



BUSINESS LENDING

Terms and Conditions

October 2021

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SECTION D: TERMS AND CONDITIONS FOR THE FACILITY

1. How these Terms and Conditions apply:

These Terms and Conditions apply to you the Customer under this agreement.

Glossary - this explains words used in this entire document (including the Schedule), except for the Direct Debit Request and Service Agreement (which contains its own defined terms).

2. Agency

You and any Guarantor acknowledge that we enter into this agreement as agent on behalf of a principal. Any reference in this agreement to us includes any principal for whom we are agent (whether identified or not).

3. How we will work with you

We will act reasonably and fairly towards you, taking into account your and our respective business interests. That includes whenever we are:

- a. considering any request you make; or
- b. deciding whether to give our consent or to exercise a right, discretion or remedy; or
- c. setting any conditions for doing any of those things.

It's worth noting that even if we don't make a decision or do something straight away, we may still do so later on. This includes where we delay or defer doing so, or we temporarily waive a requirement.

4. Basic requirements for each use of a Facility

Once we've received everything we need for you to start using a Facility, the basic requirements for each use are:

- a. the requested use meets any requirement specified in the Your Facility Details in the Schedule;
- b. using the requested amount won't cause any Facility Amount to be exceeded
- c. each Security remains valid and enforceable and, in the case of a guarantee, no Guarantor has ended or limited its obligations; and
- d. you are not in Default. See clause 23 for more details.

5. Facility Amount

We agree to lend the Facility Amount to you on the terms of this agreement.

- a. If the Schedule indicates the Facility is a Loan, we will lend the Facility Amount as a single

drawing or as multiple drawings as specified in the Schedule.

- b. If the Schedule indicates the Facility is a Line of Credit, you may draw any undrawn part of the Facility Amount at any time.

6. Purpose

Credit provided under this Facility is, or must be, applied wholly or predominantly for approved business purposes or investment purposes.

If the Schedule specifies a purpose for Facility, you must only use the amounts you draw for that purpose.

If the Schedule specifies Equipment or Construction to be financed, unless we otherwise agree, the amounts you draw may only be used to make progress payments to the Supplier of the Equipment for its purchase or under a Building Contract for Building Works. Where you can satisfy us that you have made the progress payment, we may agree to pay a Drawing to you in respect of that progress payment.

7. How Drawings are requested

You may request Drawings by telephone on 1300 728 718 or by email to medfin@nab.com.au or by using any other means of communication we approve.

Please allow at least 2 Business Days so that we have time to check everything is in order and make any funding available.

When you request a Drawing for progress payments, we may require you to give us a tax invoice from the Supplier showing the payment required in a form acceptable to us. We reserve the right to pay the invoice exclusive of GST (in which case you will need to pay the GST yourself). We will make this clear to you if this is the case.

We may give you a Payment Notice for you to sign (by hand or electronically). Please make sure that you give this signed Payment Notice back to us at least 2 Business Days before the progress payment is due to be made.

8. How drawings are paid

Unless the Schedule indicates that a Drawing is to be paid to a third party, or you otherwise instruct us, we will deposit each Drawing into the Nominated Account.

If a Drawing needs to be paid to the Supplier, we will make this payment as directed in the relevant Payment Notice unless one or more of the Payment Preconditions in clause 10 still need to be satisfied.

9. Outstanding Balance must not go beyond the Facility Amount

You need to make sure that the Outstanding Balance does not go over the Facility Amount. The Facility Amount is set out in the Schedule.

If you exceed the Facility Amount without our agreement, you must pay us the excess immediately. Until you do, we may charge you interest on that excess amount in accordance with clause 13.

If you ask us in advance, we may let you temporarily exceed the Facility Amount. There may be a fee for exceeding your Facility Amount, which we will tell you about before we charge it. You will then need to pay us the excess when we ask you or on the date we've already agreed you will pay.

10. Payment Preconditions

10.1 General preconditions

Before we allow any Drawing, we will need the following in a form acceptable to us:

- a. this agreement, properly accepted and fully signed (by hand or electronically);
- b. a completed and signed direct debit request form (please make sure that you have enough funds available when a repayment is due);
- c. we must be satisfied that you have paid any fees which the Schedule states need to be paid up front (including any upfront contribution for Building Works);
- d. each Security set out in the Schedule acceptable to us, with original title documents and any anything else we need to register the Security with first ranking priority;
- e. if we have asked you to insure any of your assets, evidence that you have obtained insurance we are comfortable with. That may include noting our interest on your policy and including us as a loss payee;
- f. anything else that the Schedule asks for.

Also, we need to be satisfied:

- g. with any valuation we require of your assets or Secured Property (this must be for a value, and from a valuer, we are comfortable with);
- h. with our "know-your-customer" checks;
- i. with title, security, insolvency and corporate searches concerning you, any Security Provider and all Security assets. We will arrange these searches and let you know if there are any issues; and
- j. you are not in Default. See clause 23 for more details.

10.2 What you need to do BEFORE we can allow Drawings for Equipment

We can't allow any Drawing relating to Equipment under a Payment Notice unless:

- a. **amount due to Supplier / you:** where payment needs to be made to:
 - (i) **the Supplier:** the amount requested is due and payable to the Supplier and you can prove this by showing us a valid tax invoice from the Supplier; or
 - (ii) **you:** you prove that you have made payment to the Supplier by showing us an invoice from the Supplier as well as a confirmation of your payment in a form acceptable to us;
- b. **Payment Notices:**
 - (i) you have provided us with a signed Payment Notice;
 - (ii) **first Payment Notice:** the first Payment Notice has been requested within 3 months of the Settlement Date unless we otherwise agree;
 - (iii) **final progress payment:** the final progress payment to the Supplier of the Equipment must be made at least 15 Business Days before the Maturity Date. Please ensure that you provide proof that the amount requested (when paid) will satisfy the entire remaining purchase price and related obligations for the Equipment.

10.3 What you need to do BEFORE we can allow Drawings for Building Work

In addition to any other conditions on Drawings, if the Schedule says that the Building Conditions apply then the following conditions also need to have been met:

10.3.1 Conditions to first Drawing

Before we can allow the first Drawing:

- a. **Final Plans and Specifications:** we need to have received final plans and specifications for the Building Works approved in accordance with all applicable local statutory requirements. This approval needs to indicate the proposed use of the premises upon completion;
- b. **Building Contract:** we need to have received a copy of a duly executed fixed price, fixed term Building Contract for the Building Works from a builder acceptable to us;
- c. **Tripartite Deed:** if we have asked for a tripartite deed as one of the Special Conditions in the Schedule, we need a signed copy of the tripartite deed between you, us and the builder in a form required by us;
- d. **Property Development Budget:** we need to have received a satisfactorily detailed property development budget (inclusive of planning, duties, landscaping and all overruns) backed up

by proof acceptable to us of your contribution to the Building Work;

- e. **Builder's liability insurance:** we also need to have received satisfactory confirmation of the currency of builders' liability insurance.

10.3.2 Conditions for each Drawing (including first and final Drawing)

Before we can allow any Drawing:

- a. **amount due to Supplier / you:** if payment is to be made to:
 - (i) **the Supplier:** the amount requested needs to be due and payable and you can prove this by showing us an invoice from the Supplier;
 - (ii) **you:** you need to prove that you have paid the Supplier by showing us an invoice from the Supplier as well as confirmation of your payment in a form satisfactory to us;
- b. **Your contributions:** you must contribute any funds we require towards the Project set out in your Facility Details referred to in the Schedule from your own resources and unless otherwise specified your contribution must be made in full before the first Drawing is made;
- c. **Inspection:** we need to be satisfied about the progress of the Building Works or any other matter relating to the Building Works based on any inspection we have carried out or required; and
- d. **Certificates:** we need to have received any document or certificate we reasonably require (including a Payment Notice in a form we require) and a certificate from a quantity surveyor or architect appointed (at your cost) or approved by us showing the cost of works covered by the certificate.

10.3.3 Conditions for final drawdown

Before we can allow the final Drawing, we have received a certificate of occupancy (or equivalent).

11. Payment

11.1 Amounts you must pay

You need to:

- a. repay the Facility by making the repayments to us in the amounts and on the Repayment Dates set out in the Schedule, or for amounts described in the Schedule as "indicative", in the amounts determined under this agreement or stated in any written confirmation we subsequently provide as these amounts may be determined or varied from time to time in accordance with this agreement;

- b. pay all interest, fees, charges other amounts that you owe to us under this agreement,

by direct debit or such other means as we agree.

On the Maturity Date, you will have to pay the Outstanding Balance and all amounts owing under this agreement whether or not any amounts for repayments or any Repayment Dates are set out in the Schedule.

If the Schedule indicates that the Facility is payable "on demand", this means that you need to pay the Outstanding Balance and all other amounts payable when we ask you to. We will provide a reasonable time for you to pay.

11.2 Payment Rules

If and when you are required to make a payment under this agreement or the Schedule, that payment must be made in full without any set-off, counterclaim, withholding or deduction, except as required by law (for example, where a court order permits).

If you do have a dispute about a payment, please contact us so we can seek to resolve this with you as soon as possible.

If a payment falls due on a non-Business Day, you can pay us on the preceding Business Day

If we have not specifically agreed in your agreement how we are to apply a particular payment, we will act reasonably in applying payments we receive for any Outstanding Balance against your liabilities to us.

11.3 Periodic Reviews

We may review your compliance with this agreement, your financial position and that of each Guarantor periodically (but at least annually).

You must give us all requested information, documents, consents and assistance in connection with a review. Following a review, we may continue to provide the Facility on the same terms, or we may notify changes we may make under clause 29.1 or ask you and any Guarantor to vary or to enter new documents with us.

Without limiting our right to conduct periodic reviews under this clause 11.3, at any time we may review the repayments you have to make.

If, in our opinion, your repayments are not sufficient to enable you to pay:

- a. the Outstanding Balance; and
- b. all interest charges; and
- c. other moneys owing under this agreement

by the last day of the Facility term (for example, because of interest rate changes), then we may increase your repayments so that this can be done.

We will notify you in writing before making any change to a principal and interest repayment amount unless we are not required by law or an industry code to give you this notice.

Your first repayment review will take place before your first repayment falls due.

11.4 Indemnity for our costs

In addition to your responsibility to make repayments, you also agree to indemnify us for our reasonable costs and expenses (including our internal administrative costs, professional consultant fees and Taxes) in relation to:

- a. preparing, stamping, registering and discharging this agreement and any Security;
- b. taking steps to enforce this agreement including protecting or waiving any of our rights under it or any Security;
- c. valuing any property which is the subject of our Security; and
- d. doing anything you or a Guarantor failed to do under the agreement, the guarantee or any Security.

11.5 When you can prepay

You may prepay all or part of the Facility at any time. However, for any part of the Facility to which a fixed rate applies, you may have to pay Economic Costs described in clause 22.

11.6 Redraw

Any amounts repaid under the Facility may not be redrawn, except as set out below:

- a. Where a variable interest rate applies and you have repaid amounts in excess of the total of the required principal and interest repayments, we will act reasonably in considering whether to allow you to redraw that excess amount, less any amounts previously redrawn.
- b. If we allow you to redraw, a minimum redraw amount of \$2000 will apply and we may place other conditions on the redrawing.
- c. When you redraw or request to redraw, you promise to us that nothing has occurred which could adversely affect your ability to repay the Outstanding Balance after the redrawing, when required.

Redraw is not available for Self-Managed Superannuation Fund Loans or Draw Down Facilities or Commercial Mortgage Construction Facilities or if the applicable interest rate is fixed rate.

11.7 Fees

You agree to pay us each fee, charge, premium or other amount and at the times specified in this agreement or in the Schedule. Unless otherwise stated, these amounts are not charged on a pro-rata basis and once paid, are not refundable

11.8 Taxes and other costs

You agree to pay or reimburse us for all taxes and reasonable costs and expenses incurred from time to time relating to:

- a. title, security, insolvency and corporate searches concerning you, any Guarantor and all Security assets;
- b. preparing, registering and maintaining any financing statement or financing change statement (each as defined in the PPSA)
- c. a Security, or taking any other action that in our reasonable opinion is necessary;
- d. preserving and maintaining the assets and property the subject of the Security (such as by paying insurance, rates or taxes for the property, including any interest, penalties and fines);
- e. a variation, release or discharge of any Facility, guarantee or Security, or giving a consent or approval or waiving a requirement in connection with any Facility, guarantee or Security;
- f. us acting or relying in good faith on any notice or other communication from you (or genuinely believed by us to be from you) including any email and any attachment to any email;
- g. a Default or us exercising or enforcing our rights (or reasonably considering or attempting to do so) under this agreement, a guarantee or Security;
- h. the costs or remuneration of, or any amounts payable by us to any External Administrator appointed by us; and
- i. if the Building Conditions apply:
 - (i) all quantity surveyor or architect costs and expenses incurred under clause 17; and
 - (ii) construction progress draw fee, as specified in the Schedule.

11.9 GST

Unless otherwise specified, all amounts referred to in this agreement or the Schedule are exclusive of GST.

If we are liable to pay GST or a similar tax on a supply (as defined in relevant GST legislation) made in connection with this agreement or the Schedule, you must pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

11.10 You indemnify us

You also indemnify us (and our officers, employees, contractors and agents), and must pay to us on

demand amounts equal to any loss, damage or costs arising as a result of or in connection with:

- a. any of the payment and reimbursement obligations listed in this clause 11; and
- b. us preserving or enforcing our rights (or reasonably considering or attempting to do so) under this agreement or the Schedule.

You don't have to pay, reimburse or indemnify us:

- a. to the extent our fraud, negligence or misconduct (or the fraud, negligence or misconduct of our officers, employees, contractors and agents) contributed to the relevant loss, damage or costs being incurred; and
- b. if you are a Small Business, to the extent any fraud, negligence or misconduct by an External Administrator appointed by us contributed to the relevant loss, damage or costs being incurred.

NOTE: We need not have incurred an expense or made a payment before enforcing a payment, reimbursement obligation or indemnity.

12. Interest calculation and charging

You need to pay interest on the Outstanding Balance.

Unless the Schedule says otherwise, we will calculate applicable interest at the end of each day on the Outstanding Balance, and charge it to you on each Repayment Date. Accrued interest which is not paid, including where a facility has no periodic Repayments, is capitalised monthly on the first Business Day of the month after it accrued.

If clause 11 requires you to pay accrued interest on a Repayment Date, you give us permission to recover this interest by a direct debit to your Nominated Account on that day or, if it is not a Business Day, on the preceding Business Day.

Where the amount of a principal and interest Repayment set out in the Schedule is described as an indicative amount, the actual amount you authorise us to recover by direct debit in respect of the interest component of that Repayment is the amount actually accrued which may be more than the indicative amount in the Schedule or any minimum Repayment amount disclosed to you after the Settlement Date.

If you do not pay the interest when charged, the interest will be added to the Outstanding Balance.

NOTE: This could mean you have to pay interest on any unpaid interest charged to you.

13. Overdue amounts and overdrawn Facilities

It is important that you pay all amounts on time and don't exceed your Facility Amount. We may charge interest in respect of:

- a. any overdue amount; and
- b. any use of a Facility above a Facility Amount.

We will charge and collect this interest in the manner set out in clause 12.

14. Variable interest rate changes

If a variable interest rate applies to your Facility, we may, acting reasonably and according to our legitimate business interests, change the rate which applies at any time.

The interest rate stated in the Schedule is indicative only and may change by the date of the first Drawing and the actual rate will be confirmed on or shortly after that date.

15. Fixed interest rate

During a fixed interest rate period, the interest rate is fixed and will not change. If your Facility commences with a fixed rate for a certain period then this will all be set out in the Schedule (note that unless you have entered into a rate lock agreement with us to set the fixed interest rate, the fixed rate in the Schedule is indicative and we will confirm the actual fixed rate either on or after the date of first drawing).

At the end of any fixed rate period, a variable rate will apply instead of the fixed rate. We will let you know what the variable rate applicable is at this time.

We may agree to any request you make to fix the interest rate for a fixed rate period but we may choose to attach conditions on doing this.

16. Restrictions you accept

Unless we agree in writing, you must not:

- a. deal with your assets (including assets of any subsidiary you have) whether by sale, other disposal or parting with possession of them;
- b. create, permit, or agree to, any Encumbrance (this means any claim against your property by a party that is not you), other than a Permitted Encumbrance, over your (or your subsidiary's) assets; or
- c. attempt to do such things,

except in the ordinary course of your business.

17. Building Conditions

If the Schedule indicates that these Building Conditions apply:

- a. the Project needs to be completed within the Anticipated Total Cost on Completion;
- b. you shouldn't:
 - (i) make, or agree to, any changes to; or
 - (ii) waive any term of,

the Building Contract (if any) or plans or specifications without our prior written consent.

- c. you promise that you will carry out the Project:
 - (i) in accordance with:
 - A. the Building Contract (if any) or plans and specifications to which you are a party; and
 - B. all applicable authorisations; and
 - (ii) in compliance with all applicable laws.
- d. unless we otherwise agree, you must not:
 - (i) do or fail to do anything that might reasonably result in the termination, repudiation or rescission of the Building Contract; or
 - (ii) allow for the Building Contract to expire.
- e. unless we otherwise agree, you promise to do everything necessary to enforce your rights, powers and remedies under the Building Contract;
- f. we won't be responsible for overseeing the Project or the Building Work, even though we may approve an alteration or inspect the Building Works from time to time.

17.1 Insurance in relation to the Project

As well as complying with the obligations in clause 21, you need to make sure that:

- a. the value of the Project (under the Building Works) is fully insured as that value increases;
- b. that the insurance policy names us as an insured party for the Project and the Secured Property;
- c. each insurance policy for the Project includes:
 - (i) a "loss payee" clause nominating us;
 - (ii) a clause which requires the insurer to give us written notice where you (or someone else on your behalf) fails to renew the policy or to pay a premium, prior to the insurer giving any notice of cancellation; and
 - (iii) a clause which says that all insurance agreements and endorsements operate in the same manner as if there were a separate policy.

17.2 Valuations in relation to the Project

We can at any time require any Security and any Secured Property to be valued by a valuer approved by us and under instruction from us. If we do this, you need to make sure that you:

- a. co-operate with the valuer;

- b. pay any fees, charges and premiums applicable to any such valuation; and
- c. comply with every reasonable request to assist that valuer including providing documents, access to individuals, premises and business equipment used in the conduct of your business.

Any valuation obtained by or for us is for our use only. We won't be responsible for the valuation or for any reliance on it by you or anyone else.

18. Statements

We may send you a statement of account at least every six months unless:

- a. the interest rate is fixed over the six month period;
- b. you are in Default; or
- c. the Outstanding Balance is less than \$100.

19. Your Acknowledgements, Representations and Warranties

When you sign the Schedule and before each drawing, you represent, acknowledge and agree that:

- a. if you are identified in the Schedule as a corporation, you:
 - (i) are registered and validly exist as a corporation under the Corporations Act;
 - (ii) have the corporate power to own your own assets and conduct your business as it is now being conducted;
 - (iii) have full power and authority to perform your obligations under this agreement and the Security you give;
 - (iv) you have taken all necessary action to authorise the execution, delivery and performance of obligations under this agreement and the Security; and
- b. You represent that:
 - (i) your obligations under this agreement and the Security are legal, valid and binding on you 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;
 - (ii) all credit and financial information you or any Guarantor have provided to us including information about you, the Guarantor or any transaction is true and correct in all material respects; and
 - (iii) nothing has occurred which could adversely affect your ability to make payments required under this agreement.
- c. You acknowledge that we rely on the above warranties, representations and acknowledgements and you agree to tell us

immediately if anything happens which prevents you from repeating them before any Drawing.

19.1 Your Acknowledgements, Representations and Warranties in relation to Equipment

Representations and Warranties

If the Schedule says this Facility will finance the purchase of Equipment, then when you sign the Schedule and before each Drawing, you represent and warrant that:

- a. unless we agree in writing, the Drawing will only be used to finance the acquisition and installation of the Equipment for internal fit out purposes and will not be used to finance any structural construction works which may require the approval of a local council or authority; and
- b. all of the Equipment will be used for internal fit out purposes only and will not be used for any other structural construction works which may require the approval of a local council or authority without the prior written consent of the Lender.

You will immediately inform us if you become aware of anything that happens which prevents you from truthfully repeating these representations and acknowledgements each time you deliver a Payment Notice.

Acknowledgements

If the Schedule says this Facility will finance the purchase of Equipment, then when you sign the Schedule and before each Drawing, you acknowledge that:

- a. you have selected the Supplier and have satisfied yourself as to its suitability and that the Equipment will, when delivered, be in accordance with the description in the Schedule and be of a design, size, capacity, type and manufacture as selected by you;
- b. you are responsible for examining the Equipment before accepting it and to make sure you are happy with its quality, compliance with description, condition, safety, suitability, fitness for purpose, the validity of any warranties or guarantees for the Equipment and entitlements to patents;
- c. as a passive financier, except to the extent provided by law, we make no representations or warranties and provide no undertakings to you relating to the Equipment or to assist you or anyone else in their examination of the Equipment and in reaching the decision to accept the Equipment;

- d. the Supplier of the Equipment is not our agent in respect of the sale of Equipment to you and has no authority to represent or bind us and you have entered into this agreement freely and without reliance upon any representations made to you by the Supplier in this regard;
- e. except to the extent we have liability for negligence or as a linked credit provider under the *Competition and Consumer Act 2011* (Cth) which cannot be excluded:
 - (i) we are not liable and you release us from any liability in connection with any faults, defects or inadequacies in the Equipment, or in connection with the injury or death of any person, or loss or damage to property arising from the use of the Equipment (except to the extent that this is caused by our negligence);
 - (ii) we are not liable and you release us from any liability or loss in connection with our reliance on any information you give us or instructions or communications however sent to us that we receive from you, any Guarantor or the Supplier;
 - (iii) you accept the Equipment as supplied with all defects (if any) and we shall not be liable for any claim, loss, damage, expense or other liability of any kind or nature caused directly or indirectly by the Equipment or any inadequacy of the Equipment for any purpose or any deficiency or defect of the Equipment; and
- f. we have entered into this agreement in reliance on your representations and acknowledgments set out in this clause 19.

20. Your obligations in relation to the Equipment

20.1 Things you must do -

If the Schedule specifies Equipment to be financed, you must:

- a. give us the correct Equipment serial numbers so we can perfect the registration of the Security on the PPSR;
- b. protect our interest in the Equipment and other Collateral;
- c. comply with all applicable law;
- d. protect the Equipment from loss or damage and keep it in good working order and condition;
- e. pay all amounts relating to the Equipment when payable;
- f. make sure the Equipment is only used for your business and for the purpose for which it is designed;
- g. service and maintain the Equipment at your expense, in accordance with the manufacturer's

- instructions and recommendations, and only by competent and properly qualified licensed personnel, and keep all records relating to this;
- h. immediately let us know if the Equipment is not in your possession or control or if you move it from the address stated in the Schedule;
 - i. allow our representative to enter any place where the Equipment is located, your places of business and your registered office, at a reasonable time to:
 - (i) inspect the Equipment;
 - (ii) check whether you have possession of the Equipment;
 - (iii) inspect and take copies of any records relating you or the Equipment including for the purposes of identifying and/or confirming its location;
 - (iv) exercise any of our rights under this agreement; or
 - (v) do any act, matter or thing that ought to have been done by you under this agreement;
 - j. replace and substitute parts to the Equipment as necessary and retain records of these for our inspection and ensure that the parts are free and clear of any Security Interests or any other rights or interest of any third party;
 - k. do all things, including signing documentation, as reasonably requested by us to allow us to register on the PPSR every Security Interest in the Equipment and other Collateral granted to us under this agreement,
 - l. if our consent is obtained to sell the Equipment, pay into a control account as specified by us all moneys which you receive in respect of the proceeds of sale. You must comply with any direction we issue to deal with those moneys while in the control account; and
 - m. do everything reasonably necessary to ensure we are able to do any of the things above (including obtaining any necessary consents from the owner or occupier of the premises for us to do so).

20.2 Things you must not do -

You must not, without our prior consent:

- a. assign or otherwise deal with your rights in connection with this agreement;
- b. attach the Equipment to any land or allow the Equipment to become an accession to, or commingled with, any other property;
- c. give or allow any other person to have an interest in this agreement, the Equipment, or any other Collateral or any land to which the Equipment is attached;

- d. place, or allow to be placed, on the Equipment any plates or marks that are inconsistent with our Security Interest;
- e. alter the Equipment or do, or omit to do, anything likely to diminish its value;
- f. allow another person to have possession or control of the Equipment; or
- g. move or allow the Equipment to be moved out of Australia.

20.3 Reporting a Casualty Event

If the Schedule indicates that this Facility is to finance the purchase of Equipment, you must notify us immediately of any Casualty Event.

A 'Casualty Event' means an event where the Equipment is:

- a. lost, stolen, destroyed, seized or confiscated; or
- b. damaged or impaired such that you or the insurer decides that repair is impractical or uneconomic.

20.4 Consequences of a Casualty Event

- a. Where there is a Casualty Event in respect of all of the Equipment:
 - (i) the Drawdown Term will be treated as having ended upon the earlier of our receipt of notice of the Casualty Event or otherwise becoming aware of the Casualty Event. The Drawdown Term will be treated as fully reinstated where (and to the extent that) a Substitution later occurs; and
 - (ii) within 7 days of a Casualty Event, unless we agree a Substitution has or will occur, you must pay us:
 - A. the Outstanding Balance and any other amounts payable; less
 - B. any moneys attributable to the Equipment received by us under any insurance policy.
- b. Where there is a Casualty Event in respect of a part of the Equipment and the unaffected Equipment can continue to be used by you, and is of a nature that could have been the subject of a separate agreement:
 - (i) this agreement will continue to apply to the unaffected Equipment; and
 - (ii) within 7 days of the occurrence of a Casualty Event, unless we agree a Substitution has or will occur in respect of the Casualty Event, you must pay us:
 - A. the Outstanding Balance attributable to the Equipment the subject of the Casualty

Event (which will be determined by us and notified to you); less

- B. any moneys attributable to the Equipment the subject of the Casualty Event received by us under any insurance policy.
- (iii) as a consequence of and subject to the payment being made by you to us under this clause 20.4, we will notify you in writing of the reduced Outstanding Balance and interest, payable under this agreement in for the Equipment not affected by the Casualty Event.
- c. The outstanding advance attributable to the Equipment subject of the Casualty Event referred to in clause 20.4b(ii), above will be calculated by us as a reasonable estimate of the value of the Equipment and/or any costs of workmanship the subject of the Casualty Event.
- d. Where you have paid us the amounts in clauses 20.4(a) or 20.4(b) for the Equipment the subject of the Casualty Event and where we subsequently receive (directly or indirectly) any money from the insurer of that Equipment in consequence of the occurrence of the Casualty Event, we will pay the money received from the insurer to you. If you are in Default under this agreement or in default of any other agreement with us, we may defer such payment until after the default is remedied.
- e. Where you have paid us the amounts in clauses 20.4(a) or 20.4(b) for the Equipment the subject of the Casualty Event and where there is later an agreed Substitution for that Equipment, we will refund the amount you have paid us for that Equipment under the Substitution. If you are in Default under this agreement or in Default of any other agreement with us, we may defer such refund until after the default is remedied.
- f. In the event of an agreed Substitution you must pay us the Asset Substitution Fee and the PPSR Fee, as described in the Schedule.
- g. We will not unreasonably withhold or delay our consent to a Substitution.

20.5 Other damage to Equipment

If any Equipment is damaged, without resulting in a Casualty Event, you must notify us immediately, and take steps to restore it to the condition it was in before it was damaged. If the we receive money from an insurer or any other person for the Equipment because of the damage that does not result in a Casualty Event, we agree to pay it to you, up to the amount required to restore the Equipment, less all money then payable by you to us under this agreement.

21. Insurance

Without limiting any insurance requirements in any Security, we are relying on your agreement to take out and maintain all insurances listed in the Schedule for a reasonable amount on terms reasonably acceptable to us. You will take out more insurance if we ask you to.

Please make sure that you provide us with the certificates and consents we need so we can confirm that such insurance is in place for the right period of time.

22. Economic Costs and benefits

Our 'Economic Costs' are the costs and loss we expect to suffer over the unexpired Term arising from receiving payments earlier than scheduled calculated by reference to the difference between our cost of funds at the time we signed the Schedule and our cost of funds at the time of cancellation. The expected amount of costs and loss is discounted back to a present day value using the interest rate equivalent to our cost of funds at the time of early repayment.

An 'Economic Event' occurs if all or part of a fixed rate Facility:

- a. is re-priced by agreement (from fixed to another fixed rate or to another type of rate);
- b. is cancelled, reduced or not fully drawn before the Maturity Date;
- c. becomes payable; or,
- d. is repaid or discharged early for any reason (including following a Default).

Warning: Economic Costs can be high and may increase the amount you owe. You can ask us at any time for an estimate of Economic Costs.

If an Economic Event occurs, we may need to liquidate funds or deposits or terminate, reverse or vary an agreement, arrangement or transaction we entered into to hedge, fix or limit our effective cost of funding or maintaining all or part of a Facility. In that case, we will determine and advise you of any resulting Economic Costs to us, or whether there is a benefit to you of any net amount of returns and gains obtained by us, including because of any changes in rates applicable to a Facility (all other things being equal).

You must pay us the amount of any advised Economic Costs.

23. Defaults

23.1 Types of default

Defaults are events or circumstances (sometimes outside your control) which may affect your or a Guarantor's ability to meet obligations to us.

There are two types of Default and each has different consequences and timeframes before we may become entitled to enforce this agreement and any guarantee or Security:

- a. a Payment Default – see clause 23.2; and
- b. specific events of non-monetary default (referred to as Adverse Events) – see clauses 23.4, 23.5 and 23.6.

23.2 What is a Payment Default?

A Payment Default occurs if you fail to make a Repayment on time or otherwise fail to pay any amount to us when it is due under this agreement.

23.3 What are the consequences of a Payment Default?

If a Payment Default occurs you are in Default. We will give you a notice that a Payment Default has occurred allowing at least 30 days (or 7 days if you are not a Small Business) to remedy it.

However, we may give you a shorter notice period, or no notice period, if:

- a. the Payment Default is unable to be remedied;
- b. it is reasonable for us to do so to manage a material and immediate risk relating to the nature of the Payment Default, your particular circumstances, or the value of the Security; or
- c. you or a Guarantor is Insolvent (but if you are a Small Business it must still be reasonable for us to act to manage the material and immediate risk as described above).

We can immediately take any or all of the Enforcement Actions listed in clause 23.7 where:

- a. a Payment Default is not remedied within the required notice period set out in any notice given under this clause (or within any longer period we allow);
- b. we give a notice under this clause but are not required to give a notice period; or
- c. we are not required to give a notice.

23.4 What is an Adverse Event?

An Adverse Event occurs if any of the following occurs:

- a. you use the Facility for a purpose not approved by us;
- b. you or a Guarantor is Insolvent, goes into bankruptcy, voluntary administration, other

insolvency process or arrangement, or no longer has legal capacity;

- c. an order for payment is made, or judgement is entered against you or any Guarantor or in respect of any Secured Property and it is not satisfied within 5 Business Days;
- d. you or any Guarantor is a Proscribed Person or in our reasonable opinion, you or a Guarantor has not complied with the law or any requirement of a government authority, or it has become unlawful for this Facility to continue;
- e. you or a Guarantor do not provide financial information we require;
- f. you or any Guarantor give us information or make any representation or warranty to us which is materially incorrect or misleading (including by omission);
- g. without our consent, there is a change in the status, capacity or composition of you or a Guarantor;
- h. without our consent, there is a change in the legal or beneficial ownership, or management control of you or a Guarantor, or of your or a Guarantor's business;
- i. you or a Guarantor do not maintain a licence or permit necessary to conduct your respective businesses;
- j. you or the Guarantor is a trustee of a trust and:
 - (i) without our written consent, a new trustee is appointed, the trust vests or terminates or any part of the trust fund is resettled or set aside;
 - (ii) the trustee's right to be indemnified out of the trust fund is restricted in any way;
- k. you are a partnership and any of the event described in paragraphs (a)-(j) occurs in relation to one or more of the partners (and is therefore deemed to have occurred in relation to you).

23.5 Additional Adverse Events under Building Conditions

If Building Conditions apply, then an Adverse Event also occurs if:

- a. the builder is unable to complete the Building Works in accordance with the Building Contract, the Development and Construction Budget or the Development and Construction Program;
- b. the pre-sale or pre-lease commitments become void or voidable;
- c. there are unfunded cost overruns and unfunded variations to the Development and Construction Budget or Development and Construction Program; or
- d. without our consent, material changes are made to approved plans and specifications in relation to the Project.

23.6 What are the consequences of an Adverse Event?

If an Adverse Event occurs (including those relating to Building Conditions in clause 23.5 above), then you are in Default.

- a. You must promptly give us any information we ask for concerning an Adverse Event.
- b. If an Adverse Event has occurred which by its nature is material, or we reasonably consider has had, or is likely to have a significant negative impact on:
 - (i) you or a Guarantor being able to make any payment due to us under this agreement including any guarantee or any Security;
 - (ii) our security risk (or our ability to assess this) – for example, the value of any Security; or
 - (iii) our legal or reputation risk where the Adverse Event is a breach of law, misrepresentation or improper use of this Facility (as described above),

then we may issue a notice (“**Adverse Event Notice**”).

- c. An Adverse Event Notice will set out the grounds on which we consider there is an Adverse Event and allow you at least 30 days to remedy the Adverse Event (if it can be remedied) or to submit to us a plan to resolve the Adverse Event to our satisfaction.
- d. If, after the period specified in the Adverse Event Notice:
 - (i) the Adverse Event has not been remedied to our satisfaction; or
 - (ii) your plan to resolve the Adverse Event was not satisfactory to us,then we may give you a further notice that the Adverse Event has not been remedied and allowing at least 7 days (or a longer period required by law) to remedy the Adverse Event.
- e. However, we may give you shorter notice periods than those described above or no notice periods in relation to an Adverse Event where:
 - (i) it is reasonable for us to act to manage a material and immediate risk relating to the nature of the relevant Adverse Event, your particular circumstances or the value of the Security, for example, if we became aware that you were attempting to sell any assets or property secured under a Security contrary to the terms of a Relevant Agreement; or
 - (ii) you or a Guarantor is Insolvent (but if you are a Small Business it must still be reasonable for us to act to manage the material and immediate risk as described above).

- f. We can immediately take any or all of the Enforcement Actions listed in clause 23.7 where:
 - (i) we give a notice under this clause and an Adverse Event is not remedied within the required notice period set out in the notice given (or within any longer period we allow); or
 - (ii) we give a notice under this clause but we are not required to give a notice period; or
 - (iii) where you are not a Small Business, we have decided in accordance with this clause not to give a notice.
- g. If we are not entitled to take any of the Enforcement Actions listed below in clause 23.7, then we may ask for further information and we may review your Facility and invite you to discuss your situation with us and the options available to assist you to meet your obligations.

23.7 Enforcement action

After any applicable steps and time periods described above, when you are in Default we can take any or all of the following (each an “Enforcement Action”):

- a. stop Drawings under the Facility;
- b. terminate this agreement;
- c. require immediate payment of the Outstanding Balance and any other amounts payable by you under the agreement including Economic Costs and other Costs;
- d. continue to charge interest at the applicable interest rate or otherwise in accordance with clause 13 on any overdue amounts (including interest);
- e. take possession of, and dispose of, any Secured Property or appointing a receiver in relation to any Secured Property, and
- f. sue you for any amount owing.

23.8 Credit (Rural Finance) Act

If the *Credit (Rural Finance) Act 1996* (Qld) applies to this agreement, our rights to take possession of or sell the Equipment are subject to giving you or any Guarantor any notice required to be given in accordance with this legislation. We agree to pay to or recover for you any amount you are entitled to under the *Credit (Rural Finance) Act 1996* (Qld) in exercising our rights.

23.9 Termination at our discretion

If the Facility is a Line of Credit, we can terminate the Facility at any time or reduce the Facility Amount by giving you written notice, in which case you must immediately pay us the Outstanding Balance and any other amounts payable including Economic Costs and other Costs.

24. You indemnify us

You indemnify us against any claim, damage, loss, liability or expense arising or incurred as a result of:

- a. the loss or destruction of the Equipment;
- b. any liability to pay any Tax on or in respect of any payments under this agreement or any Equipment (except where such Tax is payable by us);
- c. the reasonable exercise of any right we have;
- d. any act or omission of you or the Supplier;
- e. your possession, use or ownership of the Equipment;
- f. any payment by you becoming void, voidable or unenforceable;
- g. any compulsory acquisition, divestiture or purchase of the Equipment;
- h. any of your representations, warranties or acknowledgments being or becoming untrue or misleading in any material respect; and
- i. any other thing in respect of this agreement or the Equipment,

except to the extent that the claim, damage, loss, liability or expense has been met under another provision of this agreement or resulted from any of our own acts or omissions.

24.1 Continuing Obligation

Each indemnity in this agreement:

- a. is a continuing obligation notwithstanding:
 - (i) any settlement of account; or
 - (ii) the occurrence of any other thing,and remains in full force and effect until all money owing under this agreement has been paid in full; and
- b. is a separate and independent obligation of yours and no one indemnity limits the generality of any other indemnity.

24.2 Payment of Indemnity

You must pay to us on demand any amounts which we reasonably calculate is owing to us under any indemnity in this agreement.

25. Security Generally

As security for your obligations under this agreement, we take security over the Secured Property as described in the Schedule.

The Security Interest is granted under the Security Agreement/s identified in the Schedule by the person specified except that in the case of any Equipment described in the Schedule, the Security interest is granted by you under this clause 25.

25.1 Security over the Equipment

If the Schedule specifies Equipment to be financed, in consideration of, amongst other things, the Facility provided by us for your purchase of the Equipment, you grant a Security Interest in the Equipment and other Collateral to us to secure payment of the Outstanding Balance and performance of your other obligations under this agreement. You do this as beneficial owner unless the Schedule indicates that you enter into this agreement as Trustee of a Trust, in which case, you do this as Trustee of the Trust. Despite any provision of this agreement or any other document, this Security Interest is not subject to any declaration of trust, defeasance or condition not specified in this agreement.

25.2 Exclusion of PPSA provisions

To the extent the law permits:

- a. you waive your right to receive any notices we are required to give under the PPSA.
- b. for the purposes of sections 115(1) and 115(7) of the PPSA (if applicable to enforcement of a Security under this agreement):
 - (i) we need not comply with sections:
 - A. 95 (Notice to Secured Party of removal of accession);
 - B. 121(4) (Notice to grantor of enforcement of Security Interest in liquid assets);
 - C. 123 (Notice of seizure of collateral);
 - D. 125 (secured party actions when disposing of or retaining collateral);
 - E. 129 (purchase of collateral by Secured Party);
 - F. 130 (notice of disposal of collateral);
 - G. 132(3)(d) (content of statement of account on disposal);
 - H. 132(4) (statement of account if no disposal of collateral);
 - I. 134 and 135 (proposal of secured party to retain collateral);
 - (ii) sections 142 (redemption of collateral) and 143 (reinstatement of security agreement) are excluded.

You agree that you have waived your right under section 157(1) of the PPSA to receive notice of a verification statement if the Collateral is described in the registration as commercial property (pursuant to section 157(3) of the PPSA).

25.3 Security Interest confidentiality

- a. You, we and each Guarantor agree that no party will disclose to an Interested Person, or any other person at the request of an Interested Person, any information of the kind described in section 275(1) of the PPSA unless allowed or required by law.

- b. Both you and each Guarantor agree not to authorise the disclosure of any information of the kind described in section 275(1) of the PPSA.
- c. Each party agrees not to disclose information provided by the other party (including the existence or contents of this agreement) except:
 - (i) to its officers, employees, legal and other advisers and auditors or an External Administrator;
 - (ii) with the consent of any other party (who must not unreasonably withhold their consent);
 - (iii) if required by any stock exchange or if allowed or required by law;
 - (iv) by us to any related entity of ours, yours or a Guarantor;
 - (v) by us to any assignee of our rights under this agreement or any other arrangement;
 - (vi) by us to any person in connection with us exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of our rights or other person who is considering contracting with us or an External Administrator in connection with this agreement);
 - (vii) by us for the purpose of registering and maintaining any financing statement or financing change statement (each as defined in the PPSA) relating to the Security or otherwise under this agreement; or
 - (viii) by us to you and/or a Guarantor, provided that the prohibition under clause 25.3a. or 25.3b. is absolute and therefore none of the exceptions in clauses 25.3c. apply to a disclosure under clause 25.3a. or 25.3b.
- d. we agree that both you and each Guarantor are providing the signed copies of this agreement on the condition that we comply with our obligations of confidentiality under this clause 25.3.

26. Self-Managed Super Funds

Where we agree to lend to you as a trustee of a self-managed superannuation fund (“**the Fund**”) regulated by the Superannuation Laws:

- a. you need to comply with those laws; and
- b. to enable you to acquire a beneficial interest in the Property:
 - (i) we may not exercise any right of set-off, amalgamation or combination that we may otherwise have in relation to the Facility;
 - (ii) where you are in Default:
 - A. we may exercise any rights in respect of the Facility but, except for the purposes of exercising any power under any Security,

- we may not sue you for all or any part of the Outstanding Balance; and
- B. if the money we recover under the Security is less than the amount owing under the Facility (the 'Shortfall'), we may not seek to recover the Shortfall, or any part of it, from you or the Fund;
- (iii) we will discharge the Security over the Property, upon full repayment of the Outstanding Balance regardless of:
 - A. any other monies that, or that may, remain owing at that time; or
 - B. any monies that may become owing in the future,
- to us by either you or any Guarantor who granted the Security over the Property;
- (iv) due to the requirements of the Superannuation Laws, you may not redraw any money you have repaid in respect of the Facility. The reasons you must not redraw include that the Fund may not comply with the Superannuation Laws if a redraw occurs and there may also be adverse tax consequences for your superannuation fund. We recommend you seek your own independent taxation, legal and financial advice;
- c. you agree:
 - (i) to pay us any insurance claim proceeds relating to the Property that you receive prior to the full repayment of the Outstanding Balance; and
 - (ii) to direct the Security Trustee which is or will become the legal owner of the Property ('the Security Trustee') to pay to us any insurance claim proceeds relating to the Property that the Security Trustee receives prior to the full repayment of the Facility;
- d. you agree to pay to us any payment you receive and to direct the Security Trustee to pay to us any payment you or the Security Trustee receives, prior to the full repayment of the Outstanding Balance, on account of any compulsory acquisition of the Property or purchase of the Property.

If we reasonably believe that you have failed to take out or to maintain insurances over the Property in accordance with clause 21, we may take out insurance over the Property, for our own benefit, in relation to the Facility at your cost. The premiums are payable by you when we ask. We may debit to the Nominated Account or any other account you have (including by direct debit) the amount of the premiums.

27. Assignment

We may assign, novate or otherwise deal with any of our rights, obligations or interests under this agreement including any guarantee and Security.

You cannot assign your rights under this agreement without our prior written consent.

28. Waiver

Any waiver of a breach of this agreement or of any right, interest, remedy or power arising on a breach must be in writing and signed by the party granting the waiver. Failure or delay in the exercise, or partial exercise, of such a right, interest, power or remedy does not constitute a waiver.

29. Variation

29.1 Changes we can make without your agreement

In addition to all other rights we have to unilaterally change this agreement, we can make the changes described below by giving the type and period of notice specified for each type of change:

Description of change	Notice type and period
introduce a new fee, charge or premium or vary the amount of a fee, charge or premium or the way in which it is calculated or when it is charged	30 days' advance written notice to you. For government charges, notice may be give by newspaper advertisement at or before the time the change takes effect.
in relation to any Interest Rate which is variable, change the Interest Rate	Notice before the change takes effect. It will be to you in writing if the change is specific to you, otherwise, it may be by notice to you or by advertisement in the national or local media.
vary any conditions relating to the application of an Interest Rate, or introduce, suspend, withdraw or re-introduce such conditions	15 days' advance written notice to you. It will be given to you in writing if the change is specific to you, otherwise, it may be by notice to you or by advertisement in the national or local media.
change the way in which interest, or default interest, is calculated and when it	A reduction in payments may be notified at or before the time the next

Description of change	Notice type and period
is debited	account statement is due to be given.
change your payment obligations, including the amount of any payment, or your payment type;	
change any of the other provisions of this agreement: (i) as a result of a change to any law; (ii) to reflect our system capabilities; or (iii) which we reasonably consider appropriate to respond to changing circumstances or to otherwise protect our legitimate interests.	

29.2 Changes you and we agree

Any change to this agreement which we agree, will only take effect if our agreement is in writing signed by you and us and if any agreed preconditions are satisfied (for example, any consent of any Guarantor is provided).

30. How this document is to be understood

We have tried to make this agreement fair and reasonable. However, if any law applies to make part of it inoperative then the intention is for it to be interpreted in a way which preserves as much of the agreement and its operative effect as the law allows.

31. Communications and notices

How we will communicate

Notices, statements, certificates and other communications from us can be:

- a. given to you in person
- b. left at or posted to your last known address
- c. sent by fax transmission to your last known fax number
- d. given to you electronically by:
 - (i) short message service (SMS) to your last nominated mobile telephone number;

- (ii) emailing it directly to your last known nominated email address, or
- (iii) notifying you by letter, email or SMS of information on our website or online banking platform, or
- e. given to you in any other way permitted by law.

We will use your last nominated mobile number or email address for notices. You may change your nominated email address or mobile number, by giving us notice or calling us on 1300 728 718 . You must check your email and mobile phone regularly.

Your notices to us

All notices you send us must be in writing signed by you or your authorised agent. You can send us notices by:

- a. leaving them with us; or
- b. posting, sending by facsimile transmission or emailing us,

using the contact details in the Schedule.

When a notice takes effect

Unless a later date is set out in the notice, our notices to you take effect as follows:

Notices sent by	Take effect
In Person	At the time of delivery
Post	7 Business Days after it was posted
Fax	At the time shown on a transmission report showing the fax was sent in full
Email SMS	On the day it enters your information system as recipient
Media or internet published information	when it is first published

32. Applicable Law

This agreement is governed by the laws of the state or territory shown in your address in the Schedule (and if there is more than one of you, the address of the first of you shown in the Schedule). You agree to any court dispute being conducted in the courts of that place.

33. Exercise of Rights

Our rights under this agreement may be exercised by our agents, nominees and assigns.

34. Remedies not exclusive

Remedies available to a party under this agreement are cumulative and in addition to all other remedies available and the decision at any time to enforce any remedy shall in no way bar the later enforcement of that or any other remedy.

35. Confidentiality

- a. We and you agree to keep any information provided to each other and a Relevant Agreement confidential.
- b. We and you will only disclose that information:
 - (i) to our respective officers, employees, legal and other advisers and auditors;
 - (ii) to an External Administrator or you or us;
 - (iii) to third parties with the consent of the other party (such consent not to be unreasonably withheld);
 - (iv) if required by the rules of any relevant financial market or if allowed or required by law; or
 - (v) if there is a Regulatory Event.
- c. We may also disclose that information:
 - (i) if we are assigning or otherwise dealing with our interest under the Relevant Agreement or proposing to do so;
 - (ii) to register or maintain our Security;
 - (iii) to enforce our rights under the Relevant Agreement; or
 - (iv) to any Security provider (or to a person we believe may become a Security provider), but on the same confidential basis set out above.
- d. You and the Guarantor consent to us recording any telephone conversations with us in relation to the Facility where you or the Guarantor are notified prior to the commencement of the telephone conversation and to such recordings being used in any arbitral or legal proceedings.

36. Trusts

36.1 Application

This clause 36 applies if you enter this agreement or if a Guarantor gives a guarantee described in Section E in a capacity of trustee of a trust. For this purpose, every reference to "Trustee" is a reference to each such person and every reference to "Trust" is to each such trust.

36.2 Capacity in which you and any Guarantor are liable

- a. You promise that you do not act in a capacity as a trustee of a trust unless the Schedule otherwise indicates in which case you make the other promises set out in this clause 36.
- b. If you enter into a Relevant Agreement as a trustee, your liability to us is supported by you

personally, your own assets and the trust assets.

- c. Each Guarantor promises that they do not act as Guarantor in a capacity as a trustee of a trust unless the Schedule otherwise indicates in which case the Guarantor makes the other promises set out in this clause 36.
- d. If a Guarantor enters into a Relevant Agreement as a trustee, the Guarantor's liability to us is supported by the Guarantor personally, the Guarantor's own assets and the trust assets.

36.3 Trustee promises

The Trustee promises that:

- a. the Trustee is the only trustee of the Trust and no steps have been taken to remove the Trustee as trustee of the Trust;
- b. the Trustee has the power and authority to enter into this agreement and is doing so in good faith, for a proper purpose and for the benefit of all of the beneficiaries of the Trust;
- c. the Trustee has the right to be fully indemnified out of the Trust assets for obligations incurred as trustee under this agreement ahead of the beneficiaries' claims;
- d. the Trustee is not in breach (however described) under the terms of the Trust;
- e. the Trustee will not without our prior written consent:
 - (i) amend the Trust Deed;
 - (ii) cease to be the only trustee; or
 - (iii) breach their duties as trustee of the Trust;
- f. the Trust has not vested or terminated and no action has been taken or is proposed to be taken to terminate the Trust;
- g. if requested by us, true copies of the Trust Deed and other trust documents have been provided and they disclose all the terms of the Trust;
- h. the Trust Deed and other trust documents have not been revoked, varied or amended in any way since being provided to us;
- i. the Trustee and its directors and other officers (if any) have complied with all obligations in connection with the Trust;
- j. you will immediately notify us if any of the representations and warranties in this clause 36 cease to be true or become misleading in any way; and
- k. you indemnify us against any liability or loss arising from, and any costs, charges and expenses (including legal costs and expenses on a full indemnity basis) incurred in connection with, any of the promises given in this agreement being untrue or unfulfilled.

36.4 Undertakings

The Trustee undertakes to use its best endeavours to arrange for the beneficiaries under the Trust to execute any documentation reasonably required by us in connection with the Trust.

36.5 Covenant

The Trustee must not allow so far as it is able any of the following to occur without our prior written consent:

- 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.

SECTION E: GUARANTEE AND INDEMNITY

1. Guarantee Limit

If the Schedule specifies a Guarantee Limit for any Guarantor, that Guarantor's liability under this Section E is limited to the amount of the Guarantee Limit.

2. Guarantee

In consideration of our providing the Facility, each Guarantor, unconditionally and irrevocably guarantees:

- a. the payment of the Guaranteed Moneys; and
- b. the punctual performance of all of your obligations as borrower under this agreement;

3. Indemnity

Each Guarantor agrees to indemnify and to continue to indemnify us against all losses, costs and expenses we incur or suffer as a consequence of:

- a. your default as borrower under this agreement;
- b. any of your obligations as borrower or any of the Guarantor's obligations expressed in this agreement (including this Section E being void, voidable or wholly or partially unenforceable; or
- c. if we have to refund any monies paid previously by you as borrower and we are unable to recover these payments.

This indemnity is a continuing obligation and will only expire upon satisfaction of all of your obligations under this agreement.

4. Payment on demand

The Guarantor must pay us the Guaranteed Moneys on our demand in cleared and available funds without set off or deduction. Each Guarantor acknowledges and consents to us, in our discretion, demanding payment from the Guarantor before enforcing this agreement against you as borrower.

5. Guarantor obligation not affected by specified circumstances

The Guarantor's obligation to pay the Guaranteed Moneys is not affected by:

- a. our granting of any time or indulgence to you as borrower or another person;
- b. our compromising our rights against, or wholly or partially releasing, you from any obligation under this agreement;
- c. any acquiescence, delay, acts, omissions or mistakes by us;
- d. our dealing with this agreement in any way; or
- e. your mental or medical health or death or your insolvency or bankruptcy.

If a Guarantor is a Guarantor under a number of agreements with us, each guarantee shall be an independent obligation.

6. Guarantor restrictions

So long as an amount payable under this agreement remains unpaid, the Guarantor may not, without our consent;

- a. exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under this agreement;
- b. claim an amount from you as borrower under a right of indemnity; or
- c. claim an amount in your insolvency.

The guarantee and indemnity in this Section E does not merge with or adversely affect any other guarantee and indemnity, security interest, mortgage, charge or other security, or right or remedy to which we are entitled at any time or to any judgment or order which we obtain against a Guarantor or you as borrower in respect of an amount payable under the guarantee and indemnity of this agreement.

7. Guarantor acknowledgments

Each Guarantor acknowledges:

- a. having had the opportunity to seek independent legal advice before giving this guarantee and indemnity; and
- b. not being induced by us, or by you as borrower, to be a Guarantor.

8. Trust

Clause 36 applies if a Guarantor gives a guarantee described in this Section E in a capacity of trustee of a trust.

9. Costs

The Guarantor must pay us for our reasonable costs and taxes payable in connection with the guarantee and indemnity given under this Section E including:

- a. any actual or attempted exercise or enforcement of rights under the guarantee and indemnity.
- b. any payment, receipt or other transaction arising out of the guarantee and indemnity.

On our demand, the Guarantor must also pay us interest calculated on a daily basis at the Interest Rate on each amount the Guarantor owes for the period it is unpaid. We may capitalise interest in the manner that interest is capitalised on amounts which you owe as borrower such that the capitalised interest may itself accrue interest.

SECTION F: GLOSSARY

Adverse Event has the meaning given in clause 23.4.

Anticipated Total Cost on Completion means the sum (if any) specified in Your Facility Details in the Schedule.

Asset Finance Agreement means with respect to any Equipment, a Lease, Hire Purchase Agreement or Chattel Mortgage Agreement entered into between the Parties prior to, at or after the expiration of the Drawdown Term.

Associated Entity means any entity which is controlled by you or controls you.

Building Conditions means the conditions in clause 17 which apply if specified in the Schedule.

Building Contract means the agreement/s (including subcontracts) that relate to the development, construction and completion of the Project.

Building Works means all of the works to be undertaken under the Building Contract.

Business Day means:

- a. 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.

Casualty Event has the meaning given in 20.3.

Chattel Mortgage Agreement means with respect to any Equipment, a duly completed chattel mortgage agreement signed by us and accepted by you.

Collateral at any time means each one or more of the following as the context allows:

- a. the Equipment; and
- b. income and other proceeds derived from the Equipment including from any sale or other disposal and from any insurance claim.

Commercial Consignment has the meaning given in the PPSA.

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

Development and Construction Budget means the development and construction budget for the Project provided to us before the first Drawing.

Development and Construction Program means the schedule for Building Works provided to us before the first Drawing.

Drawdown Term means the period commencing on the Settlement Date and ending on the Maturity Date.

Drawing means an advance we make under the Facility.

Economic Costs has the meaning given in clause 22.

Economic Event has the meaning given in clause 22.

Encumbrance means an interest or power:

- a. reserved in or over an interest in any property, including any retention of title;
- b. created or otherwise arising in or over any interest in any property under a Security Agreement, 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 obligation and includes a Security Interest and any agreement to grant or create any of such interest or power

Enforcement Action has the meaning given in clause 23.7.

Equipment means the equipment specified in the Schedule and includes any item or part of it and any accessories, tyres, tools or other equipment supplied with or attached to or subsequently acquired to be used with or attached to that equipment and includes any Substitution.

External Administrator means a receiver, receiver and manager, administrator, liquidator, provisional liquidator, controller or bankruptcy trustee.

Facility means the finance facility described in Your Facility Details in the Schedule.

Facility Amount means the facility amount described in Your Facility Details in the Schedule.

GST means Goods and Services Tax as imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guaranteed Moneys means all debts and monetary liabilities you have to us under this agreement 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 our account alone, or severally or jointly with any other person;
- f. are owed to any other person as agent (whether disclosed or not) for or on our behalf;
- 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 the person or persons described in the Schedule as Guarantor. If there are more than one, "Guarantor" means each of them separately and every two or more of them jointly unless the context provides otherwise.

Interest Rate means:

- a. when a fixed rate applies, either:
 - (i) the relevant fixed interest rate prevailing at the date the Facility is drawn (or first drawn) as advised by us; or
 - (ii) such other rate as we later agree; and
- b. when a variable rate applies, the variable interest rate as applicable from time to time and as advised by us in accordance with clauses 14 and 29.

Interested Person has the meaning given to that term for the purposes of section 275 of the PPSA, and includes in relation to any property in which we have an Encumbrance:

- a. the person granting another Encumbrance,
- b. a person with the other Encumbrance or, if that person is a company, its auditor;
- c. an execution creditor with an interest in the property; and
- d. an authorised representative of any of the above.

Line of Credit means a finance facility under which no specific Drawings are contemplated but the Outstanding Balance must not exceed the Facility Amount (such as a Draw Down Facility, a Commercial Mortgage Construction Facility, a Med-e-Credit Facility, a Commercial Mortgage Line of Credit and a Residential Investment Line of Credit).

Loan means the loan arising under this agreement from any one or more Drawings. For the avoidance of doubt, a Line of Credit is not a 'Loan'.

Maturity Date means the date the last payment is due under this agreement specified in the Schedule.

Nominated Account means the account specified in the direct debit request included as part of this agreement.

Outstanding Balance in relation to a facility means the difference between all amounts debited and all amounts credited to the facility account.

Payment Notice in relation to a Draw Down Facility or Commercial Mortgage Construction Facility, means a notice in the form deemed acceptable by us by which you instruct us to pay a Drawing towards satisfaction of an invoice issued by the Supplier.

Permitted Encumbrance means any of the following entered into by you or a subsidiary in the ordinary course of business (as conducted on the date of the agreement):

- a. a Commercial Consignment of goods under which you or a subsidiary is the consignee;
- b. a bailment, hiring arrangement or lease under which you or a subsidiary is the bailee, hirer or lessee, that does not secure payment or performance of an obligation, but which is a PPS Lease;
- c. retention of title terms in a contract for the supply of goods to you or a subsidiary;
- d. any Encumbrance created under the Security;
- e. any Encumbrance created or subsisting with our prior written consent (as long as any conditions stipulated for that consent are complied with); or
- f. any lien arising by operation of law (other than the PPSA) and securing obligations which are not overdue;

PPS Lease has the meaning given in the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Project means the project (if any) described in Your Facility Details in the Schedule.

Property means the property described in the Security table in the Schedule.

Proscribed Person means a person we reasonably believe is (or is acting on behalf of, or for the benefit of):

- a. a proscribed person or Entity under the *Charter of the United Nations Act 1945* (Cth) or the *Autonomous Sanctions Act 2011* (Cth);

- b. on a list of people with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or
- c. in breach of the laws of any jurisdiction relating to money-laundering or counter-terrorism.

Regulatory Event means a change in regulation or the mandatory requirements of a government authority relevant to the provision of the Facility under this agreement which has the effect of, or threatens to have the effect of, interrupting, preventing, delaying, materially increasing the cost of or otherwise adversely affecting our ability to fulfil our obligations under this agreement.

Relevant Agreement means:

- a. this agreement;
- b. any Security;
- c. any agreement between us and you or a Guarantor, or us and an Associated Entity of you or a Guarantor.

Repayment means an amount you are required to pay as principal and/or interest as specified in the Schedule as may be varied under this agreement or confirmed to you after the Settlement Date.

Repayment Date means the date on which a Repayment is due as specified in the Schedule as may be varied under this agreement.

Schedule means Section A of this agreement.

Secured Property in relation to a Security means the property subject to the Security.

Security means the Security Agreement, bill of sale, mortgage, charge or other instrument or instruments (if any) granted or to be granted by you or any Guarantor to us on or about the date of this agreement and include Security referred to in the Schedule.

Security Agreement has the meaning given in the PPSA.

Security Interest, in relation to:

- a. any personal property (as defined in the PPSA) has the same meaning as in the PPSA; and
- b. any other property means any security for the payment of money or a performance of an obligation, including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. It also includes a guarantee or indemnity.

Settlement Date means the date we notify you in writing as the date the Facility was loaded into our computer systems.

Small Business means a business in relation to which the total of our business finance credit exposures to it and its related entities (that are businesses) is less than \$5,000,000. This includes the total of all its existing debt to us, any undrawn amounts in relation to that debt, and any other credit or financial accommodation provided or being applied for. A 'related entity' is an entity which falls within the definition of 'related entity' under section 9 of the Corporations Act and could include, for example, those entities which we reasonably determine are under common ownership control or management control with or by the Small Business.

Substitution means the substitution of replacement equipment for all or part of the Equipment which has been the subject of a Casualty Event whether provided by an insurer or another person we approve.

Superannuation Laws means *Superannuation Industry (Supervision) Act 1993* (Cth).

Supplier means the person described as such in the Schedule.

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 government authority 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.

Trust means a trust described in clause 36.

Trust Deed means the trust deed for Trust.

Trustee means each trustee of the Trust.

we and **us** means Medfin Australia Pty Ltd ABN 89 070 811 148.

you means the person or persons described in the schedule as "You" and if there are more than one, means each of them separately and every two or more of them jointly, "you" includes your successors and assigns to whom we have consented.