 11.2 (Tax Gross-up) or a payment under clause 11.3 (Tax indemnity).

##### 11.2 Tax Gross-up

- a. Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction unless such Tax Deduction is required by law.
- b. Each party shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the other parties accordingly.
- c. If a Tax Deduction is required by law to be made by an Obligor except in relation to a Tax described in clause 11.3(b)(i) or 11.3(b)(ii) (Tax indemnity), the Obligor shall pay an additional amount together with the payment so that, after making any Tax Deduction, the Financier receives an amount equal to the payment which would have been due if no Tax Deduction had been required.
- d. If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- e. Within thirty days of making either a Tax Deduction or any payment required

in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Financier evidence satisfactory to the Financier, acting reasonably, that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

##### 11.3 Tax indemnity

- a. The Company shall (within three Business Days of demand by the Financier) pay to the Financier (which payment may be made by deeming there to have been a Drawdown and increase in the Account Balance) an amount equal to the loss, liability or cost which the Financier reasonably determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Financier in respect of a Finance Document or a transaction or payment under it.
- b. Clause 11.3(a) shall not apply:
  - i. with respect to any Tax assessed on the Financier if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Financier; or
  - ii. to the extent the relevant loss, liability or cost is compensated for by an increased payment under clause 11.2 (Tax Gross-up).
- c. The Financier, if making or intending to make a claim pursuant to clause 11.3(a), shall promptly notify the Company of the event which will give, or has given, rise to the claim.

##### 11.4 Tax Credit

If an Obligor makes a Tax Payment and the Financier determines in its discretion (acting reasonably) that:

- a. a Tax Credit is attributable to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

b. the Financier has obtained, utilised and retained that Tax Credit,

subject to clause 30 (Conduct of business by the Financier), the Financier shall pay an amount to the Obligor which the Financier determines in its discretion (acting reasonably) will leave it (after that payment) in the same after-Tax position as it would have been in had the circumstances not arisen which caused the Tax Payment to be required to be made by the Obligor.

### **11.5 Stamp duties and Taxes**

The Company shall:

- a. pay; and
- b. within three Business Days of demand, indemnify the Financier against any cost, expense, loss or liability the Financier incurs in relation to,

all stamp duty, registration or other similar Tax payable in respect of any Finance Document except Transfer Certificates.

### **11.6 Indirect Tax**

- a. All payments to be made by an Obligor under or in connection with any Finance Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:
  - i. it must pay to the Financier an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
  - ii. the Financier will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.
- b. Where a Finance Document requires an Obligor to reimburse or indemnify the Financier for any costs or expenses, that Obligor shall also at the same time pay and indemnify the Financier against all Indirect Tax incurred by the Financier in respect of the costs or

expenses save to the extent that the Financier is entitled to repayment or credit in respect of the Indirect Tax.

## **12. Increased Costs**

### **12.1 Increased costs**

Subject to clause 12.3 (Exceptions) the Company shall, within seven Business Days of a demand by the Financier, pay for the account of the Financier the amount of any Increased Costs reasonably incurred by the Financier or any of its Affiliates as a result of:

- a. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
- b. compliance with any law or regulation, made after the date of this document. This includes any law or regulation with regard to capital adequacy, prudential limits, liquidity, reserve assets or Tax.

### **12.2 Increased cost claims**

- a. If the Financier intends to make a claim pursuant to clause 12.1 (Increased costs), it shall notify the Company of the event giving rise to the claim.
- b. The Financier shall, as soon as practicable after a demand by the Company, provide reasonable details of the amount of the Increased Costs which the Financier has incurred and how it is attributable to the matters set out in clause 12.1.

### **12.3 Exceptions**

Clause 12.1 (Increased costs) does not apply to the extent any Increased Cost is:

- a. attributable to a Tax Deduction required by law to be made by an Obligor;
- b. compensated for by clause 11.3 (Tax indemnity) (or would have been compensated for under clause 11.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in clause 11.3(b) (Tax indemnity) applied); or

- c. attributable to the fraud, negligence or wilful misconduct of the Financier.

### 13. Other Indemnities

The Company shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Financier (and, if the Company is not a Small Business, each officer, agent or employee of the Financier) against any cost, expense, loss or liability (including legal fees) reasonably incurred by the Financier as a result of or in connection with:

- a. the occurrence of any Default, Agency Termination Event or Review Event;
- b. any information produced or approved by the Company under or in connection with the Finance Documents or the transactions they contemplate being misleading or deceptive in any respect, provided that if the company is a Small Business, the indemnity will only apply if the provision of the misleading or deceptive information had a Material Impact;
- c. if the Company is not a Small Business:
  - i. any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under a Finance Document;
  - ii. the exercise or attempted exercise of or the consideration of any Power in connection with any Finance Document or any failure to exercise any Power;
  - iii. the Secured Property or the existence of any interest in, or control or Power with respect to, the Secured Property;
  - iv. a failure by an Obligor to pay any amount due under a Finance Document on its due date or in Australian Dollars or failure to do anything else that it is obliged to do under a Finance Document;

- d. where the Facility is a fixed interest rate facility, any amount payable under any Facility being repaid or becoming due for payment other than on its due date for payment, including any cost, expense, loss (including loss of profit) or liability (including legal fees) incurred by the Financier as a result of:

- i. the cancellation, termination, unwinding or alteration of any swap or other arrangement made by the Financier to fund a Drawdown or other payment; or
  - ii. any liquidation or re-employment of deposits or other funds acquired by the Financier to fund a Drawdown or other payment;
- e. if the Company is not a Small Business:
    - i. a Drawdown or other payment;
    - ii. funding, or making arrangements to fund, a Drawdown requested by the Company but not made by reason of the operation of any one or more of the provisions of this document (except to the extent caused by the fraud or negligence by the Financier alone);
    - iii. any portion of the Account Balance not being prepaid in accordance with a notice of prepayment given by the Company;
    - iv. investigating any event which it reasonably believes is a Default; or
    - v. instructing lawyers, accountants, investment bankers, tax advisers, valuers, surveyors, insolvency practitioners, third party collection agents (including pursuant to clause 21.1(e)) or other experts or professional advisers as permitted under the Finance Documents; or
  - f. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised,  
to the extent that any such cost, expense, loss or liability (including legal fees) is



not caused by fraud, negligence or wilful misconduct by the Financier (or an officer, agent or employee of the Financier) and excluding (in relation to any Small Business) any consequential losses incurred by the Financier.

## **14. Costs and Expenses**

### **14.1 Transaction expenses**

The Company shall promptly on demand pay the Financier the amount of all costs and expenses (including legal fees) reasonably incurred by the Financier in connection with the negotiation, preparation, printing, execution and registration of:

- a. this document, the Transaction Security and any other documents referred to in this document or the Transaction Security; and
- b. any other Finance Documents executed after the date of this document.

### **14.2 Amendment and other costs**

If an Obligor requests an amendment, waiver or consent or makes or initiates a request or demand under the PPSA, the Company shall, within three Business Days of demand, reimburse the Financier for the amount of all costs and expenses (including legal fees) reasonably incurred by the Financier in responding to, evaluating, negotiating or complying with that request or requirement.

### **14.3 Enforcement costs**

If an Event of Default occurs, the Company shall, within three Business Days of demand, pay to the Financier the amount of all costs and expenses (including legal fees) reasonably incurred by the Financier in connection with:

- a. the actual enforcement of, or the preservation or consideration of any right or Power under, any Finance Document; and
- b. any proceedings instituted by or against the Financier as a consequence of taking or holding the Transaction Security.

## Section 7 Guarantee And Security

### 15. Guarantee



#### **WARNING TO PERSONAL GUARANTORS!**

This is a very important document. There are financial risks involved in signing it. You may have to pay money owed by the Company. You can refuse to sign it. You have a right to limit your liability in accordance with the Code of Banking Practice and as allowed by law. However, once you sign this document, this right is restricted. In many cases you will not be able to limit your liability any further, or you will still have significant liability. Ask your lawyer about this.

#### **BEFORE YOU SIGN IT:**

1. You should read it carefully.
2. You should check for yourself whether the Company can and will pay its debts.
3. You can ask for information about the financing arrangements between the Company and its financiers.
4. You should see your own lawyer and financial adviser for advice on this document and give them the information we give you. If you do not, you should wait three days before you sign it.

#### 15.1 Guarantee

Each Guarantor irrevocably and unconditionally jointly and severally:

- a. guarantees to the Financier punctual performance by each Obligor of all that Obligor's obligations under the Finance Documents;
- b. undertakes with the Financier that:
  - i. whenever an Obligor does not pay

any amount when due under or in connection with any Finance Document (or anything which would have been due if the Finance Document or the amount was enforceable, valid and not illegal), immediately on demand that Guarantor shall pay that amount as if it was the principal obligor; and

- ii. if an Ipso Facto Event has occurred, then immediately on demand that Guarantor shall pay the Account Balance, accrued interest and other amounts referred to in clause 26 (Acceleration) as if it was the principal obligor;
- c. agrees with the Financier that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Financier immediately on demand against any cost, expense, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount of the cost, expense, loss or liability shall be equal to the amount which the Financier would otherwise have been entitled to recover.

Each of clauses 15.1(a), 15.1(b) and 15.1(c) is a separate obligation. None is limited by reference to the other.

**"Ipso Facto Event"** means the Company is the subject of:

- a. an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the Corporations Act; or
- b. any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.

## 15.2 Continuing guarantee

This Guarantee is a continuing obligation and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

## 15.3 Reinstatement

If any payment to or any discharge, release or arrangement given or entered into by the Financier (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced for any reason (including as a result of insolvency, breach of fiduciary or statutory duties or any similar event) in whole or in part, then the liability of each Guarantor under this clause 15 will continue or be reinstated as if the discharge, release or arrangement had not occurred and any relevant security shall be reinstated.

## 15.4 Waiver of defences

The obligations of each Guarantor under this clause 15 will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this clause 15 (without limitation and whether or not known to it or the Financier) including:

- a. any time, waiver or other concession or consent granted to, or composition with, any Obligor or other person;
- b. the release of any other Obligor or any other person;
- c. any composition or arrangement with any creditor of any Obligor or other person;
- d. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in

respect of any instrument or any failure to realise the full value of any security;

- e. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- f. any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- g. any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- h. any set off, combination of accounts or counterclaim;
- i. any insolvency or similar proceedings; or
- j. this document or any other Finance Document not being executed by or binding against any other Obligor or any other party.

References in clause 15 (Guarantee) to obligations of an Obligor or amounts due will include what would have been obligations or amounts due but for any of the above, as well as obligations and amounts due which result from any of the above.

## 15.5 Immediate recourse

- a. Each Guarantor waives any right it may have of first requiring the Financier (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 15. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

- b. Clause 15.5(a) does not apply to the Personal Guarantors if the Code applies to this document.

## 15.6 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Financier (or any trustee or agent on its behalf) may:

- a. refrain from applying or enforcing any other moneys, security or rights held or received or recovered (by set off or otherwise) by the Financier (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- b. without limiting clause 15.6(a), refrain from applying any moneys received or recovered (by set off or otherwise) from any Guarantor or on account of any Guarantor's liability under this clause 15 in discharge of that liability or any other liability of an Obligor and claim or prove against anyone in respect of the full amount owing by the Obligors.

## 15.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Financier otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 15:

- a. to be indemnified by an Obligor;
- b. to claim any contribution from any other guarantor or provider of security for any Obligor's obligations under the Finance Documents;

- c. to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Financier under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Financier;
- d. to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a Guarantee under clause 15.1 (Guarantee);
- e. to exercise any right of set-off against any Obligor;
- f. to claim or prove as a creditor of any Obligor in competition with the Financier; and/or
- g. in any form of administration of an Obligor (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process) prove for or claim, or exercise any vote or other rights in respect of, any indebtedness of any nature owed to it by the Obligor.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Financier by the Obligors under or in connection with the Finance Documents to be repaid in full on behalf of (but not as trustee for) the Financier and shall promptly pay or transfer the same to the Financier or as the Financier may direct for application in accordance with clause 31 (Payment mechanics).

## 15.8 Additional security

This Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Financier.

## 15.9 Limited amount: Personal Guarantor

- a. This Clause 15.9 only applies if “Limited Guarantee” has been specified in the Details Schedule.
- b. Despite anything else in this document (but subject to Clause 15.9(a)):
  - i. each Personal Guarantor’s liability under this document is limited to, and the maximum amount the Financier may recover from a Personal Guarantor under this document is limited to, the Personal Guarantee Limit; and
  - ii. to the extent the Financier is owed amounts under the Finance Documents in excess of the Personal Guarantee Limit, the Financier may not seek to recover any such shortfall from the Guarantors under this deed.

## 15.10 Modifications to guarantee where the Code applies

If the Code applies to this document, then:

- a. any Personal Guarantor may, by written notice to the Financier, withdraw from the Guarantee:
  - i. at any time before the Financier provides any Drawdown under the Facility; or
  - ii. after the first any drawdown under the Facility is provided, if the Facility differs in a material respect from the proposed facility the Financier gave the Guarantor before it signed the Guarantee; and
- b. the Guarantor can end their liability under the guarantee at any time by paying:
  - i. the total amount owed under the Facility by the Company, including any future or contingent liability;
  - ii. the amount to which the Guarantor’s guarantee is limited (if applicable, as set out in Part IV of Schedule 3); or

- iii. making other arrangements which the Financier agrees to in return for releasing the Guarantor from the Guarantee.

## 16. Security Interest

### 16.1 Security interest creation

- a. Each Grantor grants a security interest in the Collateral to the Financier to secure the payment of the Secured Money.
- b. This security interest is a transfer by way of security of Collateral consisting of accounts and chattel paper (each as defined in the PPSA) which are not, or cease to be, Revolving Assets or which have not already been absolutely transferred to the Financier.
- c. To the extent any Collateral is not transferred, this security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Collateral.
- d. Each Grantor grants this security interest in respect of Collateral other than Trust Assets which it owns or will own as beneficial owner.
- e. Each Grantor which is a trustee of any Trust grants this security interest in respect of Collateral comprising Trust Assets as sole trustee of each relevant Trust.

### 16.2 Priority

This security interest will operate as a first ranking security subject only to:

- a. any Security mandatorily preferred by law;
- b. any Security comprising a purchase money security interest over goods; and
- c. any Security over Collateral that is the subject of a Priority Deed and which is expressed to rank in priority to this security interest.

Where a Grantor (as trustee of a relevant Trust) has a right of indemnity out of the Trust Assets of that Trust, the Grantor acknowledges and agrees that all of the Grantor's rights under that right of indemnity will at all times and for all purposes be postponed to and rank after the interest of the Financier under this document.

### **16.3 Effect of Event of Default**

While any Event of Default is continuing, and after the expiry of the period specified in the notice given under clause 26 (Acceleration), at the option of the Financier, by notice to the Grantor and despite any delay or previous waiver of the right to exercise that option any rights of any Grantor to Deal with the Collateral (other than through a Receiver appointed under this document) immediately cease.

### **16.4 Appointment of Receiver**

- a. While any Event of Default is continuing and after the expiry of the period specified in the notice given under clause 26 (Acceleration), the Financier may:
  - i. appoint any person or persons to be a receiver or receiver and manager of the Collateral; and
  - ii. in case of the removal, retirement or death of any Receiver, appoint another person or persons in the place of that Receiver.
- b. The Financier may terminate the appointment of any Receiver at any time, without limiting its rights under clause 16.4(a).

### **16.5 Security interest creation**

- a. The terms set out in the Security Schedule apply to each Grantor and to each security created under this document.
- b. Each Grantor acknowledges that it has read and understood the terms set out in the Security Schedule.

## **Section 8 Representations, Undertakings and Events of Default**

### **17. Representations**

Each Obligor (other than each Personal Guarantor) makes the representations and warranties set out in this clause 17 to the Financier on the date of this document. Each Personal Guarantor makes the representations and warranties set out in clauses 17.3(a), 17.4, 17.5, 17.6, 17.7, 17.8, 17.9, 17.10, 17.11, 17.12, 17.14, 17.15, 17.17, 17.18, 17.21 and 17.23 to the Financier on the date of this document

#### **17.1 Repetition**

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Drawdown and the first day of each month while the Facility is available.

#### **17.2 Status**

- a. It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- b. It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

#### **17.3 Binding obligations**

- a. The obligations expressed to be assumed by it in each Finance Document to which it is a party are, subject to any necessary stamping and Authorisations, equitable principles and laws generally affecting creditors' rights, legal, valid, binding and enforceable obligations.
- b. Without limiting the generality of clause 17.3(a) above, each Transaction Security Document to which it is a party creates the Security Interests which that Transaction Security Document purports to create and those Security Interests are, subject to any necessary stamping, Authorisations and registration requirements,

equitable principles and laws generally affecting creditors' rights, valid and effective.

#### **17.4 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents including the granting of the Transaction Security do not and will not conflict with:

- a. any law or regulation applicable to it;
- b. its or any of its Subsidiaries' constitutional documents; or
- c. any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets or constitute a default or termination event under any such agreement or instrument.

#### **17.5 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

#### **17.6 Validity and admissibility in evidence**

All Authorisations required or desirable:

- a. to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- b. to make the Finance Documents to which it is a party, its legal, valid, binding and enforceable obligations, admissible in evidence in its jurisdiction of incorporation;
- c. to perfect the Transaction Security; and
- d. for it and its Subsidiaries to carry on their business,

have been obtained or effected and are in full force and effect other than any Authorisation which will be carried out in satisfaction of the Conditions Precedent to Financial Close or by the Financier.

#### **17.7 Governing law and enforcement**

- a. The choice of law referred to in clause 47 (Governing Law) as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.
- b. Any judgment obtained against it in any jurisdiction referred to in clause 48 (Enforcement) in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

#### **17.8 Insolvency**

No:

- a. Other Insolvency Process or Arrangement; or
- b. creditors' process described in clause 24.3(Creditors' process),

has been taken in relation to a member of the Group, and none of the circumstances described in clause 23.9 (Insolvency) applies to a member of the Group.

#### **17.9 No stamp Taxes**

Under the law of its jurisdiction of incorporation it is not necessary that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, save for:

- a. any payment referred to in any legal opinion delivered to the Financier under this document or disclosed by or behalf of an Obligor to the Financier;
- b. which has been paid or will be paid in satisfaction of the conditions precedent in Schedule 2 (Conditions Precedent) or by the Financier; or
- c. payment of stamp duty in respect of each of the Transaction Security Documents specified by the Financier,

which stamp duty, Taxes and fees will be paid promptly after the date of the relevant Transaction Security Document or at such later date as the Financier may approve.

### 17.10 No default

- a. No Event of Default or Potential Default is continuing or might reasonably be expected to result from any Drawdown or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- b. No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Impact.

### 17.11 Disclosure

It has disclosed in writing to the Financier all information known to it which could reasonably be expected to be material to the ability of the Group (taken as a whole) to perform their obligations under the Finance Documents or to the Financier's assessment of the nature and degree of risk undertaken by it in granting financial accommodation to the Group in entering into the Finance Documents.

### 17.12 No misleading information

- a. Any factual information provided by or on behalf of an Obligor or any other member of the Group (excluding projections) in connection with the Finance Documents and the transactions they contemplate was true and accurate in all material respects and not misleading as at the date it was provided or as at the date (if any) at which it is stated.
- b. Any financial projections provided by or on behalf of an Obligor to the Financier have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- c. Nothing has occurred or been omitted from the information provided in writing in connection with the Finance Documents and no information has been given or withheld that results

in the information provided by or on behalf of an Obligor to the Financier being untrue or misleading in any material respect.

### 17.13 Financial statements

- a. Its Original Financial Statements were prepared in accordance with GAAP consistently applied unless expressly disclosed to the Financier in writing to the contrary before the date of this document.
- b. Its Original Financial Statements give a true and fair view and fairly represent its financial condition as at the end of the relevant Financial Year and operations during the relevant Financial Year (consolidated in the case of the Company) unless expressly disclosed to the Financier in writing to the contrary before the date of this document.
- c. Its most recent financial statements delivered pursuant to clause 18.1 (Financial statements):
  - i. have been prepared in accordance with clause 18.2 (Requirements as to financial statements); and
  - ii. give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- d. There has been no adverse change in its business or financial condition (or the business or consolidated financial condition of the Group, in the case of the Company) since the most recent financial statements delivered pursuant to clause 18.1 (Financial statements) that would have a Material Impact.
- e. All budgets and forecasts (the Forecasts) supplied by or on behalf of the Company or any Obligor to the Financier under this document have been prepared in good faith on the basis of recently available historical information and on the basis of



assumptions which were reasonable as at the date they were prepared and supplied (it being understood that the Forecasts are subject to significant uncertainties and contingencies many of which are beyond the control of the Company and the Obligors and that no assurances can be given that such Forecasts will be realised).

#### **17.14 Pari passu ranking**

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

#### **17.15 No proceedings pending**

- a. No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Impact has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.
- b. No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any government or other regulatory body which is reasonably likely to have a Material Impact has (to the best of its knowledge and belief) been made against it or any of its Subsidiaries.

#### **17.16 Authorised signatories**

Any person specified as its authorised signatory under Schedule 2 (Conditions precedent) or clause 18.2(c) (Information: miscellaneous) is authorised to request Drawdowns and sign other notices on its behalf except where it has previously notified the Financier that the authority has been revoked.

#### **17.17 Tax Consolidation**

- a. No Obligor is a member of a Tax Consolidated Group.

- b. It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax except as disclosed to and accepted by the Financier.
- c. No claims are being, or are reasonably likely to be, made against it (or any of its Subsidiaries) with respect to Taxes except as disclosed to and accepted by the Financier.

#### **17.18 Ranking**

The Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or pari passu ranking Security Interest other than Permitted Security Interests that are agreed to rank ahead of the Transaction Security.

#### **17.19 Good title to assets**

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

#### **17.20 Shares**

The shares, membership or other interests, or other securities in or issued by any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional or other documents of entities whose shares, membership or other interests, or other securities are subject to the Transaction Security do not and could not restrict or inhibit any transfer or creation or enforcement of the Transaction Security.

#### **17.21 Group Structure Chart**

- a. The group structure chart delivered to the Financier as a Condition Precedent to Financial Close is true, complete and accurate in all material respects on the first Drawdown.

- b. The most recent group structure chart delivered to the Financier under this document is true, complete and accurate in all material respects.
- c. All necessary intra-Group loans, transfers, share exchanges and other steps resulting in the final Group structure are set out in the group structure chart and have been or will be taken in compliance with all relevant laws and regulations and all requirements of relevant regulatory authorities.

#### **17.22 Related party and financial assistance**

It has not contravened or will not contravene Chapter 2E or 2J.3 of the Corporations Act or any equivalent or similar legislation in any other applicable jurisdiction by entering into any Finance Document to which it is a party or by participating in any transaction in connection with any Finance Document.

#### **17.23 Receivables Representations**

##### **a. Ownership**

The Company is the legal owner of all Eligible Receivables and pursuant to the assignment of such Receivables to the Financier in equity the Financier is the beneficial owner of those Receivables.

##### **b. Normal course of business**

Each Eligible Receivable was created in the ordinary course of the Company's ordinary business.

##### **c. Completion, delivery and performance**

It has provided all services or goods (or both) to which each Eligible Receivable relates.

##### **d. Good title**

It had good title to the goods and services being shipped or otherwise delivered to each Debtor, free from any Security Interest.

##### **e. Reporting**

All data and information provided by it in relation to the Eligible Receivables

(including pursuant to Annexure A or a Transaction Report) is correct in all material respects.

#### **17.24 Concentration Limit**

At any time Eligible Receivables owing by any one Debtor (and its Affiliates and related bodies corporate) must in the aggregate not exceed 20% of the aggregate face value of all Eligible Receivables (or such other percentage specified in the Details Schedule) (the Concentration Limit) provided that the Concentration Limit may be varied by the Financier (acting reasonably) giving written notice to the Company from time to time (which notice may only be given in relation to a Small Business if the Financier reasonably considers that it is required to address or mitigate a Material Impact).

#### **17.25 Trustee**

- a. Other than any Obligor identified in the Details Schedule as entering into this document as trustee of a Trust, it does not enter into any Finance Document or hold any property as trustee.
- b. If any Obligor enters into any Finance Document as the trustee of a Trust:
  - i. the Trust is validly constituted and has not been terminated;
  - ii. there is either:
    - A. no conflict of interest affecting the Obligor as Trustee (or the Obligor's related parties or directors) which prevents the Obligor from entering into or performing the Obligor's obligations under the Finance Documents; or
    - B. the Trust Deed permits the Obligor to enter into and perform the Obligor's obligations under the Finance Documents despite any conflict of interest that may affect the Obligor (or the Obligor's related parties or directors);

- iii. the Trustee has a right to be indemnified out of the Trust Assets;
- iv. the Trustee is not in default under the Trust Deed and no action has been taken or proposed to terminate the Trust;
- v. the Obligor has complied with the Obligor's Trust obligations (as have any directors or officers);
- vi. the Obligor has taken every necessary action to authorise the Obligor to execute the Finance Documents and perform the Obligor's obligations under the Finance Documents;
- vii. executing the Finance Documents is not a breach of Trust on the Obligor's part; and
- viii. the Financier's rights under the Finance Documents have priority over the interest of the beneficiaries of the Trust.

## 18. Information Undertakings

The undertakings in this clause 18 remain in force from the date of this document for so long as any amount is outstanding under the Finance Documents or any Credit Limit is available.

### 18.1 Financial Statements, Management Accounts and Statements of Financial Position

The Company shall promptly supply to the Financier any Financial Statements, Management Accounts or Statements of Financial Position requested by the Financier as soon as the same become available.

### 18.2 Requirements as to Financial Statements

- a. Each set of Financial Statements or Management Accounts delivered by the Company or an Obligor pursuant to clause 18.1 (Financial Statements, Management Accounts and Statements of Financial Position) shall be certified by a director of the relevant company as giving a true and fair view

of its financial condition as at the date as at which those Financial Statements or Management Accounts were drawn up.

- b. The Company shall procure that each set of Financial Statements of an Obligor delivered pursuant to clause 18.1 (Financial Statements, Management Accounts and Statements of Financial Position) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of Financial Statements previously provided to the Financier for that Obligor or, if none have been provided, with those consistent with usual good practice in Australia.
- c. Each Personal Guarantor shall ensure, and the Company shall procure, that each Statement of Financial Position relating to that Personal Guarantor delivered pursuant to clause 18.1 (Financial Statements, Management Accounts and Statements of Financial Position) is prepared in accordance with usual good practice in Australia and in good faith.

### 18.3 Information: miscellaneous

The Company shall supply to the Financier:

- a. all documents dispatched by the Company to its shareholders (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;
- b. promptly, upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Impact;
- c. promptly, upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal

or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group and which might have a Material Impact;

- d. promptly, following a change in the structure of the Group, an updated group structure chart;
- e. promptly, such further information regarding the financial condition, business and operations of any member of the Group as the Financier may reasonably request;
- f. on an annual basis at least 30 days prior to the anniversary of each insurance policy:
  - i. approved certifications for all required insurance policies, executed by each insurer, or by an authorised representative of each insurer, which identifies underwriters, the type of insurance, the insurance limits, the policy term and lists special provisions required; and
  - ii. a schedule of all insurance policies held by or for the benefit of the Company and required to be in force;
- g. such budgets and forecasts as may be reasonably required by the Financier;
- h. promptly, such evidence as the Financier may reasonably require from time to time in relation to the Obligors' compliance with clause 19 (Financial Covenants);
- i. promptly, such information as the Financier may reasonably require about the Secured Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- j. promptly, notice of any change in authorised signatories of the Company signed by a director or secretary of the Company accompanied by specimen signatures of any new signatories, provided that no notice of change

shall be effective until the Financier has conducted "know your customer" checks on each such new authorised signatory as required by the Financier.

#### **18.4 Notification of Default**

- a. Each Obligor shall notify the Financier of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- b. Promptly upon a reasonable request by the Financier, the Company shall supply to the Financier a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **18.5 Know your customer checks**

- a. Each Obligor shall from time to time promptly upon the reasonable request of the Financier supply, or procure the supply of, such documentation and other evidence as is requested by the Financier (for itself or on behalf of any prospective new Financier) in order for the Financier or any prospective new Financier to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- b. The Company shall promptly supply, or procure the supply of, such documentation and other evidence reasonably requested by the Financier from time to time in relation to an Obligor to enable the Financier to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to the Financier.

## 19. Financial Covenants

The Company must ensure that each Financial Covenant specified in the Details Schedule is satisfied on each Calculation Date.

## 20. General Undertakings

The undertakings in this clause 20 remain in force from the date of this document for so long as any amount is outstanding under the Finance Documents or any Credit Limit is available.

### 20.1 Authorisations

Each Obligor shall promptly:

- a. obtain, comply with and do all that is necessary to maintain in full force and effect; and
- b. supply certified copies to the Financier of,

any Authorisation required to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document and to the extent that failure by it to obtain or maintain such Authorisation is reasonably likely to have a Material Impact any Authorisation required for it to carry on its business.

### 20.2 Compliance with laws

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Impact.

### 20.3 Taxation

- a. Each Obligor shall (and the Company shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
  - i. such payment is being contested in good faith;
  - ii. adequate reserves are being maintained for those Taxes and

the costs required to contest them which have been disclosed in its latest financial statements delivered to the Financier under clause 18.1 (Financial statements); and

- iii. such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Impact.

- b. No member of the Group may change its residence for Tax purposes.

### 20.4 Guarantor coverage

The Company shall ensure that at all times each of its Subsidiaries has guaranteed all of its obligations under this document in form and substance satisfactory to the Financier and become an Obligor under this document.

### 20.5 Preservation of assets

Each Obligor (other than the Personal Guarantors) shall (and the Company shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

### 20.6 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of the Financier against it under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except, in the case of each Obligor other than the Personal Guarantors, those creditors whose claims are mandatorily preferred by laws of general application to companies.

### 20.7 Inspections and Access Rights

#### a. Access

- i. Each Obligor shall, and the Company shall ensure that each member of the Group will permit the Financier and/or the delegates and/or the accountants

or other professional advisers and contractors of the Financier (collectively, representatives) access at all reasonable times and on reasonable notice at the risk and cost of the Obligor or Company to (a) the premises, assets, books, accounts and records of each member of the Group and (b) following an Agency Termination Event or a Default to meet and discuss matters with senior management of the Obligors.

- ii. Each Obligor shall permit the Financier (or any of its duly authorised representatives) to review any contracts that give rise to Receivables and obtain evidence of their performance together with other Accounting Records, orders, correspondence and such other documents in connection with such Receivables or debtors in respect of such Receivables as the Financier may require.
- iii. For purposes of the exercise of rights under this clause 20.7, each Obligor grants to the Financier a non-exclusive licence to enter any premises on which any Company Records are located.
- iv. Unless an Event of Default has occurred and is continuing and access is required to address or mitigate a Material Impact, the Financier agrees to give the Company reasonable notice if the Financier intends to enter any premises without the relevant Group Member's consent to inspect any Company Records. The Financier must ensure that each person entering any such premises complies with applicable safety and security laws and procedures.

**b. Periodic independent audits**

- i. Without limiting (and in addition to) clause 20.7(a), the Company

must, no more than twice in each calendar year or, after the occurrence of an Agency Termination Event or a Default which is continuing, more frequently at the discretion of the Financier, permit an independent third party auditor instructed by the Financier to, at any time upon reasonable notice to perform (either by its own employees or by its representatives) an audit of the Purchased Receivables and all documentation in connection with such Purchased Receivables (including insurance policies), the Eligible Premises, the books and records of the Obligors (including, without limitation, in respect of internal controls, systems, storage and handling, the Receivables and debtor assessment, and collateral, risk and credit management practices) and the Company shall, and must procure that each member of the Group shall, grant or procure access to its premises (including, for the avoidance of doubt and without limitation, all leased premises) at reasonable times and on reasonable notice, and shall co-operate with such audit process (including by the provision of information and copy documentation) as reasonably required by the Financier. The Company shall pay the reasonable costs incurred by the Financier in connection with any audit undertaken pursuant to this clause 20.7(b).

- ii. Within 10 Business Days of the end of each Quarter (or at such other intervals as the Financier may require), the Company must procure a satisfactory audit by the Financier or its agents or representatives of a sample of sales invoices (and associated proof of delivery or provisions

of services (as applicable) and proof of payment) selected by the Financier or its agents or representatives and that were raised during that period.

**c. Additional audits**

In addition to the rights set out in clause 20.7(b) the Financier may also, at any time in its discretion (acting reasonably), undertake an audit in accordance with clause 20.7(b). The Company shall pay the reasonable costs incurred by the Financier in connection with any audit undertaken pursuant to this clause 20.7(c).

**20.8 Bank Accounts**

Without limiting clause 7.1, the Company must ensure that the following amounts are paid directly into the applicable Obligor's bank accounts:

- a. all proceeds of the Receivables;
- b. all proceeds of payment under any Credit Insurance Policy; and
- c. any other payment that is in any way a realisation of Receivables.

**20.9 Investigating consultant**

The Obligors must whenever requested by the Financier (acting reasonably), appoint any accountants or other consultants approved by the Financier to:

- a. examine the books and property of any member of the Group;
- b. examine and monitor the conduct and performance of the Group's affairs and operations and its financial and trading conditions;
- c. attend any or all management and directors' meetings;
- d. prepare recommended business practices for the Group's business;
- e. advise the Group's officers and management on prudent business practices, credit control, stock control, cash flow management, financing and refinancing arrangements or any other matter relevant to its business;

- f. investigate whether an Agency Termination Event, a Default or an Event of Default has occurred or is likely to occur; and/or
- g. report to the Group and to the Financier on the results of its examinations and investigations, and provide to them its advice and recommendations.

**20.10 Anti-bribery law**

Each Obligor agrees that no part of the proceeds of the Facility will be used, directly or indirectly, for any payments that could constitute a violation of any applicable anti-bribery law.

**20.11 Sanctions**

- a. No Obligor may (and the Company shall ensure that no member of the Group will) directly or indirectly use the proceeds of the Facility, or lend, contribute or otherwise make available such proceeds to any acquired entity or other person:
  - i. to fund or facilitate any activities or business with or related to a Sanctioned Person;
  - ii. to fund or facilitate any activities or business with or related to any Person that is engaged in any conduct that would or might reasonably be foreseen to cause it to become a Sanctioned Person;
  - iii. in any other manner that would result in a breach of any Anti-terrorism Laws or Sanctions by any person (including the Financier).
- b. Each Obligor shall (and the Company shall ensure that each member of the Group will) ensure that no Sanctioned Person will have any property interest, as defined under OFAC regulations, in any funds repaid or remitted by any member of the Group to the Financier in connection with the Facility.
- c. No Obligor shall (and the Company shall ensure that no member of

the Group will) engage in any other conduct that would or might reasonably be foreseen to cause it to become a Sanctioned Person.

- d. No Obligor shall, directly or indirectly, use any benefit derived from the Facility to facilitate or fund any activities or business of or with any Person, including a supplier or buyer, or in any country or territory, that is, or whose government is, the subject of Sanctions, in any other manner that would result in a violation of Sanctions by any Person.

#### 20.12 Financial assistance

Each Obligor shall (and the Company shall procure each member of the Group will) comply in all respects with Part 2J.3 of the Corporations Act and any equivalent legislation in other jurisdictions.

#### 20.13 Title retention

No Obligor may enter into an agreement with respect to the acquisition of assets on title retention terms, other than a Permitted Security Interest.

#### 20.14 Trustee

The undertakings in this clause apply to each Obligor entering into a Finance Document as the trustee of a Trust.

- a. The Obligor must:
  - i. be the sole trustee of the Trust or, if there is more than one trustee, be all the trustees of the Trust;
  - ii. have the power under the Trust Deed to enter into and observe the Obligor's obligations under the Finance Documents;
  - iii. enter into the Finance Documents in the Obligor's personal capacity and in the Obligor's capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
  - iv. have all the necessary authorisations required to sign the Finance Documents and perform

the Obligor's obligations; and

- v. have a right to be fully indemnified for all the Obligor's obligations under the Finance Documents out of the property the Obligor holds on Trust.
- b. The Obligor must give the Financier a copy of the Trust Deed and any other documents that disclose all the terms of the Trust.
- c. When the Obligor signs the Finance Documents as a Trustee, the Obligor must:
  - i. at the Financier's request, exercise or hold for the Financier the Obligor's right of indemnity from the Trust Fund and the beneficiaries in order to pay the Financier any money owed under the Finance Documents;
  - ii. observe and perform the Obligor's obligations as trustee of the Trust; and
  - iii. cause any successor trustee of the Trust to abide by these terms and conditions.
- d. Without the Financier's consent the Obligor will not do anything to:
  - i. retire or be removed or replaced as trustee of the Trust or allow additional trustees of the Trust to be appointed;
  - ii. terminate the Trust, vary the Trust Deed in a way that impacts on the ability of the Trustee to fulfil its obligations under the Finance Documents, or re-settle the Trust Fund or determine a vesting date; or
  - iii. limit the Obligor's right of indemnity from the Trust Fund for obligations under the Finance Documents.

#### 20.15 Additional Undertakings

Each Obligor shall comply with each Additional Undertaking.



## 20.16 Financier Software

- a. If the Company has selected “Financier Software” in the Details Schedule for Information Exchange, the Company and each Obligor must ensure that the Financier Software remains operational on its computer systems at all times.
- b. If the Company has selected “Financier Software” in the Details Schedule for Information Exchange, if the Company or an Obligor suspects that the Financier Software has been disconnected or otherwise ceases to be operational, it must:
  - i. immediately take steps to remedy such circumstances; and
  - ii. if unable to immediately remedy such circumstances, promptly notify the Financier of such circumstances and take all steps that the Financier may reasonably direct the Company and the Obligors to take with respect to the Financier Software.
- c. if the Company has selected “Manual Reporting” for Information Exchange in the Details Schedule then the Company must provide the Financier with the additional reporting specified in Annexure A.

## 21. Receivables Provisions

### 21.1 Confidential Facility

- a. **Undisclosed agency**
  - i. Subject to clauses 21.1(b) and 21.1(c), the Facility will be operated on a confidential basis on the following terms.
  - ii. As the purchaser and assignee of the Purchased Receivables, the Financier has the sole right to collect and enforce payment of the Purchased Receivables and enforce all Associated Rights corresponding to the Purchased Receivables. The Financier must act reasonably when exercising this right. Until the Financier exercises

its rights under clause 21.1(b) or 21.1(c), the Company must, at the Company’s cost, collect the Purchased Receivables sold by it to the Financier and manage Debtors’ accounts for the Financier as its undisclosed agent. The Company is not the Financier’s agent for any other purpose.

- iii. The Company must ensure that all Purchased Receivables are promptly and correctly recorded in the Company’s Accounting Records, and that the Company’s sales ledger control bears a conspicuous notation that the Purchased Receivables have been sold to the Financier.
- iv. The Financier (or any party nominated by it) may communicate in the Company’s name (and purport to act on the Company’s behalf) with Debtors for the purpose of debt verification. The Company must provide the Financier with every assistance the Financier (or such party) reasonably requires. The Company authorises the Financier to disclose its identity if the Financier is required to do so by law or at the request of any Debtor and the Financier must notify the Company if it is so required.
- v. The Company must act promptly and efficiently when carrying out the Company’s duties as the Financier’s agent and, in any event, strictly in accordance with any reasonable instructions the Financier gives to the Company (either directly or through the Company, acting as the Company’s agent).

#### b. Disclosed purchase and agency

The Financier may, if a Default is continuing or if an Agency Termination Event occurs and is continuing, require by notice to the Company that all or part of

the Facility must operate on a disclosed basis. If the Financier requires that all or part of the Facility will be operated on a disclosed basis, the following provisions will apply:

- i. The Financier may notify each relevant Debtor of the assignment of the Purchased Receivables to it (and the Company appoints the Financier as its attorney and agent for purposes to giving each Debtor such notification). The Financier may do this in its own name or in the Company's name (or both).
- ii. On each invoice, statement of account and all copies a notice of assignment of each such Purchased Receivable to the Financier (using words provided by the Financier) must appear together with instructions to pay the Financier via the Company's agency. Notices of assignment must not appear on credit notes.
- iii. The Financier may at any time require the Company to deliver original invoices, credit notes and statements to the Financier for onward despatch to such Debtors at the Company's expense.
- iv. The agency in this clause 21.1 will become a disclosed agency in relation to the relevant Purchased Receivables.
- v. The Company must:
  - A. instruct any solicitor or debt recovery agent acting for it in legal proceedings relating to the recovery or collection of such Purchased Receivables to report to the Financier, if it so requires, at each stage of those legal proceedings, at the Company's expense; and
  - B. not engage any solicitor or debt recovery agent to act for it in legal proceedings relating to the recovery or collection of such Purchased Receivables without the Financier's prior approval.

- vi. The Financier may at any time (without limiting its rights under this clause 21.1 at any time after such reinstatement) agree to the reinstatement of the undisclosed agency granted to the Company.

#### **c. Cancellation of agency**

The Financier may, if a Default is continuing or if an Agency Termination Event has occurred and is continuing, by notice to the Company cancel the terms of the agency granted to the Company under this clause 21.1 in relation to some or all of the Purchased Receivables (and such cancellation shall be taken to be immediately effective from the date the notice is given unless otherwise specified in the notice). If the Financier does so, the Financier will give notice (in such form as it decides) to each relevant Debtor that the Financier is the owner of all the Company's present and future Purchased Receivables together with payment directions. If the Financier has not by then told the Company of the cancellation of the Company's agency, such notice to Debtors will act as a cancellation of the Company's agency in respect of all Purchased Receivables corresponding to those Debtors whom the Financier has given notice (and shall be taken to be effective from the date the notice is given). The Financier may at any time (without limiting its rights under this clause 21.1 at any time after such reinstatement) agree to the reinstatement of the agency granted to the Company in respect of all or some of the Purchased Receivables. The Financier's right to cancel the agency granted by the Financier to the Company under this clause 21.1 may be exercised as a separate and independent right in addition to any other rights that the Financier may have in connection with the continuation of a Default or Agency Termination Event.

#### **d. Effect of Cancellation of Agency**

Following a cancellation of the Company's agency under this clause 21.1:

- i. the Financier will have the sole right to collect and enforce payment of all Purchased Receivables and may take any steps it in its discretion determines, acting reasonably, in respect of such collection and enforcement, including notifying each Debtor of the assignment of the Purchased Receivables to it. The Company may not say it is the Financier's agent and the Company must at all times fully co-operate with the Financier and help the Financier to collect Purchased Receivables, as the Financier directs;
  - ii. if the Financier has not given notice to each Debtor that the Financier is the owner by way of assignment of all Purchased Receivables in accordance with this clause 21.1, the Company must, at the request of the Financier, promptly (and, in any event, within 2 Business Days) give each Debtor notice to such effect (using wording provided by the Financier) together with payment directions (and the Financier may give such notice on behalf of the Company);
  - iii. the Company must promptly (and, in any event, within 2 Business Days) send to the Financier copies of its Accounting Records relating to Receivables. The Financier will maintain the Company's accounts in the form of a sales ledger and may contact Debtors in the Financier's name in relation to all matters concerning the Purchased Receivables;
  - iv. at the request of the Financier, the Company must (and the Financier may on behalf of the Company) instruct the Debtors to pay all their Purchased Receivables to the Financier and the Financier may undertake the procedures for collection of Purchased Receivables;
  - v. the Financier may, at any time:
    - A. grant time or other indulgence to, or compromise claims with, any Debtor without discharging the Company from its obligations to the Financier;
    - B. accept payment from a Debtor that is less than the face value of the Purchased Receivable;
    - C. settle, conduct or abandon any collection activity or start, defend or compromise any legal proceedings (in the Financier's or the Company's name),  
and the Company will be bound by the Financier's actions and decisions;
  - vi. the Company must give the Financier all assistance when the Financier asks for its records, gather evidence and make available its employees or officers to attend court as witnesses; and
  - vii. the Financier may require the Company to give it such security for any costs as the Financier thinks appropriate.
- e. Appointment of collection agent**
- Following a cancellation of the Company's agency under this clause 21.1, the Financier may at the cost of the Company appoint a third party to collect and enforce payment of all Purchased Receivables and to take any step or do anything that the Financier authorises the third party to take or do, including any of the steps or actions described in clause 21.1(d).
- f. Assistance**
- Following a cancellation of the Company's agency under this clause 21.1, the Company must render all reasonable assistance (acting diligently, expeditiously and in good faith) to assist the Financier, or any third party appointed by the Financier, to collect and enforce payment of the Purchased Receivables.
- g. Information**
- i. The Company acknowledges that the provision of accurate and timely information in relation to the Purchased Receivables is fundamental to the risks assumed by the Financier under this document (whether the Company has selected "Manual

Reporting” or “Financier Software” for Information Exchange in the Details Schedule).

- ii. Accordingly, without limiting any other provision of this document relating to reporting, Events of Default or Agency Termination Events, if the Company fails to provide any information within 2 Business Days of the due date for provision of any information under this document (including under Annexure A) then the Financier will have the right (at any time after the expiry of that 2 Business Day period until such time as the required information has been provided to the satisfaction of the Financier, acting reasonably) to reduce the Credit Limit by an amount determined by the Financier (acting reasonably) on notice to the Company to be up to the aggregate amount of all Receivables paid into the Company Account (or otherwise received by the Financier) since the date of the last required information provided by the Company in compliance with this document (which notice may only be given in relation to a Small Business if the Financier reasonably considers that it is required to address or mitigate a Material Impact).

## 21.2 Returned Goods

- a. The Company must:
  - i. promptly tell the Financier about all Returned Goods; and
  - ii. if a Default subsists and if directed by the Financier, ensure that it:
    - A. sets aside Returned Goods and mark the Financier’s name on them as the owner; and
    - B. delivers all Returned Goods and any Associated Rights to the Financier, or deals with them as the Financier directs.
- b. If an Event of Default subsists, the Financier may, without notice, enter any premises where the Financier believes any Returned Goods or

anything in respect of Associated Rights are kept and take possession of, or sell any Returned Goods or deal with any Associated Rights on such terms and prices as the Financier considers appropriate. The Financier will credit the net proceeds towards the discharge of the relevant Receivables.

## 21.3 Warranties Relating to Receivables

In respect of each Receivable assigned to the Financier, the Company gives the following warranties to the Financier both at the date of assignment and at all other times whilst the Receivable is outstanding:

- a. all the particulars contained in its information and Accounting Records in relation to the Receivable are correct and complete in all material respects;
- b. the transfer to the Financier of information about a Debtor will not breach any applicable laws or agreement;
- c. the face value of the Receivable as provided to the Financier is the amount due in respect of the Receivable under the Contract of Sale and is the value of that Receivable as set out in the Accounting Records;
- d. the calculation of Gross Receivables Value, Net Receivables Value and each component part thereof including all rebates and Discounts is an accurate calculation of all such amounts;
- e. each Contract of Sale of the Company in respect of any Receivables is in the form which has been approved by the Financier (which is the form of the Company’s standard terms and conditions provided to and approved by the Financier prior to the Closing Date);
- f. the correct name and address of the Debtor and any required purchase order number appear on each invoice, credit note and any documents evidencing the Receivable;
- g. each Receivable included in any information provided to the Financier

as an Eligible Receivable is an Eligible Receivable on the date of assignment of that Receivable and, unless otherwise notified to the Financier in writing after the date of assignment for that Receivable, continues to be an Eligible Receivable on each day the Receivable remains outstanding;

h. in respect of any Receivable, it has registered a financing statement on the PPSR in respect of any Associated Right that is a security interest under the PPSA (and if applicable, as a PMSI within the relevant timeframes necessary to obtain PMSI status).

#### 21.4 Undertakings Relating to Receivables

The Company must:

- a. after assigning a Receivable to the Financier, not vary or cancel:
  - i. any Contract of Sale in any way that could reduce the amount payable by a Debtor (including by reducing any payments under that Contract of Sale or increasing the risk of set-off by that Debtor); or
  - ii. any payment terms or settlement discounts,  
in each case without the Financier's consent;
- b. make sure that every Contract of Sale:
  - i. is only made in the ordinary course of the Company's trading activities as disclosed to the Financier before the date of the Facility Agreement;
  - ii. is subject to the laws of an Approved Territory;
  - iii. provides for payment by the Debtor in an Approved Currency;
  - iv. does not include any prohibition or other restriction against assignment, transfer or other dealing with the Receivable;
- c. notify the Financier promptly if the Company becomes aware of:

- i. details of any adverse credit or other adverse information about a Debtor;
  - ii. any holder of rights of ownership over Goods making any claim; or
  - iii. all retrospective or quantity discount structures agreed with the Debtors and all Discounts to which a Debtor is entitled that have not been taken;
- d. promptly when asked:
- i. at the Financier's request from time to time, provide a sample (selected by the Financier or its advisers) of at least 20 invoices (or such other number as is required by the Financier) and associated proof of delivery (or provision of services as applicable) and receipt of payment taken from sales made over a 12 month period preceding the date of such request;
  - ii. give the Financier such information about the Company's Debtors or Receivables as the Financier (acting reasonably) may specify;
  - iii. give the Financier evidence (including proof of Delivery) satisfactory to the Financier of any order and the completion of any Contract of Sale; and
  - iv. exercise all rights of an unpaid seller of Goods, including any reservation of title;
  - v. perform all of the Company's obligations to each Debtor and, if the Financier asks, give evidence of such performance;
  - vi. promptly inform the Financier if the Company becomes aware of any breach of the Company's warranties under this document;
  - vii. ensure that any debt collection or credit management agency used by the Company acknowledges the Financier's ownership of Purchased Receivables and its

- right to take over collection of the Purchased Receivables in accordance with the terms of this document, in a form acceptable to the Financier;
- e. ensure that the Company's registration number, GST (or equivalent sales tax) registration number and the Company's credit terms appear on all invoices;
- f. ensure that the Company's standard Contract of Sale (or other terms of trade) in effect as at the date of this document, as applicable, and disclosed to the Financier is not amended in any way that could increase the risk of non-payment by a Debtor, without the Financier's consent;
- g. if requested by the Financier, give the Financier possession of any Contract of Sale that constitutes Chattel Paper at the time the Financier purchases the Receivables to which that Contract of Sale relates;
- h. ensure that no person other than the Financier has or is given possession of any Contract of Sale that constitutes Chattel Paper; and
- i. if requested by the Financier, ensure any Contract of Sale that constitutes Chattel Paper is prominently and permanently marked in such a way that no other person can take possession of that Chattel Paper without being aware that it is subject to a Security Interest in favour of the Financier.

## 21.5 Receivables and Accounting Data Access

The Company must:

- a. provide the Financier details of:
  - i. if the Company has selected "Financier Software" in the Details Schedule for Information Exchange, all Receivables as they arise, Debtors, Contracts of Sale and the Client's compliance with Contracts of Sale at such frequency as reasonably required by the Financier from time to time;

- ii. if the Company has selected "Manual Reporting" for Information Exchange in the Details Schedule, all information contemplated by Annexure A at the times and in the manner contemplated by Annexure A;
- b. provide any other assistance the Financier reasonably requires so that it can verify any Receivables;
- c. if the Company has selected "Financier Software" in the Details Schedule for Information Exchange, undertake all actions which are reasonably required by the Financier from time to time which enables complete access to the Company Records by the Financier Software; and
- d. if the Company has selected "Financier Software" in the Details Schedule for Information Exchange, update its software from time to time as required by the Financier (acting reasonably) to enable the Financier to have the access to Company Records contemplated by, and otherwise exercise the Financier's rights under, this clause 21.5.

## 21.6 Disputes Relating to Receivables

### a. Handling of disputes

If any dispute arises or disputes arise in respect of a single Debtor that represents 5% or more by value of the Eligible Receivables or Debtors that in the aggregate represent 10% or more by value of the Eligible Receivables:

- i. the Company must promptly give the Financier full details and, if reasonably requested by the Financier, copies of all correspondence relating to the dispute/s; and
- ii. the Company must do its best promptly to settle such dispute/s, failing which, if an Event of Default subsists, the Financier may settle such dispute/s on such terms as the Financier reasonably thinks appropriate.

## **b. Dilutions and Discounts**

- i. The Company must ensure that its calculation of rebates and other Discounts (including for purposes of determining Net Receivables Value) at all times accurately reflects the terms of the relevant contract such that the value of the Receivables at all times reflects all rebates and other Discounts to which the Debtors are or are likely to become entitled.
- ii. The Company must include details of all Dilutions arising during a period in the Company Records.

## **c. Performance**

The Financier may reasonably direct the Company to give it evidence of the performance by the Company of all of the Company's obligations to each Debtor. If the Company fails to perform those obligations, the Financier may, if an Event of Default subsists, do so as the Company's agent and at the Company's expense.

## **d. Indemnity**

The Company indemnifies the Financier against any cost, losses, expenses or liabilities that the Financier reasonably sustains or incurs directly or indirectly as a result of dealing with Disputes by Debtors or any matters arising out of such Disputes. The indemnity in this clause 21.6(d) does not extend to any cost, losses, expenses or liability that the Financier suffers or incurs to the extent that it is caused by any fraud or wilful misconduct or any negligence of the Financier (or any officer, agent or employee of the Financier).

## **21.7 Termination of Facility**

### **a. Termination**

On termination of the Facility and repayment of all amounts and discharge of all obligations due to the Financier under the Finance Documents (to the satisfaction of the Financier, which must be confirmed in writing by notice to

the Company) the assignment of the Purchased Receivables to the Financier will be taken to have terminated and all legal and equitable title to the Purchased Receivables will without further action be taken to have reverted to the Company.

### **b. Continued ownership**

The Financier will continue to own all Receivables until clause 21.7(a) has been confirmed by it in writing to apply. The confirmation in clause 21.7(a) is not to be unreasonably withheld or delayed.

### **c. Rights upon termination**

Except as otherwise provided, the termination of the Facility will not affect the rights of the Financier in respect of:

- i. any Receivables which came into existence prior to its termination; or
- ii. all transactions or events having their inception prior to the termination of the Facility, including the Financier's rights to set off monies or combine accounts.

Such rights and obligations remain in full force and effect until the Financier receives the full Account Balance.

## **22. Insurance**

- a. The Obligors must take out and maintain Insurance Policies with a reputable insurer in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the business and assets of the Group (including all insurance required by applicable law).
- b. The Company will comply, and ensure that the Group members comply, with all terms of each Insurance Policy to the extent that a failure to do so might cause such policy to be cancelled or an insurer to refuse to make a payment under such policy and will not do or permit to be done or omit to do anything which may render an Insurance Policy void, voidable or

unenforceable (in whole or in part) and will not vary, amend, rescind, cancel or terminate an Insurance Policy without the Financier's prior written consent (not to be unreasonably withheld or delayed).

c. Each Insurance Policy shall be on terms that the relevant insurer will inform the Financier:

- i. of any cancellation, alteration, termination or expiry of the relevant Insurance Policy;
- ii. of any default in the payment of any premium or failure to renew the relevant Insurance Policy; and
- iii. of any act, omission or event of which the insurer has knowledge which may make the relevant Insurance Policy void, voidable or unenforceable (in whole or in part),

and the Company must promptly notify the Financier if it receives any notice from the insurer or from the insurance broker.

d. The interest of the Financier must be noted on each Insurance Policy of the Group for its interest as an interested party. Copies of a certificate of currency in respect of any such Insurance Policy confirming the amount and terms of insurance must, if required by the Financier, be promptly provided to the Financier for inspection or retention.

e. The Obligors will pay, on the date due for payment, all and any relevant insurance premiums and other sums payable under each Insurance Policy and shall, if the Financier so requests, provide a certificate of currency for each Insurance Policy within five Business Days of renewal of the applicable Insurance Policy.

f. If any Obligor fails to:

- i. make payment of any insurance premium referable to an Insurance Policy by its due date for payment

or fails to produce any certificate of currency to the Financier on demand; or

- ii. comply with any other requirement with respect to the Insurance Policies which might be expected to cause any such Insurance Policy required hereunder to be void or suspended, materially impaired or defeated,

then, without prejudice to the rights of any of the Financier under any Finance Document, it will immediately notify the Financier, and the Financier may, at the Company's expense, make any such payment to the insurer, or effect or renew such Insurance Policy as the Financier may, in its reasonable opinion, consider necessary to restore full compliance with the requirements of this document, and any sums paid by the Financier in this regard shall be paid immediately upon the Financier's request, together with interest at the rate provided for in clause 9.2.

- g. The Company undertakes in the event of the invalidity or ineffectiveness of any Transaction Security in relation to a Credit Insurance Policy and/ or the proceeds thereof, without prejudice to any other provision in this clause 22, to hold the proceeds for the Financier absolutely, separately from the Obligor's other monies, and will immediately pay them to the Financier, upon the Financier's reasonable request, without any set-off, waiver or reduction whatsoever or howsoever arising (and, following receipt, the Financier must hold those proceeds and, if no Event of Default is continuing, make them available to the Company to be applied as permitted or required under this clause 22).

## **23. Events of Default - all companies**

Each of the events or circumstances set out in this clause 23 is an Event of Default.



### **23.1 Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- a. its failure to pay is caused by:
  - i. administrative or technical error; or
  - ii. a Disruption Event; and
- b. payment is made within 2 Business Days of its due date.

### **23.2 Financial covenants**

Any requirement of clause 19 (Financial covenants) is not satisfied and such breach has a Material Impact.

### **23.3 Misrepresentation**

- a. An Obligor gives the Financier information or makes a representation or warranty to the Financier which is materially incorrect or misleading (including by omission).
- b. No Event of Default under paragraph (a) above will occur unless there is a Material Impact.

### **23.4 Early Repayment and Cross-Default**

- a. Early repayment is required under a separate financing arrangement between an Obligor and the Financier.
- b. Default-based action is taken against an Obligor by the Financier because of an event of default that would amount to an Event of Default under this clause 23.

### **23.5 Reporting**

Any Obligor does not provide financial information required by the Finance Documents.

### **23.6 Priority of Transaction Security**

A Transaction Security ceases for any reason to have the priority ranking contemplated in it, and, in the reasonable opinion of the Financier, this has a Material Impact.

### **23.7 Ineffectiveness of any Transaction Security**

Any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.

### **23.8 Enforcement proceedings**

Enforcement proceedings are taken against an Obligor or an Obligor's assets by another creditor.

### **23.9 Insolvency**

An Obligor is Insolvent, goes into bankruptcy, voluntary administration, some Other Insolvency Process or Arrangement, or no longer has legal capacity.

### **23.10 Control**

- a. There has been any change in the legal or beneficial ownership or management control or Control of an Obligor or their business without the Financier's consent.
- b. There has been any change in the status, capacity or composition of an Obligor without the Financier's consent.

### **23.11 Proscribed Person**

In the Financier's reasonable opinion, any Obligor, member of the Group or anyone associated with the Facility is a Proscribed Person.

### **23.12 Unlawfulness**

The Financier believes on reasonable grounds that an Obligor has not complied with the law or any requirement of a statutory authority, or it becomes unlawful for the Company or the Financier to continue with the Facility.

### **23.13 Unauthorised purpose**

The Company applies any amounts borrowed by it under the Facility for any purpose other than general working capital purposes or any other purpose specified under "Additional Facility Purposes" in the Details Schedule.

### 23.14 Unlicensed business

An Obligor does not maintain any license or permit necessary to carry on all or a material part of its business.

### 23.15 No insurance

An Obligor does not, or ceases to, maintain insurance as required by clause 22 (Insurance) of this document.

### 23.16 Trustee Events of Default

- a. **(change of trustee)** Without the consent of the Financier, a Trustee ceases to be sole trustee of the Trust, or any step is taken to:
  - i. remove it as trustee, or to appoint a substitute or additional trustee; or
  - ii. bring any part of the Trust Assets under the control of any court.
- b. **(Trust winding up):**
  - i. Any application or order is made in any court for:
    - A. accounts to be taken in respect of a Trust; or
    - B. any property of a Trust to be brought into court or administered by the court under its control;
  - ii. the beneficiaries of a Trust resolve to wind up the Trust;
  - iii. a Trustee is required to wind up the Trust under the Trust Deed or applicable law; or
  - iv. the winding up of the Trust commences for any other reason.
- c. **(Trust not constituted)** The Trust is held, or is conceded by a Trustee, not to have been properly constituted.
- d. **(no Trust authorisation)** A Trustee ceases to be authorised under the Trust Deed or at law to own the Trust Assets in its name or to perform its obligations under each Finance Document to which it is a party.
- e. **(dealing with units)** If the Trust is a unit trust, any unit is issued, transferred,

redeemed, encumbered or otherwise dealt with, other than to an existing unitholder, without the prior consent of the Financier.

- f. **(default by trustee)** A Trustee breaches any of its obligations as trustee of the Trust.

## 24. Further Events of Default

Except where the Company is a Small Business, each of the events or circumstances set out in this clause 24 is an Event of Default.

### 24.1 Other obligations

- a. An Obligor does not comply with any provision of the Finance Documents (other than those referred to in clause 23.1 (Non-payment) and clause 23.2 (Financial covenants)) or with any condition of any waiver or consent by the Financier under or in connection with any Finance Document which the Obligors have accepted as a condition.
- b. No Event of Default under clause 24.1(a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the earlier of (A) the Financier giving notice to the Company and (B) the Company becoming aware of the failure to comply.

### 24.2 Cross default

- a. Early repayment is required under a separate financing arrangement between an Obligor and another creditor.
- b. Default-based action is taken against an Obligor by another creditor because of an event of default that would amount to an Event of Default under clause 23 (Events of Default - all companies).

### 24.3 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group is not discharged within 10 Business Days.

#### 24.4 Unsatisfactory audit

Any audit conducted pursuant to clause 20.7 of this document reveals a material inaccuracy in the Receivables reported to the Financier pursuant to this document.

#### 24.5 Vitiating of Finance Documents

A provision of a Finance Document is or becomes or is claimed by a party other than the Financier to be wholly or partly invalid, void, voidable or unenforceable in any material respect.

#### 24.6 Cessation of business

Any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except pursuant to a Permitted Disposal.

#### 24.7 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any member of the Group or its assets.

#### 25. Material Impact

Where the Company is a Small Business, the Financier will only act on an Event of Default set out in clause 23 (Events of Default - all companies) if the Financier reasonably considers the event has had, or is likely to have:

- a. a Material Impact; or
- b. a material adverse effect on the Financier's legal or reputation risk where clause 23.3 (Misrepresentation), 23.12 (Unlawfulness) or 23.13 (Unauthorised purpose) applies.

#### 26. Acceleration

- a. On and at any time after the occurrence of an Event of Default

which is continuing the Financier may:

- i. where an Event of Default is capable of remediation, give the Company a notice specifying the grounds on which the Financier considers there is an Event of Default and allowing a reasonable period for the Company to remedy the Event of Default. Except where clause 26(a)(ii) applies, a reasonable time will not be less than 30 days
- ii. where:
  - A. an Event of Default is not capable of remediation; or
  - B. it is reasonable for the Financier to manage a Material Impact relating to the nature of the relevant Event of Default, the Company's particular circumstances or the value of the Financier's security;

the Financier may give the Company a shorter period or no period to remedy the default

- b. At the conclusion of the period specified in the notice given under clause 26(a), the Financier may:
  - i. by notice to the Company:
    - A. cancel the Credit Limit whereupon it shall immediately be cancelled;
    - B. declare that all or part of the Account Balance, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
    - C. declare that all or part of the Account Balance be payable on demand, whereupon they shall immediately become payable on demand by the Financier; and/or

- ii. exercise any or all of its rights, remedies, Powers or discretions under the Finance Documents or at law.

## 27. Independent accountant

- a. Without limiting the rights of the Financier under this document, at any time after the occurrence of an Agency Termination Event or a Default the Financier may by notice to the Company appoint a firm of independent accountants or other experts to review and report to the Financier on the affairs, performance, financial condition and business of any Obligor.
- b. Each Obligor shall do everything in its power to ensure any review and report referred to in clause 27(a) above can be carried out promptly, completely and accurately. Without limitation, it shall co-operate fully with the review and ensure that the accountants and experts are given access to all premises and records of each Obligor and are given all information concerning any Obligor which they require from time to time.

## 28. Review Event

- a. If a Review Event occurs:
  - i. the Company shall promptly notify the Financier upon becoming aware of that event;
  - ii. the Financier shall not be obliged to fund a Drawdown; and
  - iii. the Financier is entitled to review the provision of any or all of the Facility and the terms upon which it is provided, including whether it is to be continued to be provided at all and in doing so the Financier agrees to consult with the Company in good faith for a period of 30 days with a view to determining a course of action.

- b. If a course of action is agreed, the Financier will not exercise its rights unless the Company fails to comply with the agreed course of action or the course is determined by the Financier not to have been effective.
- c. If, following the 30 day consultation period, the Financier determines in its discretion, acting reasonably, that it will not continue to provide any or all of the Facility, the Financier may on 30 days' written notice:
  - i. cancel the Credit Limit;
  - ii. declare that all or part of the Account Balance be immediately due and payable whereupon it shall become immediately due and payable; and/or
  - iii. if the Code applies, make modifications to the Events of Default.

## **Section 9**

### **Changes to Parties**

#### **29. Assignments**

##### **29.1 Assignments by an Obligor**

No Obligor may assign, create any interest in or otherwise deal with all or any of its rights under any Finance Documents without the prior consent of the Financier, such consent not to be unreasonably withheld (and where the consent relates to a Small Business any decision as to whether or not to consent must be provided within a reasonable time).

##### **29.2 Assignments by the Financier**

The Financier may assign, novate, create any interest in or otherwise deal with all or any of its rights under any Finance Document at any time as it sees fit (provided that where the assignment is in relation to a Small Business it is to a wholly owned subsidiary of the Financier or for the purposes of securitisation, funding or similar arrangements, or otherwise in connection with the disposal of substantially all of the Financier's facilities of this nature to another funder and otherwise the Financier has given notice to the Obligor and received consent from the Obligor (such consent not to be unreasonably withheld and any decision as to whether or not to consent to be provided within a reasonable time)). The Financier may disclose any confidential information in respect of this document or an Obligor to any potential assignee of the Financier's rights under this document.

#### **30. Conduct of Business by the Financier**

No provision of this document will:

- a. interfere with the right of the Financier to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- b. oblige the Financier to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

- c. oblige the Financier to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## Section 10 Administration

### 31. Confidential Information

The Financier may for the purpose of exercising any of its rights, powers or remedies under this document disclose to any person any documents, records or information about any of the Obligors, the Obligors' business or affairs, this document or the transactions evidenced or contemplated by this document that the Financier reasonably thinks appropriate notwithstanding that, but for this clause, the disclosure of those documents or records or that information would be in breach of any law or duty owed by the Financier to the Obligors in respect of those documents or records or that information including a duty to keep them secret or confidential.

### 32. Payment Mechanics

#### 32.1 Payments to the Financier

On each date on which an Obligor is required to make a payment under a Finance Document, that Obligor shall make the same available to the Financier (unless a contrary indication appears in a Finance Document) for value in Sydney on the due date in immediately available funds.

#### 32.2 Distributions to an Obligor

The Financier may (with the consent of the Obligor or in accordance with clause 33 (Set-off)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### 32.3 Partial payments

- a. If the Financier receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents,

the Financier shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

- i. **first**, in or towards payment pro rata of any amounts payable but unpaid in respect of fees, costs, expenses, losses or liabilities of the Financier;
- ii. **secondly**, in or towards payment of any accrued interest, fees or commission due but unpaid under the Finance Documents;
- iii. **thirdly**, in or towards payment of any principal due but unpaid under the Finance Documents and any amount due but unpaid under clause 13 (Other Indemnities); and
- iv. **fourthly**, in or towards payment of any other sum due but unpaid under the Finance Documents.

- b. The Financier may vary the order set out in clauses 32.3(a)(i) to 32.3(a)(iv) inclusive.
- c. Clauses 32.3(a) and 32.3(b) above will override any appropriation made by an Obligor.

#### 32.4 No set-off by Obligors

- a. Where the Company is a Small Business then if the Financier has assigned this document or any of its rights under this document (equitably or legally) or granted security over this document or any of its rights under this document, irrespective of whether notice of such assignment or security has been given to the Company, as part of, or to assist with its funding of this document or similar agreements or raising funding for the Financier's business generally, including by way of securitisation then all payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim,

- b. Where the Company is not a Small Business, all payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### 32.5 Business Days

- a. Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- b. During any extension of the due date for payment of any principal or Unpaid Sum under this document interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### 32.6 Currency of account

Australian dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.

### 32.7 Disruption to payment systems etc.

If either the Financier determines (in its discretion, acting reasonably) that a Disruption Event has occurred or the Financier is notified by the Company that a Disruption Event has occurred:

- a. the Financier may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Financier may deem necessary in the circumstances;
- b. the Financier shall not be obliged to consult with the Company in relation to any changes mentioned in clause 32.7(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

- c. any such changes agreed upon by the Financier and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents; and
- d. the Financier shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Financier) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause 32.7.

### 32.8 Anti-money laundering

- a. The Financier may delay, block or refuse to process any payment or other transaction without incurring any liability if the Financier knows or reasonably suspects that the transaction or the application of its proceeds will:
  - i. breach, or cause the Financier to breach, any applicable laws or regulations of any jurisdiction (including any sanctions); or
  - ii. allow the imposition of any penalty on the Financier or its Affiliates under any such law or regulation, including where the transaction or the application of its proceeds involves any entity or activity the subject of any applicable sanctions of any jurisdiction binding on the Financier or its Affiliate, or the direct or indirect proceeds of unlawful activity.
- b. As soon as practicable after the Financier becomes aware that it will delay, block or refuse to process a transaction under clause 32.8(a), it will notify the Company and consult in good faith but in each case only to

the extent the Financier determines it is legally permitted to do so. In making that determination the Financier shall act reasonably.

- c. The Company shall promptly advise the Financier if any Obligor enters into any Finance Document in the capacity as agent and promptly supply, or procure the supply of, such information as may be reasonably requested by the Financier from time to time in relation to any principal for which an Obligor may be acting.
- d. Each Obligor undertakes to exercise its rights and perform its obligations under the Finance Documents in accordance with all applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or sanctions.

### 33. Set-Off

The Financier may, but need not, set off any matured obligation due from an Obligor under the Finance Documents against any obligation owed by the Financier to that Obligor (whether or not matured), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Financier may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### 34. Notices

#### 34.1 Address for and method of notice

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to the Finance Documents:

- a. may be made or delivered:
  - i. in accordance with clause 45; or
  - ii. in writing and addressed to the address or addresses identified with its name in the Details Schedule or to any other address as may be notified to the other party from time to time or, if an

address set out in the Details Schedule or otherwise notified is no longer appropriate, to the usual place of business or registered office of the recipient last known to the sender; and

- b. will be deemed to be duly given or made:
  - i. **in the case of delivery in person:** when delivered personally or to the address, place of business or registered office of the intended recipient referred to in this clause;
  - ii. **in the case of post:** on the third day after having been posted as prepaid ordinary mail or, in the case of international post, on the seventh day after having been posted as prepaid airmail; and
  - iii. **in the case of email:**
    - A. on production of a 'delivery receipt' (or an equivalent expression) by the sender's electronic transmission system stating that the message was delivered to the recipient; or
    - B. at the time of transmission where no return electronic message is received by the sender stating that the transmission was not delivered or effected.

#### 34.2 Time of notice

If a notice, request, demand, consent, approval, agreement or other communication is deemed to have been duly given or made after 5.00 pm in the place to which the communication is addressed or on a day which is not a Business Day in that place, it will be deemed to be duly given or made at 9.00 am on the next Business Day in that place.

#### 34.3 Electronic transmissions

Each Obligor acknowledges that the Financier will not be liable (whether in negligence or otherwise) in the event of the falsity, inaccuracy, insufficiency



or forgery of or in any notice, request, demand, consent, approval, agreement or other communication given or made or purporting to be given or made pursuant to any electronic transmission of an Obligor (including via the Financier System), or the failure of the Financier to enquire whether any facsimile or electronic transmission has been accurately given to or received by it for any cause whatsoever or has been given or sent by an authorised person or has been signed by one or more Authorised Officers of an Obligor.

#### **34.4 English language**

All documents, notices or other communications given under or in connection with any Finance Document must be in English.

#### **34.5 Provision of statements**

The Financier will deliver statements to the Company in writing in accordance with the terms and conditions applicable to the Company Bank Account.

### **35. Calculations and Certificates**

#### **35.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Financier are prima facie evidence of the matters to which they relate.

#### **35.2 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

#### **35.3 Settlement conditional**

If:

- a. the Financier has at any time released or discharged:
  - i. an Obligor from its obligations under any Finance Document; or
  - ii. any assets of an Obligor from a Transaction Security,

in either case in reliance on a payment, receipt or other transaction to or in favour of the Financier; or

- b. any payment, receipt or other transaction to or in favour of the Financier has the effect of releasing or discharging:
  - i. an Obligor from its obligations under any Finance Document; or
  - ii. any assets or property of an Obligor from a Transaction Security; and
- c. that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason (including under any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person); and
- d. that claim is upheld or is conceded or compromised by the Financier, then:
  - e. the Financier will immediately become entitled against that Obligor to all rights (including under any Finance Document) as it had immediately before that release or discharge;
  - f. that Obligor must, to the extent permitted by law:
    - i. immediately do all things and execute all documents as the Financier may, acting reasonably, require to restore to the Financier all those rights; and
    - ii. indemnify the Financier against all costs, losses, expenses or liabilities suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

## 36. Partial Invalidity and Severance

- a. If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- b. If any term of any Finance Document is found to be illegal, void or unenforceable by the Financier for fairness or any other reason (for example, if a court declares it so), then the remaining terms are to be interpreted in a way which preserves as much of the Finance Document and the operative effect as the law allows.

## 37. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Financier, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Financier shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

## 38. PPSA Provisions

### 38.1 Exclusion of certain provisions

Where the Financier has a Security Interest under any Finance Document, to the extent the law permits:

- a. for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i. the Financier need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and

- ii. sections 142 and 143 of the PPSA are excluded;

- b. for the purposes of section 115(7) of the PPSA, the Financier need not comply with sections 132 and 137(3);
- c. each party waives its right to receive from the Financier any notice required under the PPSA (including a notice of a verification statement); and
- d. if the Financier exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Financier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

This does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other clause in any Finance Document.

### 38.2 Further assurances

Whenever the Financier requests an Obligor to do anything:

- a. to ensure any Finance Document (or any Transaction Security) is fully effective, enforceable and perfected with the contemplated priority;
- b. for more satisfactorily assuring or securing to the Financier the Secured Property or other Transaction Security in a manner consistent with the Finance Documents; or
- c. for aiding the exercise of any power in any Finance Document,

the Obligor shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any Security Interest.

### 38.3 PPSA Policies

Each Obligor must:

- a. maintain in effect and implement written policies for purposes of the PPSA in relation to the documentation, perfection and registration of its security interests under the PPSA and when requested from time to time provide evidence satisfactory to the Financier that the Obligors are complying with those policies;
- b. do everything required to ensure that its security interests have attached and are perfected by registration on the PPSR including:
  - i. where applicable, that the security interest is properly perfected against the relevant grantor as a PMSI within the time periods for registration of a PMSI that are prescribed by the PPSA; and
  - ii. if the security interest is capable of being perfected by a serial numbered registration on the PPSR, it is properly perfected against the relevant grantor as a serial numbered registration at all times;
- c. if the Financier requests at any time, ensure any original sub-lease or supply agreement that is a chattel paper
  - i. permanently and prominently marked in such a way that no other person can take possession of the document without being put on notice of the Financier's security interest in the document as chattel paper;
  - ii. delivered to the Financier and held in the Financier's possession; and
- d. provide evidence (from time to time, when required by the Financier), in a form acceptable to the Financier, that the requirements of this clause 38.3 (PPSA Policies) have been complied with.

### 38.4 PPS registrations

Each Obligor undertakes, if requested by the Financier, to use reasonable endeavours to have each registration removed from the PPSR which, as at the date of this document:

- a. does not perfect a valid Permitted Security Interest; or
- b. is incorrect; or
- c. is in favour of a secured party that the relevant Obligor does not have a trading relationship with.

### 38.5 Nature of transfers of Receivables and Chattel Paper

The Company and the Financier agree that for the purposes of section 109(1) of the PPSA, each transfer of Receivables or Chattel Paper under the Facility does not secure payment or performance of an obligation.

### 38.6 Appointment of nominee for registration

For the purposes of section 153 of the PPSA, the Financier appoints the relevant Company as its nominee, and authorises each such Obligor to act on its behalf, in connection with a registration under the PPSA of any security interest under this document in favour of the relevant Obligor which is:

- a. evidenced or created by Chattel Paper;
- b. perfected by registration under the PPSA; and
- c. transferred to the Financier under this document.

This authority ceases when the registration is transferred to the Financier.

### 39. Counterparts

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

#### **40. Indemnities and Reimbursement**

All indemnities and reimbursement obligations (and any other payment obligations of any Obligor) in each Finance Document are continuing and survive termination of the Finance Document, repayment of the Account Balance and cancellation or expiry of the Credit Limit.

#### **41. Banking Code of Practice**

The Code applies to the Facility provided under this document if the Company is a Small Business as defined in the Code. If this is the case, the relevant provisions of the Code will also apply to a Personal Guarantor.

#### **42. Sanctions and Refusing Service**

- a. Australia, as a member state of the United Nations, is obliged to implement United Nations Security Council sanctions. Australia also may be required to implement other international sanctions and sometimes imposes unilateral sanctions. Sanctions can cover various subject matters including financial restrictions.
- b. Consequently, the Financier may be prohibited from dealing with certain persons or entities. This means that if the Financier is aware that an Obligor is a Proscribed Person, then the Financier may be required to suspend, cancel or refuse the Obligors services or close or terminate any account, Facility, transaction, arrangement or agreement with the Obligors. The Financier may also be required to freeze the Obligors' assets. The Obligors could incur significant costs as a result of these actions.

#### **43. Changes to the Financier Software**

If the Company has selected "Financier Software" in the Details Schedule for Information Exchange, and if the Financier Software ceases to exist or no longer facilitates the provision or maintenance of the Facility on the terms contemplated by this document then the Financier may

require the Obligors to execute such amendments to this document as may be reasonably required by the Financier to ensure that the Facility may continue to be provided to the Company on the terms and in the manner contemplated by this document (which may be on the basis of "Manual Reporting" in accordance with Annexure A).

#### **44. Rights and obligations of Financier**

##### **44.1 Offer and acceptance**

The parties acknowledge that:

- a. the Details Schedule initially constitutes a request or offer by each party that signs it for the Financier to provide the Facility on the terms set out in the Details Schedule (as completed or supplemented by this document); and
- b. the Financier may accept that request or offer, and enters into the Working Capital Facility Agreement comprised by that Details Schedule and this document, by making the Facility available to the Company, including (if the Company has selected "Financier Software" in the Details Schedule for Information Exchange) through the Financier Software.

##### **44.2 Financier benefit and burden**

If the Financier has entered into the Working Capital Facility Agreement by making the Facility available to the Company:

- a. that Facility has been made available by the Financier to the Company on the condition that the Financier has the benefit of, and is entitled to enforce, the Working Capital Facility Agreement comprised in the Details Schedule, this document and each other Finance Document even if it has not executed such document; and
- b. the Financier is bound by the terms of the Working Capital Facility Agreement comprised in the Details Schedule and this document.

- 45. Variation and changes the Financier can make without your agreement**
- a. A variation of any terms of this document must be in writing and signed by the parties (other than any variations permitted to be made by the Financier under or in accordance with this document).
  - b. If the Company requests and the Financier agrees to a change to the terms of this document, the variation will only become effective on execution of a written amendment between the Company (on behalf of the Obligors) and the Financier.
  - c. The types of changes the Financier can make without your agreement are listed in the table below with the minimum notice period and the way the Financier will let the Company know of the changes.
  - d. Each of the type of changes below is a separate right and this clause 45 is to be read as if each change was a separately expressed right.
  - e. If the Company doesn't like any of the changes, the Company may repay the Facility without fee or charge (where a fixed interest rate applies, usual break costs apply unless the change was to make the interest rate a fixed interest rate in which event no break costs may apply).
  - f. No notice of change is required if a particular change has already been agreed (for example, the expiry of special pricing on a certain date).
  - g. The Financier will act reasonably in exercising these rights and will only exercise these rights in relation to a Small Business where it is reasonably necessary to protect its legitimate interests. Any reference in the table to "we", "our" or "us" is to the Financier and "you" is to the Company.

What Financier can change	Minimum notice period	How Financier will notify Company about the change
<b>Fees and charges</b>		
Introduce a new fee or, increase an existing fee or apply an existing fee in new circumstances	30 days	In writing or by advertising in the national or local media
Introduce or change a government charge	Reasonably promptly after the government notifies us <sup>2</sup>	In writing <sup>1</sup> or by advertising in the national or local media
Reduce or remove a fee	No later than the day of the change	In writing <sup>1</sup> or by advertising in the national or local media
<b>Interest rate</b>		
Change an interest rate	No later than the day of change <sup>3</sup>	In writing <sup>1</sup> or by advertising in the national or local media
Change how the Financier calculates interest, how often the Financier charges or pays interest, or which part of your balance interest applies to	If the Financier believes the change is unfavourable to the Company, 30 days. Otherwise, no later than the day of the change	In writing <sup>1</sup> or by advertising in the national or local media

1. Notices in writing may be provided electronically – see clause 34.1

2. We do not have to tell you about this type of change if the government publicises the introduction or change.

3. We do not have to tell you about an interest rate change if we are unable to because the interest rate is calculated according to a money market or some other external reference rate, or a rate otherwise designated as a variable or floating rate.

What Financier can change	Minimum notice period	How Financier will notify Company about the change
<b>General changes</b>		
<p>Make any change to the terms and conditions that apply to the Facility.</p> <p>For example, the Financier may make changes (including but not limited to) to:</p> <ul style="list-style-type: none"> <li>• reflect changes to the cost of providing the Facility to the Company;</li> <li>• reflect changes in technology or our processes, including computer systems;</li> <li>• include new product features or services or to ensure that the terms and conditions match our operational processes;</li> <li>• discontinue or replace a product, and for this purpose Financier may change your product to a different product with similar features to the discontinued or replaced product;</li> <li>• to consolidate or simplify our terms and conditions and contractual documents;</li> <li>• to add, change or remove any concessions or benefits;</li> <li>• to bring us into line with our competitors, industry or market practice or best practice in Australia or overseas;</li> <li>• to manage risks including credit risk, fraud, operational or regulatory risk;</li> <li>• as necessary or desirable to comply with or reflect any law, code of conduct, regulator guidance or requirement, or decision of a court or other dispute resolution process; or</li> <li>• to correct errors, omissions, inconsistencies or ambiguities.</li> </ul>	<p>30 days, if the Financier believe the change is unfavourable to the Company</p> <p>Otherwise no later than the day the change takes effect.</p>	<p>In writing<sup>1</sup> for changes specific to Company and not generally applicable to other customers.</p> <p>Otherwise, in writing or by advertising in the national or local media.</p>

## 46. Complaints

- a. If you have a complaint about our services, products, facilities or any other aspect of Commonwealth Bank, we'd like to hear from you.
- b. To make a complaint, please contact us on 1800 805 605. You can also make a complaint in the following ways:
  - i. verbally or in writing directly to your relationship manager or at any one of our Commonwealth Bank branches;
  - ii. by visiting [www.commbank.com.au/contact-us/compliments-complaints](http://www.commbank.com.au/contact-us/compliments-complaints) and completing the online complaint form; or
  - iii. by writing to us, care of:  
CBA Group Customer Relations  
Reply Paid 41  
Sydney, NSW 2001
- c. We strive, wherever possible, to resolve your complaint within 5 working days.
- d. You will be advised of the details (including the timeframes) of our internal dispute process, and an officer with the appropriate authority to resolve the dispute will investigate your complaint thoroughly. We will do our best to resolve your complaint promptly.
- e. If you're not satisfied with our handling of your matter, you can refer your complaint to external dispute resolution. The Australian Financial Complaints Authority (AFCA) scheme is a free service established to provide you with an independent mechanism to resolve specific complaints. The contact details for AFCA are:  
  
Website: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Phone: 1800 931 678 (free call)  
  
Postal address: GPO Box 3,  
Melbourne, VIC, 3001

- f. To find out more information about our Complaints process visit: [www.commbank.com.au/contact-us/compliments-complaints](http://www.commbank.com.au/contact-us/compliments-complaints).



## **Section 11**

### **Governing Law and Enforcement**

#### **47. Governing Law**

This document is governed by New South Wales law.

#### **48. Enforcement**

##### **48.1 Jurisdiction**

- a. The courts having jurisdiction in the State of New South Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this document (including a dispute relating to the existence, validity or termination of this document) (a Dispute).
- b. The parties agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- c. Notwithstanding clause 48.1(a), the Financier shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Financier may take concurrent proceedings in any number of jurisdictions.

##### **48.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor:

- a. irrevocably appoints the Company as its agent for service of process in relation to any proceedings in connection with any Finance Document; and
- b. agrees that failure by the Company to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

## **Schedule 1**

### **Security Schedule**

#### **1. SECURITY INTEREST**

##### **1.1 Variations and replacements**

Each Grantor acknowledges that the Finance Documents may be varied or replaced from time to time. Each Grantor confirms that the Secured Money includes any amount payable under any Finance Document as varied or replaced. Each Grantor confirms that this applies regardless of:

- a. how the Finance Document is varied or replaced;
- b. the reasons for the variation or replacement; and
- c. whether the Secured Money decreases or increases or the tenor thereof is extended or the Finance Document is otherwise more onerous as a result of the variation or replacement.

#### **2. DEALING WITH COLLATERAL**

##### **2.1 Restricted dealings**

- a. Subject to clause 2.1(b), no Grantor may do, or agree to do, any of the following unless it is permitted to do so by clause 2.2 or another provision of this document:
  - i. create or allow another interest in any Collateral; or
  - ii. dispose, or part with possession, of any Collateral.
- b. Where by law the Financier may not restrict the creation of any Security Interest in an asset ranking after the Security Interests granted in 16.1:
  - i. clause 2.2(a) will not restrict that creation; and
  - ii. the relevant Grantor must ensure that before that Security Interest is created the holder of that Security Interest enters into a deed of priority with the Financier in form and substance satisfactory to the Financier.

## 2.2 Permitted dealings

A Grantor may do any of the following in the ordinary course of the Grantor's ordinary business unless it is prohibited from doing so by another provision in this document:

- a. create or allow another interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset; or
- b. withdraw or transfer money from an account with a bank or other financial institution.

## 2.3 Revolving Assets

If a Control Event occurs in respect of any Collateral then automatically:

- a. that Collateral is not (and immediately ceases to be) a Revolving Asset;
- b. any floating charge over that Collateral immediately operates as a fixed charge; and
- c. the relevant Grantor may no longer deal with the Collateral under clause 2.2.

## 2.4 Conversion to Revolving Assets

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge under this clause 2 (Dealing with Collateral), the Financier may give the relevant Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge. This may occur any number of times.

## 2.5 Control of inventory

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to the security interest under this document. No Grantor may remove any such inventory without obtaining the specific and express authority of the Financier to do so.

## 3. EVENTS OF DEFAULT

### 3.1 Assistance in enforcement

At any time while the Security of a Grantor is enforceable, that Grantor must take all

action required by the Financier, a Receiver or an attorney to assist any of them to realise its Collateral and exercise any Power including:

- a. executing all transfers, conveyances, assignments and assurances of any of its Collateral;
- b. giving all notices, orders, directions and consents which they consider expedient;
- c. doing anything necessary or desirable under the laws of any place where its Collateral is situated; and
- d. doing anything necessary for a call to be made on its uncalled capital or to collect its called but unpaid capital.

## 4. RECEIVERS: APPOINTMENT AND POWERS

### 4.1 Joint Receivers

If more than one person is appointed as a Receiver, the Financier may at its option specify whether the appointment and the Powers of each appointee will be joint or joint and several. If no specification is made, the appointment and the Powers of each appointee will be joint and several.

### 4.2 Remuneration of Receiver

The Financier may fix or vary the remuneration of any Receiver.

### 4.3 Agent of Grantor

Each Receiver will be the agent of the relevant Grantor. That Grantor will be solely responsible for all acts and omissions by, and the remuneration of, each Receiver.

### 4.4 Powers of Receiver

Without the need for any consent from any Grantor or any other person, each Receiver will have all of the following powers:

- a. **(Section 420)** all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act;
- b. **(possession)** take possession or control, or give up or re-take possession or

- control, of any Collateral as often as it chooses;
- c. **(business)** carry on or concur in carrying on any business of a Grantor;
  - d. **(options)** grant to any person an option to purchase any Collateral;
  - e. **(acquire)** acquire any interest in any property, in its name or in the name or on behalf of a Grantor, which on acquisition forms part of the Collateral;
  - f. **(surrender)** surrender or transfer any Collateral to any person or exchange any Collateral with any person for any other property whether of equal value or not;
  - g. **(enforce)** exercise or obtain the benefit of, or refrain from exercising or obtaining the benefit of, any right, power, authority, discretion or remedy of a Grantor which forms part of the Collateral;
  - h. **(moneys)** give effectual receipts for all moneys and other assets which come into its hands and pay any cost or other debt owing by a Grantor or any other person;
  - i. **(formation)** promote the formation of companies or other entities intended to purchase any Collateral or assume any obligation of a Grantor or for any other purpose;
  - j. **(capital)** make calls in respect of any uncalled capital of a Grantor and collect or enforce payment of any called but unpaid capital of a Grantor;
  - k. **(Dispose)** whether or not in possession, to dispose of the Collateral in such manner and on such terms as the Receiver thinks fit;
  - l. **(Transfer on sale)** execute transfers and assignments of the Collateral (including in the name of a Grantor), and do everything to complete any sale that the Receiver thinks necessary;
  - m. **(Register)** to register itself or its nominee as the holder of the marketable securities (or any of the marketable securities) forming part of the Collateral;
  - n. **(Borrow or raise money)** to borrow or raise from the Financier or any other person any money which may be required for any purposes and, if the Receiver thinks fit, to secure any money borrowed or raised by the grant of any Security over the Collateral (whether in the name of a Grantor or otherwise) so that the Security ranks in priority to, *pari passu* with or after this document. The Financier will not be bound to inquire as to the necessity or propriety of any indebtedness nor be responsible for the misapplication or non-application of any money so borrowed or raised;
  - o. **(Lease)** whether or not the Receiver has taken possession, to lease or licence the Collateral in the name of the relevant Grantor or otherwise, for any period and on any terms or to vary or terminate a lease or licence;
  - p. **(Collection)** collect book debts or monetary claims forming part of the Collateral or sell, factor or discount any of them on any terms it thinks fit;
  - q. **(Engage)** to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver) and the Receiver may act on any advice given by any person so engaged;
  - r. **(Take up entitlements)** to exercise all or any of the rights, privileges or entitlements conferred on or accruing to the registered holder of any marketable securities in all respects as if it were the absolute beneficial owner of the marketable securities, including to attend and vote at any

- meeting of the members or creditors of any Issuer or of the holders of any marketable securities or class of marketable securities forming part of the Collateral, to appoint attorneys and proxies, and to prove in any winding up or scheme of arrangement;
- s. **(Take up issues)** to take up and accept any rights issues, bonus shares or other marketable securities of each Issuer, and to pay any sum or sums of money necessary or expedient for the taking up of those rights, shares or other marketable securities, with any sum or sums paid being deemed to be and become part of the Secured Money and bearing interest accordingly;
  - t. **(Receive Income)** to receive all Income payable on the marketable securities forming part of the Collateral and to apply any money so received towards satisfaction of the Secured Money without being liable to account for it;
  - u. **(Conduct works)** to repair, renew, replace, renovate or clean the Collateral, to erect any new buildings or make any improvements to any land forming part of the Collateral and to demolish, alter, rebuild or extend any existing buildings on the Collateral;
  - v. **(Invest proceeds against contingencies)** if any of the Secured Money is contingent, to invest, deposit or hold the Collateral in a form or mode of investment for the time being as the Receiver thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until that part of the Secured Money ceases to be contingent;
  - w. **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, any Grantor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Collateral or entered into in the exercise of any Power;
  - x. **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of any Grantor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Collateral or otherwise;
  - y. **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Collateral, to grant to any person involved time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Financier;
  - z. **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Collateral;
  - aa. **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Collateral or for the security or other benefit of the Financier;
  - ab. **(Delegate)** with the Financier's prior approval, to delegate to any person, for any time, any of the Powers including this power of delegation;
  - ac. **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of any Grantor which the Receiver believes is necessary to protect, preserve or improve any or all of the Collateral and the rights of any Grantor or the Financier in respect of any agreement for sale and to obtain for the Financier all of the benefits of this document and any other Finance Document;
  - ad. **(Operate bank accounts)** to open or operate any bank account in the name of any Grantor (whether alone or jointly

with any other person) to the exclusion of the relevant Grantor and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the relevant Grantor cheques, promissory notes, bills of exchange and other negotiable instruments;

ae. **(Do all other things)** to do all things the law allows an owner of any interest in the Collateral, or any Controller of the Collateral, to do; and

af. **(Do all things as are expedient)** to do all other acts and things without limitation as the Receiver thinks expedient,

and any further powers as the Financier confers on a Receiver by notice in writing to that Receiver (all of which Powers may be exercised without notice, demand or lapse of time being necessary unless required by a law which cannot be excluded).

#### **4.5 Indemnity**

The Financier may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Financier is obliged to pay any money under any indemnity, that money will become part of the Secured Money.

#### **4.6 Nature of Receiver's Powers**

The Powers of a Receiver must be construed independently and no one Power limits the generality of any other Power. Any dealing under any Power of a Receiver will be on the terms and conditions the Receiver thinks fit.

#### **4.7 Status of Receiver after commencement of winding up**

a. The power to appoint a Receiver under clause 16.4 may be exercised even if, at the time an Event of Default occurs or at the time a Receiver is appointed, the liquidation of the relevant Grantor has occurred or will occur.

b. If for any reason, including operation of law, a Receiver appointed in the circumstances described in clause 16.4 or appointed at any other time ceases to be the agent of a Grantor as a result of the liquidation of the Grantor, the Receiver immediately becomes the agent of the Financier.

#### **4.8 Termination**

The Financier may give up possession of any Collateral and terminate any receivership or agency at any time.

### **5. FINANCIER'S POWERS**

#### **5.1 Exercise of Power**

While any Event of Default is continuing, the Financier may without notice and whether or not a Receiver has been appointed:

- a. exercise all or any of the Powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those Powers had been expressly conferred on the Financier;
- b. exercise all other Powers; and
- c. appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the Powers (or any of them) to the agent or agents (in which case clauses 16.4, 4.2, 4.5, 8.2, 8.3 and 8.4 will apply as if the agent or agents were each appointed as a Receiver).

#### **5.2 Act jointly**

The Financier and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Security over the Collateral or by any receiver or receiver and manager appointed by that other holder and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Financier or the relevant Receiver thinks fit.

### 5.3 Power of attorney

- a. In consideration of the Financier entering into the Finance Documents, each Grantor irrevocably appoints the Financier and each director, secretary, attorney or other person authorised by a party to act on its behalf for the purposes of the Finance Documents and each Receiver, severally, as an attorney of that Grantor with power:
  - i. at any time:
    - A. to do anything that the Financier may reasonably require to enable it to perfect its Security under this document by control over marketable securities; and
    - B. to appoint (and remove at will) at any time any person as a substitute for an attorney; and
    - C. at any time while an Event of Default is continuing;
    - D. to do all acts which ought to be done by that Grantor under any Finance Document;
  - ii. to do all acts to exercise or give effect to any Power;
  - iii. to demand, sue for, recover and receive the Collateral from any person, in the name of a Grantor or in the name of the Financier, the relevant Receiver or any other attorney appointed under this clause 5.3; and
  - iv. to take further action and to execute further instruments which are, or are in the opinion of the Financier, the relevant Receiver or any other attorney appointed under this clause 5.3, necessary or desirable to secure more satisfactorily the payment of the Secured Money or to sell or otherwise Deal with the Collateral.
- b. Each Grantor:
  - i. agrees that each attorney may exercise powers under this power

of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Grantor and either the interests of that attorney or a related body corporate or Related Entity of that attorney or another duty of that attorney; and

- ii. ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 5.3(b)(i) or in respect of which that attorney has a personal interest.
- c. Each Grantor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this document.
- d. Each Grantor will do anything requested by the Financier, acting reasonably, to enable the Financier to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

### 5.4 Financier may make good any default

If any Grantor defaults in satisfying any of its obligations under any Finance Document, the Financier may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the reasonable opinion of the Financier to make good or to attempt to make good that default to the reasonable satisfaction of the Financier. Each Grantor will take all steps which the Financier, acting reasonably, requests to facilitate the exercise by the Financier of its rights under this clause 5.4. The Financier will not be a mortgagee, chargee or Financier in possession simply as a result of the exercise of its rights under this clause 5.4.

## 5.5 Notice for exercise of Powers

- a. The Powers may be exercised by the Financier at any time while any Event of Default is continuing, without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- b. Subject to clause 5.5(c), if required by any law which cannot be excluded, one day is fixed as the period for which:
  - i. default must continue in the payment of any part of the Secured Money before the Financier may give any notice or demand as required by any law affecting the Powers; and
  - ii. default in the payment of any part of the Secured Money must continue after the giving of any notice or demand before any Power may be exercised.
- c. If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Financier or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

## 5.6 Exclusion of PPSA provisions

To the extent the law permits:

- a. for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i. the Financier need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - ii. sections 142 and 143 are excluded;
- b. for the purposes of section 115(7) of the PPSA, the Financier need not comply with sections 132 and 137(3);
- c. each Grantor agrees not to:
  - i. exercise its rights to make any request of the Financier under section 275 of the PPSA;

- ii. authorise the disclosure of any information under that section; or
  - iii. waive any duty of confidentiality that would otherwise permit non-disclosure under that section; and
- d. each Grantor waives its rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement).

However, nothing in this clause prohibits the Financier or any Receiver from giving a notice under the PPSA or any other law.

## 5.7 Exercise of Powers

If the Financier exercises a Power in connection with this document, that exercise will be taken to be an exercise of the Power under the general law unless the Power is only available under the PPSA or the Financier states otherwise at the time of exercise.

## 6. APPLICATION OF MONEY

### 6.1 Priority of payments

All money received by the Financier or by any Receiver as a result of the exercise of the Powers and all other proceeds of enforcement under this document will be applied in the following order:

- a. **(Incidental to exercise of Powers)** in payment of all costs and expenses incurred in or incidental to the exercise or attempted exercise of any of the Powers;
- b. **(Outgoings)** in payment of any other outgoings as any Receiver or the Financier thinks fit;
- c. **(Payment of Security having priority)** in payment of all amounts secured by any Security of which the Financier is aware which have priority to this document, in the order of their priority;
- d. **(Payment of Secured Money)** in payment of the balance of the Secured Money then owing or contingently or prospectively owing, whether or not due and payable;

- e. **(Subsequent Security)** in payment of all amounts secured by any subsequent Security of which the Financier is aware in the order of their priority; and
- f. **(Surplus)** the surplus (if any) belongs to the relevant Grantor but does not carry interest. The Financier or relevant Receiver, as applicable, will pay this amount to the relevant Grantor by paying this amount into an account in the name of the relevant Grantor.

If there is any conflict between this clause 6 and any other part of this document, this clause 6 prevails.

## 6.2 Money received

In applying any money towards satisfaction of the Secured Money in the manner contemplated by clause 6, the relevant Grantor will be credited only with as much of the money available for that purpose as is actually received by the Financier or any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

## 6.3 Application of money

The Financier and each Receiver has a discretion, which it shall exercise reasonably, to apply any money received as a result of the exercise of any Power or which is the proceeds of enforcement of this document (and which is to be applied in payment of the Secured Money) in reduction of any part or parts of the Secured Money, whenever and on whatever account it became secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.

## 6.4 Reliance on certificate

In making any payment to the holder of any other Security as contemplated by clause 6, the Financier and each Receiver may rely on a certificate from that holder as to the amount secured by the relevant Security and is not bound to inquire as to

the accuracy of the certificate or whether the amount referred to is validly secured by the Security.

## 7. LIABILITY AND RELEASE

### 7.1 Continuing obligation

This document constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing.

### 7.2 Personal liability

No grant of full or partial satisfaction of or discharge from this document by the Financier will, unless it expressly provides otherwise, release any Grantor from personal liability under this document or under any other Finance Document until none of the Secured Money is owing (whether actually, contingently or prospectively).

### 7.3 No Grantor's liability affected

The liability of each Grantor under this document:

- a. **(Absolute)** is absolute and is not subject to the execution of this document by any other Grantor or the execution of any other Finance Document or any other document by any person or to the performance of any condition precedent or subsequent, including as between any Obligor and the Financier or between any two or more Obligors; and
- b. **(Not Affected)** will not be affected by any act, omission, matter or thing that would otherwise operate by law to reduce or release any Grantor from its liability including any of the following:
  - i. the occurrence or continuance of any Event of Default;
  - ii. the receipt by the Financier of any payment, dividend or distribution under any law, agreement, arrangement or scheme relating to insolvency or administration of assets in relation to any Obligor;



- iii. any Finance Document, or any payment or other act the making or doing of which would otherwise have formed part of the Secured Money or other obligations under the Finance Documents, being, becoming or being conceded to be illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future, including as a result of any:
  - A. law;
  - B. act or omission by any person;
  - C. legal limitation, disability or incapacity of any Obligor;
  - D. improper exercise of a Power; or
  - E. Power being suspended or postponed by statute, any court order or otherwise;
- iv. the Financier accepting the benefit of any other Security;
- v. the Financier granting time, waiver or other indulgence or concession to, or making any composition or compromise with, any Obligor;
- vi. the Financier forbearing or neglecting to exercise any remedy or right it has for the enforcement of any Finance Document (other than an express waiver granted in favour of the relevant Grantor in respect of its liabilities under this document);
- vii. any laches, acquiescence or other act, neglect, default, omission or mistake by the Financier;
- viii. the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Financier or any Obligor of any Finance Document or any of the Secured Money (other than an express release or discharge of the relevant Grantor from all of its liabilities under this document);
- ix. any variation to any Finance Document, whether or not the variation is substantial or material or imposes an additional liability on or is onerous on any Obligor;
- x. the full, partial or conditional release or discharge by the Financier, or by operation of law or otherwise, of any person from any Finance Document or any obligation to pay or repay any of the Secured Money (other than an express release or discharge of the relevant Grantor from all of its liabilities under this document);
- xi. the release of any property from any other Security, or the substitution of any property in place of any other property now or after the date of this document the subject of any other Security;
- xii. the Financier wasting, destroying, abandoning, prejudicing or not perfecting, maintaining, preserving, enforcing or realising or not properly enforcing or realising any other Security;
- xiii. the failure to perfect or to obtain the benefit, or the loss or impairment, of any other Security by operation of law or otherwise;
- xiv. the postponement or loss of the priority attaching to any other Security;
- xv. the opening or operation of any new account with the Financier by any Obligor;
- xvi. the transfer or assignment of the benefit of any Finance Document or of any of the obligations under any of those documents;
- xvii. any failure by the Financier to disclose to any Grantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Financier relating to or affecting any Obligor

at any time before or during the currency of any Finance Document, whether prejudicial or not to the rights and liabilities of any Grantor and whether or not the Financier was under any duty of disclosure; or

xviii. the Financier entering into a covenant with any other Obligor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or winding up, participate in any scheme of arrangement or reconstruction, prove in any bankruptcy or winding up or do any other act, matter or thing in respect of the liability of any other Obligor.

#### **7.4 Claim on Grantor**

The Financier is not required to:

- a. make any claim or demand on any other Obligor or any other person;
- b. enforce any other Finance Document or other Security; or
- c. enforce any other Power,

in any case, before making any demand on any Grantor under this document or otherwise enforcing this document.

#### **7.5 Release of Collateral**

The Financier will be under no obligation to grant a release of the Collateral from this document unless at the time the release is to be provided, none of the Secured Money is owing (whether actually, contingently or prospectively).

### **8. PROTECTION AND INDEMNITY**

#### **8.1 No conflict**

The Financier and each Receiver may exercise any Power, even though the exercise of that Power involves a conflict between any duty owed to any Grantor by the Financier or that Receiver and any duty owed by the Financier or that Receiver to any other person or the interests of the Financier or that Receiver. No contract

will be void or voidable by virtue of that conflict of duty or interest nor will the Financier or Receiver be liable to account to any Grantor or any other person for any money or property as a result of that conflict.

#### **8.2 No notice or enforcement**

The Financier need not:

- a. give any notice of this document to any debtor of any Grantor, to any purchaser or to any other person;
- b. enforce payment of any money payable to any Grantor; or
- c. realise the Collateral or take any steps or proceedings for that purpose.

#### **8.3 Indemnity**

Each Grantor will on demand indemnify and keep the Financier, any Receiver and any Delegate indemnified in respect of all costs and Taxes incurred by the Financier, any Receiver or any Delegate:

- a. in the exercise, attempted exercise of any Power, unless the same is due to its own negligence, fraud or wilful misconduct;
- b. as a consequence of any Event of Default occurring or continuing; and
- c. by reason of the Financier redeeming or taking a transfer of any Security ranking in priority to or pari passu with this document,

and each Grantor will defend all actions, proceedings, claims or demands brought by any person in relation to any matter the subject of this indemnity.

#### **8.4 Protection of persons**

No person acquiring any money or asset from or paying or handing over any money or asset to or otherwise dealing with the Financier, any Receiver or any Delegate, or to whom is tendered for registration an instrument executed by the Financier, any Receiver or any Delegate, will be:

- a. bound to inquire:
  - i. whether the Financier or the

- relevant Receiver or Delegate has the right to dispose of any money or asset;
- ii. whether any Event of Default has occurred or is continuing;
- iii. whether any of the Secured Money is owing or payable;
- iv. whether the relevant Receiver or Delegate has been properly appointed;
- v. as to the propriety or regularity of the exercise or purported exercise of any Power; or
- vi. as to any other matter or thing;
- b. affected by actual or constructive notice that any transaction, document or other dealing is unnecessary or improper; or
- c. concerned to see to the application of any money or asset, or be answerable or accountable for any loss or misapplication,
  - and:
  - i. in the case of any person paying or handing over any money or asset, that person will be discharged from any further liability to pay or hand over that money or asset; and
  - ii. the irregular, improper or unnecessary exercise of any Power and any other dealing of any nature with the Financier, any Receiver or any Delegate will be, as regards the protection of any such person, deemed to be authorised by each Grantor and valid.

## **9. PAYMENTS**

### **9.1 Money repayable as agreed or on demand**

Each Grantor will pay the Secured Money to the Financier in Australian Dollars or any other currency specified in the relevant Finance Document in immediately available funds not later than 11.00 am in the place of payment on the due date (or if no due date is specified, on the date of demand by the Financier) and in

compliance with any other requirements of the Finance Documents.

### **9.2 Credit balances of other accounts**

In determining the amount of the Secured Money, no credit need be allowed by the Financier for any credit balance in any joint or other account of any Grantor with the Financier, or for any other money owing by the Financier to any Grantor.

### **9.3 Merger**

If the liability of any Grantor to pay any of the Secured Money becomes merged in any judgment or order, that Grantor will as an independent obligation pay, in accordance with the Finance Documents, interest at the rate which is the higher of that payable under the Finance Documents and that fixed by or payable under the judgment or order.

### **9.4 Suspense account**

- a. Each Grantor acknowledges and agrees that the Financier may deposit into a suspense account any amount it or any Receiver receives as a result of the exercise of any Power for such time as it considers appropriate without the Financier being obliged to apply any such amount towards payment or repayment of the Secured Money.
- b. If the Financier determines this is required or the Financier deposits any amount into a suspense account as contemplated by clause 9.4(a) in order to preserve rights to prove in the bankruptcy or liquidation of a person, that amount will not be treated as an amount received as a result of the exercise of any Power until such time as the amount is withdrawn from the suspense account.

## **10. MISCELLANEOUS**

### **10.1 Further acts and documents**

- a. Each Grantor will, and will procure that all persons having or claiming any estate or interest in the Collateral from time to time after the date of this document will, on demand by the

Financier (and at the entire cost and expense of the Grantors) perform all acts and execute and deliver all further documents as the Financier, acting reasonably, requires:

- i. for more satisfactorily securing to the Financier the payment of the Secured Money;
  - ii. to perfect the Security created by this document over the Collateral; or
  - iii. for facilitating the exercise of any Power.
- b. Without limiting clause 10.1(a) if the Financier determines that a Finance Document (or a transaction related to a Finance Document) is or contains a Security, each Grantor agrees to promptly do anything (including amending any Finance Document or executing any new document) which the Financier reasonably requires for the purposes of:
- i. ensuring that the Security is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
  - ii. enabling the Financier to apply for registration, or give any notification, in connection with the Security so that the Security has the priority required by the Financier; or
  - iii. enabling the Financier to exercise rights in connection with the Security.
- c. If the Security does not at any time extend or attach to any Collateral then while an Event of Default is continuing and the Financier (directly or through a Receiver) is enforcing its rights under this document, each Grantor must comply with all instructions of the Financier in relation to the performance of the Grantor's obligations and the exercise of the Grantor's rights in relation to that Collateral.

## **10.2 Powers cumulative**

Each Power is cumulative and in addition to each other Power available to the Financier or any Receiver.

## **10.3 Consents**

A consent required under this document from the Financier may be given or withheld, or may be given subject to any conditions, as the Financier (in its absolute discretion) thinks fit, unless this document expressly provides otherwise.

## **10.4 Indemnities**

- a. Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion, expiration or release of this document.
- b. It is not necessary for the Financier to incur any expense or to make any payment before enforcing a right of indemnity conferred by this document.
- c. Each Grantor must pay on demand any amount it must pay under an indemnity in this document.

## **10.5 Time of essence**

Time is of the essence in respect of each Grantor's obligations under this document.

## **10.6 Binding on each signatory**

This document binds and is enforceable against each Grantor who executes it despite:

- a. any other person not executing this document or its execution being defective in any way; or
- b. any obligation or liability of any other party under this document not being binding or enforceable against that party for any reason.

## **10.7 Registration**

The Financier may register this document or the security interest created by this document, or any financing statement or financing change statement relating to this document or the security interest

created by this document, in the manner prescribed by law to ensure the full efficacy of this document and the security interest created by this document in favour of the Financier in all relevant jurisdictions.

## **Schedule 2**

### **Conditions Precedent**

#### **Conditions Precedent to Financial Close**

##### **1. Obligors**

All documents and other evidence reasonably requested by the Financier in order for the Financier to carry out all necessary “know your customer” or other similar checks in relation to each Obligor and each of its authorised signatories under all applicable laws and regulations where such information is not already available to the recipient.

##### **2. Finance Documents**

- a. This document duly executed.
- b. Each of the Transaction Security Documents, duly executed.
- c. Each of the Finance Documents specified in the Details Schedule, duly executed
- d. A copy of all notices required to be sent under the Transaction Security Documents executed by the relevant Obligors and, where applicable, duly acknowledged by the addressee.
- e. All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.

##### **3. Legal opinions**

If reasonably required by the Financier, an opinion in form and substance satisfactory to the Financier from a law firm acceptable to the Financier as to matters of New South Wales law and/or such other laws as may be required by the Financier.

##### **4. Due diligence**

The Financier is satisfied with all business, environmental and legal due diligence it reasonably requires including

asset appraisals, insurance reviews, environmental audits and collateral reviews including a sample (selected by the Financier or its advisers) of not less than 20 invoices taken from sales made over the past 12 months and associated proof of delivery and receipt of payment.

## 5. Other documents and evidence

- a. A copy of any other Authorisation or other document, opinion or assurance which the Financier reasonably considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- b. Evidence that the fees, costs and expenses then due from the Company pursuant to clause 10 (Fees) and clause 14 (Costs and Expenses) have been paid or will be paid by the first Drawdown.
- c. A current group structure chart for the Group.
- d. A copy, certified by an authorised signatory of the Company to be a true copy, of the Original Financial Statements of the Company and each Guarantor.
- e. Completion of all site visits and valuations reasonably required by the Financier, to the reasonable satisfaction of the Financier.
- f. Completion of all contract reviews (including unfair contract terms, NCCP or other reviews) as may be reasonably required by the Financier, to the reasonable satisfaction of the Financier.
- g. Completion of all procedures testing required by the Financier.
- h. Completion by the Financier of random invoice sampling with respect to the Receivables (with associated delivery notes or confirmation of service,

purchase orders and cash/payment receipt for said invoices) as may be required by the Financier.

- i. Receipt of such duly executed Deeds of Release (if any) as may be reasonably required by the Financier such that the Transaction Security has the priority intended by it under this document.
- j. If the Obligors include any Personal Guarantor, a signed certificate of independent legal advice executed by each such Personal Guarantor.
- k. In relation to each Fraud Indemnifier (if any), a signed certificate of independent legal advice executed by each such Fraud Indemnifier.
- l. Copies of certificates of currency in respect of all required Insurance Policies (which note the Financier as an interested party (if applicable)).
- m. A copy of each Trust Deed corresponding to a Trustee Obligor, together with any amendments reasonably required by the Financier in relation to that Trust Deed.
- n. A notice of assignment executed in blank on the Company's letterhead in form and substance satisfactory to the Financier.
- o. If the purpose of the Facility includes (in whole or in part) the refinancing of existing facilities of the Obligors, copies of the last 12 months of bank statements for all existing facilities being refinanced.

## 6. Additional Conditions Precedent to Financial Close

Receipt or confirmation by the Financier that each Additional Condition Precedent to Financial Close has been provided to the Financier or met, in each case to the reasonable satisfaction of the Financier.

## **Annexure A**

### **Manual Reporting**

The following provisions apply where the Company has selected "Manual Reporting" for Information Exchange in the Details Schedule. These provisions do not apply if the Company is a Small Business as defined in clause 1.7 of the Standard Terms.

#### **1. Additional Definitions**

**Reserve** means an amount calculated by the Financier (acting reasonably and in good faith) at any time (whether or not an Agency Termination Event or Default has occurred or is anticipated to occur) which is deducted from the amounts that are made available to the Company under the Facility as a result of events, factors or circumstances determined by the Financier (acting reasonably and in good faith) to reduce the likely value of the Eligible Receivables if an Agency Termination Event or Event of Default were to occur at any point in the future, including without limitation the following factors:

- a. increases in write offs or bad debts incurred by the Company;
- b. delays in providing any reporting required by this document;
- c. changes in law;
- d. matters that are likely to increase the cost of recovering the Eligible Receivables;
- e. changes in the business of the Company.

#### **2. Other Provisions**

For purposes of clause 6 (Credit Limit and Drawdowns) of this document, the Financier may hold Reserves against the amounts that would otherwise be made available to the Company to be borrowed under this document, which amounts will be notified by the Financier to the Company from time to time and deducted by the Financier from the Credit Limit on a real time basis.

#### **3. Additional Reporting**

If the Company has selected "Manual Reporting" for Information Exchange in the Details Schedule then the Company must provide the Financier with the following Additional Reporting:

- a. once a week (and in any event not more than 7 Business Days after the last such report) (or such shorter time period as may be notified by the Financier to the Company at any time (which for the avoidance of doubt may include daily reporting)), in relation to the close of business on the preceding day, a copy of the Company's full debtors' ledger reflecting all debits and credits in respect of all Receivables;
- b. within 10 days of the end of each month, in relation to the last day of the preceding month, a Transaction Report setting out the information in relation to the Receivables required by this document and the Financier together with the following information in electronic format (and such other information as is reasonably requested by the Lender) in form and substance satisfactory to the Lender; and
- c. such other reporting as may be required by the Financier from time to time which might include reconciliation reports, an accounts receivable roll forward analysis, an accounts receivable aging analysis and the Company's accounts payable schedule.







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