

SECURED MED-E-CREDIT TERMS AND CONDITIONS (MEDE:12/2014)



1 Definitions and interpretations

1.1 Definitions

Agreement means the agreement between you and the Lender to provide a Facility in accordance with the Letter of Offer and the Terms and Conditions;

Amortising Loan Facility means the amortising loan facility made available to you by the Lender in accordance with the Terms and Conditions;

Associated Entity means any entity which is controlled by the Borrower or controls the Borrower;

Bank Bill Swap Reference Rate means for any Interest Period:

- (a) the Bank Bill Swap Reference Rate: Average Bid rate for bank accepted Bills with a tenor equal to 90 days, as published in the Australian Financial Review on the first Business Day of the Interest Period; or
- (b) if there is no such rate published, or if for any other reason it is not possible in the opinion of the Lender to determine the Bank Bill Swap Reference Rate: Average Bid rate as provided in paragraph (a) of this definition, the Bank Bill Swap Reference Rate for the month is that rate determined by the Lender in good faith to be the equivalent rate having regard to the current Bill market or comparable indices if then available;

Bill means a bill of exchange as defined in the Bills of Exchange Act 1909 (Cth);

Borrower means the person or persons or corporation identified as the Borrower in the Schedule;

Business Day means:

- (a) for the purposes of clause 16, a day on which banks are open for business in the city where the notice or other communication is received excluding a Saturday, Sunday or public holiday; and
- (b) for all other purposes, a day on which banks are open for business in Sydney and Melbourne excluding a Saturday, Sunday or public holiday;

Closing Interest Balance means on any date

- (a) the Closing Principal Balance at the most recent Interest Date;
- (b) minus any prepayments and plus any redraws made after that date;
- (c) plus any arrears of interest, fees and charges incurred but unpaid since that date.

Closing Principal Balance means on any date the total amount outstanding on your account excluding any interest charges and any fees, charges and expenses;

Daily Percentage Rate means, on any date, the then applicable Interest Rate (or if the Default Rate applies, the then applicable Default Rate) divided by 365;

Default Rate on any date means the then applicable Interest Rate plus 4% per annum;

Direct Debit Authority means the order on your bankers signed by you in the Original application form;

Direct Debit Account means your bank account specified in the Direct Debit Authority;

Encumbrance means any interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power, by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above;

Establishment Fee means the amount (if any) so called and notified to you by the Lender;

Event of Default means any event specified in clause 13.3;

Facility means the credit facility made available to you by the Lender in accordance with the Terms and Conditions;

Facility Amount means the amount specified by the Lender as the maximum amount available to you under the Facility, as specified in the Schedule as the facility amount or as subsequently notified to you by the Lender at any time;

Facility Maturity Date means:

- (a) in the case of the Amortising Loan Facility, the last Interest Date as notified to you by the Lender; and
- (b) in the case of the Amortising Loan Facility and the Revolving Facility:
 - (1) at the Lender's election, the date on which any Event of Default occurs;
 - (2) the date which is 3 Business Days after the date on which the Lender gives you notice that an event has occurred which makes it unlawful, or impracticable, for the Lender to make, fund or continue the Facility or to perform its obligations under these Terms and Conditions;
 - (3) the date which is 3 Business Days after the date on which the Lender gives you notice that an event has occurred which in the opinion of the Lender, formed in its absolute discretion, may have a material adverse effect on the value of your assets or the assets of any Guarantor, or on your ability or the ability of a Guarantor to perform any of the obligations under the Terms and Conditions;
 - (4) the date which is 3 Business Days after the date on which the Lender gives you notice that it has reviewed its records regarding the relevant Facility and any Relevant Document and has formed the opinion in its absolute discretion that it is not in the Lender's interests for the Lender to continue the Facility or to perform its obligations under the Terms and Conditions.

Guarantee Limit means the guarantee limit set out in the Original application form.

Guaranteed Moneys means all of your debts and monetary

liabilities to the Lender under the Terms and Conditions and under any Relevant Document irrespective of whether the debts or liabilities;

- (a) are present or future;
- (b) are actual, prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by or on account of you alone, or severally or jointly with any other person;
- (e) are owed to or incurred for the account of the Lender alone, or severally or jointly with any other person;
- (f) are owed to any other person (whether disclosed or not) as agent for or on behalf of the Lender or as principal of the Lender;
- (g) are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; or
- (h) comprise any combination of the above;

Guarantor means, where you are a corporation, the person or each of the persons who signed the Original application form and named as such in the Schedule;

Interest Date means the first day in each month, or such other dates as otherwise notified to you by the Lender from time to time;

Interest Instalment means the amount drawn by the Lender from the Direct Debit Account on account of interest on an Interest Date. The Interest Instalment is calculated by multiplying the daily Closing Interest Balance of your account by the Daily Percentage Rate;

Interest Period means the period commencing on an Interest Date and ending on the day immediately preceding the next Interest Date, except that:

- (a) the first Interest Period commences on the day you make your first drawing; and
- (b) the last Interest Period ends on the day your Facility terminates.

Interest Rate means:

- (a) in relation to a Revolving Facility, the Bank Bill Swap Reference Rate for the relevant Interest Period together with the Margin specified in the Schedule;
- (b) in relation to an Amortising Loan Facility means:
 - (1) if the loan is a fixed rate Amortising Loan Facility, the fixed rate determined by the Lender and notified to you in the Schedule; or
 - (2) if the loan is a variable rate Amortising Loan Facility, the interest rate (as notified by the Lender from time to time);

Lender means Medfin Australia Pty Limited and includes any principal for whom it is agent whether identified or not.

Maintenance Fee means the fee (if any) so called and notified to you by the Lender from time to time;

Original application form means the form which you (and the Guarantor if any) executed when you applied to the Lender for the Facility;

Power means any right, power, authority, discretion or remedy conferred on the Lender by the Terms and Conditions or any applicable law;

Prepayment Fee means, in the case of an Amortising Loan

Facility, the amount determined in accordance with clauses 7.3 and 7.4;

Relevant Document means:

- (a) this Agreement;
- (b) any agreement for the provision of financial accommodation including, without limitation, any loan agreement, lease, hire purchase agreement or rental agreement between the Borrower or any Associated Entity thereof and the Lender, or any agreement whereby the Lender agrees to acquire equipment at the request of the Borrower or any Associated Entity thereof;
- (c) any Security.

Repayment Instalment means, in the case of an Amortising Loan Facility, an amount notified to you by the Lender in the Schedule, as varied by the Lender under clause 8.2(b) from time to time.

Revolving Facility means the revolving credit facility made available to you by the Lender in accordance with the Terms and Conditions and any terms subsequently notified to you by the Lender;

Security means:

- (a) the bill of sale, mortgage, charge or other instrument referred to in the Schedule granted or to be granted by you or any Guarantor to the Lender on or about the date of the Terms and Conditions; and
- (b) any other Encumbrance, guarantee or other document or agreement created or entered into by the Borrower, Guarantor or any other person at any time,

as security for the repayment of any of the Facility;

Secured Property means the property subject to the Security;

Tax means:

- (a) any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or
- (b) any income, stamp or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any governmental agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above;

Terms and Conditions means these terms and conditions, including the Schedule, and any other terms and conditions subsequently notified to you by the Lender;

Transaction Fee means the fee (if any) so called and notified to you by the Lender from time to time;

You means the Borrower and "your" has a corresponding meaning.

1.2 Interpretation

Headings and underlinings are for convenience only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (d) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;

- (e) a reference to a party to any document includes that party's successors and permitted assigns; and
- (f) no provision will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Terms and Conditions of that provision.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day:

- (a) in relation to clause 3.4, that thing may be done on the next Business Day; and
- (b) otherwise, that thing must be done on or by the preceding Business Day.

PART 2

Revolving Facility

The following provisions of this Part 2 apply only in the case of a Revolving Facility.

2 Operating the Revolving Facility

2.1 Drawings; Expiry

- (a) The Lender will, if you so request, provide the Facility Amount in more than a single drawing.
- (b) If you do not request any drawing within six (6) months after the date of the Original application form, the Lender may notify you that the Revolving Facility is terminated.

2.2 Deposits to Direct Debit Account

Each drawing including the first drawing, and each redrawing, will be deposited by the Lender into your Direct Debit Account.

2.3 Prepayments from Direct Debit Account

You may prepay the Facility Amount in whole or in part at any time by direct debit from your Direct Debit Account in favour of the Lender.

2.4 Redraw

You may draw any undrawn part of the Facility Amount, or redraw any prepaid amount.

2.5 Reduction of Facility Amount

- (a) You may request the Lender, by written notice to reduce the Facility Amount.
- (b) If the Lender consents to your request pursuant to paragraph (a) above, the Lender will determine a revised Facility Amount and notify you of this determination.
- (c) You shall not be entitled to redraw any amount of which the Facility Amount is reduced in accordance with this clause.

2.6 Telephone or other requests

- (a) You may request drawings or redrawings by telephone to the Lender's nominated telephone number, or by any other telephone or electronic means approved from time to time by the Lender and notified to you, and the Lender will use all reasonable endeavours to comply with your request as soon as practicable.
- (b) The Lender is entitled to rely on its record of your requests made in accordance with paragraph (a) unless the contrary is proved.

2.7 Monthly statement

- (a) The Lender will provide you with statements of account at least every six months, unless otherwise agreed

showing transactions which have occurred and any fees costs and expense incurred during the month.

- (b) Notwithstanding 2.7(a) if the Lender is not required by law or under the Code of banking Practice to give you a statement of account, it may choose not to do so.

3 Fees and Interest

3.1 Establishment fee

- (a) On the date the Revolving Facility is first funded (and whether or not the whole of the Facility Amount is drawn down on that date) you must pay the Establishment Fee to the Lender.
- (b) The Lender may retain the Establishment Fee from the amount of the first drawing to be deposited to your Direct Debit Account and it is not refundable under any circumstances.

3.2 Transaction fees

If more than four (4) transactions ("excess transactions") consisting of draws, redraws, or prepayments, occur in any one Interest Period, you must pay and the Lender may charge your Direct Debit Account with the Transaction Fee notified to you by the Lender from time to time, in respect of each excess transaction.

3.3 Maintenance Fee

You must pay and the Lender may charge your Direct Debit Account with the Maintenance Fee notified to you by the Lender from time to time.

3.4 Interest

On each Interest Date and on the day your Facility terminates, you must pay and the Lender may charge your Direct Debit Account with interest in arrears on the Closing Interest Balance.

3.5 Calculation of interest

- (a) Interest is calculated on a daily balance by applying the Daily Percentage Rate to the Closing Interest Balance.
- (b) The Lender may increase or otherwise vary the Interest Rate by giving you notice on or before the day the variation takes effect.

3.6 Interest on overdue amounts

- (a) You must pay and the Lender may charge your Direct Debit Account with interest at the Default Rate on any interest or other moneys payable but unpaid.
- (b) Default interest accrues from day to day from and including the due date for payment up to the actual date of payment, both before and, as an additional and independent obligation, after any judgement or other thing into which the liability to pay moneys due and payable but unpaid becomes merged and may be capitalised by the Lender at monthly intervals.

4 Repayment

On the Facility Maturity Date, you must pay to the Lender the Closing Interest Balance and any other moneys due and owing to the Lender under the Facility from the Direct Debit Account or in default, in immediately available funds at the Lender's address specified in the Original application form or subsequently notified to you by the Lender, unless the Lender otherwise directs.

PART 3

Amortising Loan Facility

The following provisions of this Part 3 apply only in the case of an Amortising Loan Facility.

5 Operating the Amortising Loan Facility

5.1 Drawing

The Lender will provide the Facility Amount in relation to the Amortising Loan Facility in a single drawing.

5.2 Establishment fee

- (a) On the date the Amortising Loan Facility is funded you must pay the Lender the Establishment Fee, unless that Establishment Fee has been previously paid.
- (b) The Establishment Fee is not refundable under any circumstances.

6 Interest

6.1 Interest on outstanding moneys

You must pay interest in arrears on the Amortising Loan Facility at the applicable Interest Rate on each Interest Date.

6.2 Calculation of interest

Interest is calculated on a daily basis by applying the Daily Percentage Rate to the Closing Interest Balance for that day.

6.3 Interest on overdue amounts

You must pay interest at the Default Rate on any moneys due and payable, but unpaid. Such interest shall accrue and be capitalised at monthly rests until paid.

7 Payment, repayment and prepayment

7.1 Loan repayment

- (a) You must repay the Amortising Loan Facility in instalments by paying to the Lender on each Interest Date the applicable Repayment Instalment.
- (b) On the Facility Maturity Date, you must in addition pay to the Lender the Closing Interest Balance and any other moneys due and owing to the Lender under the Facility from the Direct Debit Account or in default, in immediately available funds at the Lender's address specified in the Original application form or subsequently notified to you by the Lender, unless the Lender otherwise directs.

7.2 Prepayment

- (a) Subject to clauses 7.3 and 7.4 you may prepay the Amortising Loan Facility in whole or in part on any Interest Date.
- (b) Any amount prepaid under clause 7.2(a) will be applied against the last Repayment Instalment and preceding Repayment Instalment in inverse order.

7.3 Funding Breakage

You must at any time indemnify ("Funding Indemnity") the Lender upon demand against any loss or cost as a direct or indirect consequence of any prepayment or repayment by you to the Lender on account of principal due in respect of any outstanding Facility Amount being made or received on a day prior to the Facility Maturity Date or an Interest Date for any reason, whether in compliance with the provisions of this Agreement or otherwise, but excluding any default by the Lender.

7.4 Break Costs

The Funding Indemnity of you pursuant to this provision shall apply in relation to the amount determined by the Lender as being necessary to compensate the Lender for any loss, cost, premium, penalty or loss or margin incurred by the Lender, without limitation, by reason or on account of:

(contracted funds): funds borrowed or contracted for by the Lender in order to fund the Facility Amount;

(liquidated deposit): the repayment, prepayment, liquidation or re-

employment of deposits or other funds acquired, contracted for or utilised by the Lender to fund the Facility Amount;

(hedging arrangements): the total or partial termination, reversal, changing or rearranging any financial or currency exchange agreement of any kind, including without limitation any currency, principal or interest rate swap or futures agreement or arrangement or hedging transaction, entered into by the Lender to hedge, fix or limit its effective cost of funding the Facility Amount, even if effected in relation to a larger pool of funds; or

(proceeds reinvestment): the reinvestment or re-employment of proceeds of any prepayment or payment.

PART 4

Switching Facilities

8 Switching Facilities

8.1 Option to switch

- (a) The Lender may, at any time, require you to switch from a Revolving Facility to a variable rate Amortising Loan Facility.
- (b) You may, at any time, elect to switch from a Revolving Facility to a variable rate Amortising Loan Facility by giving written notice to the Lender.

8.2 Notice

- (a) The Lender will give you
 - (1) written notice of the requirement to switch pursuant to clause 8.1(a); or
 - (2) written notice of the Lender's acceptance of your election to switch pursuant to clause 8.1(b).
- (b) A notice given pursuant to clause 8.2(a) shall include the following details:
 - (1) the date on which the Revolving Facility is switched to an Amortising Loan Facility (the Switch Date), which shall be the next succeeding Interest Date unless such date is less than 7 days following the Lender's notice under clause 8.2(a) in which event the switch shall take effect on the following Interest Date;
 - (2) the term of the Amortising Loan Facility which shall be 1 year commencing on the Switch Date;
 - (3) the Facility Amount which shall be the Closing Interest Balance at the Switch Date; and
 - (4) the Repayment Instalment payable on each Interest Date commencing on the Switch Date.
- (c) You must comply with the terms of the written notice.

8.3 Provisions relating to a switch

From the Switch Date the provisions of Part 2 cease to apply and in substitution Part 3 will operate.

PART 5

General Terms and Conditions Applicable to the Revolving Facility and Amortising Loan Facility

9 Conditions Precedent

The Lender is not obliged to provide the Facility until the Lender has received all of the following in form and of substance satisfactory to the Lender:

- (a) **Security:** the Security duly executed and delivered in registrable form, together with (if applicable) a duly executed Form 309 and the certificate required by section 265(4)(b) of the Corporations Law;
- (b) **title documents:** documents evidencing title to the Secured Property and, where the Secured Property comprises shares or other marketable securities, blank transfer forms duly executed by each person granting the security; and
- (c) **miscellaneous:** such other documents as the Lender may reasonably request to evidence or ensure proper execution of (including authority to execute) relevant documents, payment of stamp duty and registration of the Security.

10 Your other obligations

10.1 Taxes

You must pay all Taxes in respect of the Facility.

10.2 Notices to the Lender

You must give notice to the Lender

- (a) as soon as you become aware of any Event of Default occurring, and
- (b) of any change in your address or contact telephone number or the address or contact telephone number of Guarantor.

10.3 Costs and expenses

- (a) You must pay all costs and expenses of the Lender in relation to:

- (1) any stamping, registration and discharge in respect of the Facility or any Security;
- (2) the enforcement, protection or waiver, or attempted or contemplated enforcement or protection, of any rights of the Lender under the Facility or any Security,

including, but not limited to, any administration costs of the Lender in connection with the matters referred to in paragraph (b) and any legal costs and expenses and any professional consultant's fees for any of the above on a full indemnity basis.

- (b) The Lender may charge your Direct Debit Account with the costs and expenses in paragraph (1) and (2).

10.4 Financial Statements

You and Guarantor must provide to the Lender on demand:

- (a) true and correct copies of your financial statements and the financial statements of any Guarantor for the previous financial year; and
- (b) such other information showing your financial position or any Guarantor's financial position as the Lender may reasonably require.

10.5 Loan Purpose

You must apply the Facility Amount for business and/or investment purposes only.

11 Repayment

11.1 No set off

Your obligation to pay each amount of money under the Terms and Conditions is absolute and unconditional and is not subject to abatement or set-off or limited or otherwise affected by any act, matter or thing.

11.2 Appropriation of payments

All payments made by you (or by Guarantor) may be appropriated as between principal, interest and other amounts as the Lender in its absolute discretion determines, and until the Lender otherwise determines, in the following order:

- (a) first, all fees costs expenses charges damages and indemnity payments incurred or due and owing by you;
- (b) second, payment of interest due and payable;
- (c) third, repayment or prepayment of the Facility Amount.

12 Representations and warranties

12.1 Representations and warranties

Both you and the Guarantor represent and warrant that:

- (a) incorporation: if either you or Guarantor executed the Original application form as a corporation, it is a corporation as that expression is defined in the Corporations Act having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the Corporations Act;
- (b) corporate power: it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) authority: it has full power and authority to enter into and perform its obligations under the Terms and Conditions and the Security;
- (d) authorisations: each has taken all necessary action to authorise the execution, delivery and performance of the Terms and Conditions and the Security in accordance with the terms of such documents;
- (e) binding obligations: the Terms and Conditions and the Security constitute its legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity; and
- (f) true and correct information: all credit and financial information provided to the Lender (whether by you, Guarantor or any other person) concerning you, the Guarantor or the Facility is true and correct in all material respects.

12.2 Acknowledgements

You and Guarantor acknowledge that the Lender has entered into the Facility in reliance on your and the Guarantor's warranties, representations and acknowledgments set out in the Terms and Conditions.

13 Termination

13.1 Termination of Facility

The Lender may terminate;

- (a) the Revolving Facility at any time upon the Lender giving you 7 Business Days written notice of such termination; or
- (b) the Revolving Facility or the Amortising Loan Facility, as at the date on which the Facility Maturity Date occurs.

13.2 Effect of Termination

If the Lender elects to terminate the Facility pursuant to clause 13.1 the Closing Interest Balance and any accrued but unpaid interest becomes immediately due and payable to the Lender.

13.3 Event of Default

It is an Event of Default if any of the following occurs:

- (a) you fail to pay:
 - (1) in the case of a Revolving Facility, an Interest Instalment on the due date;
 - (2) in the case of an Amortising Loan Facility, a Repayment Instalment or Interest Instalment on the due date; or
 - (3) other moneys payable under the Terms and Conditions within seven (7) days of such moneys becoming due for payment;
- (b) you fail to comply with any of your other obligations under the Terms and Conditions, unless, if such breaches are capable of being remedied, you remedy them within 7 days after the Lender notifies you of the breach;
- (c) you or any Guarantor has an official receiver, trustee in bankruptcy, liquidator, administrator, receiver, receiver and manager or other similar official appointed;
- (d) if you are a natural person, you die and if a Guarantor is a natural person, a Guarantor dies;
- (e) if you are a corporation, any of your shares are (or the beneficial interest in any or your shares is) transferred to any person other than a person previously approved in writing by the Lender;
- (f) you cease to operate the business described in the Original application form or you sell all or substantially all of the assets of the business;
- (g) you or the Guarantor make any false, inaccurate or misleading statement in the Original application form or otherwise in applying for the Facility or any redrawing; or
- (h) you do anything which constitutes an event, whatever called, which causes or enables the acceleration of any payment to be made under any Relevant Document, or the enforcement, termination or rescission of any Relevant Document.

14 Assignment

14.1 Assignment by Borrower

You may not assign any of your rights, interest or entitlements in or under the Facility except with the prior written consent of the Lender.

14.2 Assignment by Lender

The Lender may assign its rights, interests or entitlements in or under the Facility.

15 Waiver

15.1 Waiver must be in writing

Any waiver of a breach of the Terms and Conditions or of any right, interest, remedy or power arising on a breach of the Terms and Conditions must be in writing and signed by the Lender.

15.2 No waiver of breach

A breach of the Terms and Conditions is not waived by any failure or delay in the exercise or partial exercise of any right, interest, remedy or power exercisable in respect of that breach or by the waiver of any other breach whether of the same term or condition or otherwise.

15.3 No waiver of right

A right, interest, remedy or power created or arising on a breach of the Terms and Conditions is not waived by the failure or delay in the exercise, or partial exercise, of that or any other right, interest, remedy or power.

16 Notices

16.1 Form of Notices

Any notice or other communication (other than a telephone request by you in respect of a drawing or redrawing):

- (a) must be in legible writing and in English addressed to the recipient at the address for that party specified in the Original application form or at such other address as a party may specify by written notice to the other parties;
- (b) must be signed by the sender or the sender's authorised agent; and
- (c) may be delivered to a party by being left at, or posted by prepaid post to, that party's address; and a notice sent by prepaid post is regarded as being given by the sender and received by the recipient 3 Business Days from and including the date of posting.

16.2 Lender's records

The Lender is entitled to rely on its records as to any moneys owing and unpaid and the date of postage of any notice unless the contrary is proved.

17 Time of Essence

Time is of the essence in the Agreement.

18 Governing Law and Jurisdiction

18.1 Jurisdiction

- (a) Except as otherwise required by law the Agreement is governed by the laws of New South Wales.
- (b) Each of the parties irrevocably submits to the exclusive jurisdiction of the Courts of New South Wales and waives any objection that the party may have now or in the future:
 - (1) to any place in New South Wales as a venue for any legal action or proceedings; and
 - (2) that any such action or proceeding has been brought in an inconvenient forum.

19 General

19.1 Exclusion of Moratorium

A provision of any statute which at any time directly or indirectly:

- (a) lessens or otherwise varies or affects in your favour or in favour of the Guarantor any obligations under the Terms and Conditions; or
- (b) stays, postpones or otherwise prevents or adversely affects the exercise by the Lender of any interest, remedy, right or Power of the Lender,

is to the extent permitted by law, expressly negated and excluded and all relief, benefit and protection conferred on you or Guarantor by or under that statute is negated and excluded.

19.2 Variation

- (a) The Lender may, at any time, vary the Terms and Conditions if:
 - (1) the Lender is entitled under the Terms and Conditions to do so, or
 - (2) the Lender gives prior written notice in accordance with paragraph (b).
- (b) A notice given pursuant to clause 19.2(a)(2) of a variation to the Terms and Conditions (Varied Terms and Conditions) shall include the following details:

- (1) the date that the Varied Terms and Conditions will become effective, such date not being less than [21] days following receipt of the Lender's notice under clause 19.2(a)(2); and
 - (2) a copy of the Varied Terms and Conditions.
- (c) You may choose not to accept the Varied Terms and Conditions in accordance with the following:
- (1) notify the Lender within [21] days of the receipt of the Lender's notice under clause 19.2(a)(2) of your non acceptance of the Varied Terms and Conditions; and
 - (2) the Closing Interest Balance and any accrued but unpaid interest becomes due and payable within [30] days after receipt of notice to the Lender.
- (d) If no notice is given under clause 19.2(c), then your acceptance of the Varied Terms and Conditions will be deemed.

19.3 Severance

If at any time any of the Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect, it may be severed without affecting the enforceability of the other Terms and Conditions.

19.4 Exercise of Rights

The Lender's rights and Powers under the Facility may be exercised by its agents, nominees and assigns.

19.5 Joint and Several

If you are two or more persons, each person is jointly and severally liable for all amounts payable by you under the Terms and Conditions.

19.6 Remedies not exclusive

The remedies provided in the Terms and Conditions are not exclusive but are cumulative and in addition to all other remedies in the Lender's favour existing at law, in equity or in bankruptcy and the election at any time to enforce any such remedies shall in no way bar the later enforcement from time to time of any other such remedies.

19.7 Set off

If the Borrower has not paid any amount (including, but not limited to principal, rent, hiring charges, interest, fees, costs, expenses or taxes, whether contingent or otherwise) at any time due and payable by it to the Lender in respect of this agreement, the Borrower authorises the Lender to apply any credit balance in any account of the Borrower with any branch or office of the Lender in and towards satisfaction of that amount.

19.8 Code of Banking Practice

Relevant provisions of the Code of Banking Practice apply to this agreement if the Borrower is an individual or small business customer (as defined by the Code). If the Code applies, the Borrower can obtain on request a copy of the Code and general descriptive information concerning the Lender's banking services (including information about its obligations of confidentiality, its compliant handling procedures, bank cheques, the advisability of the Borrower informing it promptly when the Borrower is in financial difficulty and the advisability of reading this Agreement). Information on interest rates and standard fees and charges is available on request.

20 Guarantee and Indemnity

20.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Lender:

- (a) the payment of the Guaranteed Moneys; and
- (b) the performance of the Borrower's obligations under the Terms and Conditions.

20.2 Payment on demand

The Guarantor must make payment to the Lender of the Guaranteed Moneys on demand made by or on behalf of the Lender to the Guarantor.

20.3 Principal obligations

The obligations of the Guarantor under this guarantee and indemnity are principal obligations imposed upon the Guarantor as principal debtor. The Guarantor acknowledges and agrees that the Lender may make a claim against the Guarantor under this agreement before the Lender enforces any of its rights against the Borrower or any other person or under any other document including any security interest.

20.4 No impairment etc

This guarantee and indemnity is not wholly or partially discharged by the payment at any time of any of the Guaranteed Moneys unless and until such moneys have been paid in full. This guarantee and indemnity shall not be impaired or discharged by reason of any time, waiver or indulgence granted by the Lender to the Borrower or the Guarantor or by virtue of the fact that the person signing this agreement as Lender is doing so in its capacity as agent for the principal. This guarantee and indemnity shall not be wholly or partly satisfied or discharged or in any way affected by the Borrower or the Guarantor (depending on whether they be a company or a natural person) entering into any scheme or arrangement or compromise, assigning their estate for the benefit of creditors, or suffering the appointment of an administrator or a receiver or receiver and manager or official manager or trustee in bankruptcy or other similar officer in respect of its assets or the Borrower or the Guarantor being released from any obligation to the Lender by operation of law.

20.5 Void or voidable transaction

If any claim is made that any payment, transfer or other transaction made by the Borrower to or in favour of the Lender is void or voidable for any reason, including without limitation, under any law relating to bankruptcy or insolvency, the payment, transfer or other transaction shall be deemed not to have discharged any of the Guarantor's obligations under this clause to the effect that such obligations shall be reinstated on the basis that no such payment, transfer or other transaction was ever made.

20.6 Indemnity

Without prejudice to the guarantee contained in paragraph 20.1, the Guarantor indemnifies the Lender from and against all losses, damages, claims, demands, liabilities, expenses and costs (including legal costs on a solicitor and own client basis) sustained or incurred by the Lender:

- (a) on account of the non observance or non performance by the Borrower of any term or condition (whether expressed or implied) of the Terms and Conditions on the part of the Borrower to be performed and observed;
- (b) as a consequence of the Lender being unable, for any reason whatsoever to recover the Guaranteed Moneys from the Borrower or the Guarantor including, without limitation, any or all provisions of the Terms and Conditions being void, voidable or unenforceable by the Lender against the Borrower or Guarantor.

20.7 Costs

- (a) The Guarantor must pay the Lender for the Lender's reasonable costs and taxes payable in connection with the Guarantee and Indemnity given under clause 20 including:
 - (i) any actual or attempted exercise or enforcement of rights under the Guarantee and Indemnity.
 - (ii) any payment, receipt or other transaction arising out of the Guarantee and Indemnity.
- (b) The Guarantor must also pay the Lender interest calculated on a daily basis at the Default Rate on each amount the Guarantor owes the Lender under this agreement which is not paid on time for the period it is unpaid. Interest may be capitalised monthly or at such other intervals as advised by the Lender. The Guarantor is then liable for interest under this clause on the total amount accrued. Interest under this provision is payable on demand.

20.8 Code of Banking Practice

- (a) Relevant provisions of the Code of Banking Practice apply to this Guarantee and Indemnity if, at the time that this Guarantee and Indemnity is executed, the Guarantor is an individual and the Borrower is an individual or a small business customer (as defined by the Code).
- (b) To the extent the Code of Banking Practice applies to the Guarantee and Indemnity, or in any case if a Guarantee Limit is specified in the Original application form, the Guarantor's liability in connection with this agreement is limited to the sum of:
 - (1) the Guarantee Limit; and
 - (2) the additional liabilities payable by the Guarantor under clause 20.7 (such as costs, taxes and interest).

20.7 Joint and several liability

If the Guarantor is constituted by two or more persons, each person is jointly and severally liable for all amounts payable under this part 20.

20.8 No obligation to marshal

The Lender is not required to marshal or to enforce or apply under or appropriate, recover or exercise any other security or money or asset which the Lender, at any time, holds or is entitled to receive.

20.9 No competition

- (a) Until the Guaranteed Moneys have been fully paid and the Facility has been finally discharged, a Guarantor is not entitled to:
 - (1) be subrogated to the Lender or claim or receive the benefit of any encumbrance, guarantee or other document or agreement of which the Lender has the benefit, or any moneys held by the Lender, or any Power;
 - (2) subject to paragraph (b), either directly or indirectly to prove in, claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the liquidation of the Borrower or any other Guarantor;
 - (3) make a claim or exercise or enforce any right, power or remedy (including, but not limited to, under an Encumbrance or Guarantee or by way of contribution) against the Borrower or any other Guarantor;
 - (4) accept, procure the grant of or allow to exist any encumbrance in favour of a Guarantor from the Borrower or any other Guarantor;

- (5) exercise or attempt to exercise any right of set-off against, or realise any encumbrance taken from the Borrower or any other Guarantor; or
- (6) raise any defence or counterclaim in reduction or discharge of its obligations under this guarantee and indemnity.

- (b) If required by the Lender, a Guarantor must prove in any liquidation of the Borrower or any other Guarantor for all moneys owed to the Guarantor.

21 Trusts

21.1 Application

If the Borrower or Guarantor is entering into the Facility on behalf of a trust, this part 21 applies. For this purpose, every reference to "Trustee" will be taken to be a reference to each person who has entered into the Facility whether as Borrower or Guarantor on behalf of a trust and every reference to "Trust" will be taken to be a reference to each such trust of which that person is the Trustee.

21.2 Entering into the Facility

Every Trustee will be taken to have entered into the Agreement both in its personal capacity and as trustee of the Trust.

21.3 Representations and warranties

The Trustee represents and warrants to the Lender that:

- (a) if a copy of the deed establishing the Trust ("Trust Deed") has been supplied to the Lender, that copy is a true and correct copy of the original Trust Deed and contains all the terms relating to the Trust;
- (b) all financial information relating to the Trustee and the Trust which has been supplied to the Lender is true and correct in all material respects;
- (c) the Trustee is the sole trustee of the Trust;
- (d) the Trustee has been validly appointed to its position as trustee of the Trust and has been duly authorised in accordance with the terms of the Trust Deed to execute the Original application form and to enter into the Facility as Borrower or Guarantor (as the case may be);
- (e) the entering into the Facility by the Trustee and the performance by the Trustee of obligations under the Facility as Borrower or Guarantor (as the case may be) has been duly authorised in accordance with the terms of the Trust; and
- (f) no limitation or restriction exists in respect of the Trustee's rights to be indemnified out of the trust assets in respect of obligations incurred by the Trustee under the Terms and Conditions as Borrower or Guarantor (as the case may be).

21.4 Beneficiaries

The Trustee has arranged for such of the adult beneficiaries under the Trust as the Lender requires to execute the Agreement as guarantors.

21.5 Covenant

None of the Trustee and the Guarantors must allow any of the following to occur without the prior written consent of the Lender:

- (a) a variation, replacement or revocation of the terms of the Trust Deed;
- (b) the directors of the Trustee as at the date hereof being replaced as directors or other persons being appointed as directors of the Trustee;
- (c) the resignation or replacement of the Trustee as trustee of the Trust or the appointment of another trustee as trustee

of the Trust (whether or not as trustee in conjunction with the Trustee); or

- (d) a distribution, transfer or setting aside of any part of the income or capital of the Trust.

22 GST

(a) Definitions and interpretation

- (1) GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply;
- (2) GST law has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (3) New Tax System changes has the meaning in section 75AT of the Trade Practices Act 1974 (Cth);
- (4) Regulated Supply has the meaning in section 75AT of the Trade Practices Act 1974 (Cth); and
- (5) Tax Invoice includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.
- (6) Words used in the Terms and Conditions which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.

(b) Adjustment for GST

- (1) The consideration for any supply by the Lender under or in connection with the Facility does not include GST.
- (2) To the extent that any supply made by the Lender under or in connection with the Facility is a taxable supply, the consideration for that supply is increased by an amount determined by the Lender, not exceeding the amount of that consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.