



L A W Y E R S

# Specific Security Deed Poll

REGARDING

## Bank Account

ENTERED INTO BY

the party described in Schedule 1 as

(1) **Grantor**

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**SPECIFIC SECURITY DEED POLL (BANK ACCOUNT)**  
**- M101 NOMINEES PTY LTD**



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## Specific Security Deed Poll

This **Specific Security Deed Poll** is entered into on the day and year first (1<sup>st</sup>) set out in Schedule 1 by the party described in Schedule 1 as the Grantor, for the benefit of the Secured Party.

### Background

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- A. Security - In consideration of financial accommodation being made available now or in the future to, at the request of, or for the account of, the Principal Obligor, the Grantor has agreed to enter into this deed.

### Terms and Conditions

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In consideration of the mutual promises contained in this deed, and for other good and valuable consideration, it is agreed as follows:

#### 1. DEFINITIONS AND INTERPRETATION

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##### 1.1 Definitions

Terms defined in the Security Trust Deed will have the same meanings in this deed, *unless* expressly defined in this deed (in which case the meanings in this deed will prevail), and in this deed the following terms will have the following meanings, *unless* the context otherwise requires:

“**ABN**” means Australian Business Number;

“**ACN**” means Australian Company Number;

“**Affiliate**” means, in relation to a person, any person who (*other* than by means of this agreement):

- (a) associated - is an ‘associate’ (as that term is defined in section 9 (*Dictionary*) of the Corporations Act);
- (b) related - is a ‘related entity’ (as that term is defined in section 9 of the Corporations Act, substituting the name of that person for the words ‘body corporate’);
- (c) business - is a partner or joint venturer of that person; or
- (d) Controlled - is a body corporate or other person which is Controlled by that person;

“**Applicable Law**” means all laws and regulations applicable to the Grantor, the Principal Obligor and/or the Security Beneficiaries, *including* the Corporations Act;

“**Attorney**” means each attorney appointed by the Grantor under clause 19;

“**Australian Accounting Standards**” means:

- (a) definition - “accounting standard” as defined in section 9 (*Dictionary*) of the Corporations Act;
- (b) Act - the requirements of the Corporations Act in relation to the preparation of accounts; and

- (c) GAAP - generally accepted accounting principles and practices consistently applied in Australia, *including* any domestically accepted international accounting principles and practices, *except* principles and practices that are inconsistent with paragraphs (a) or (b) of this definition;

**“Authorisation”** *includes*:

- (a) approval - a consent, authorisation, registration, filing, lodgement, agreement, notice of non-objection, notarisation, certificate, permission, licence, approval, permit, authority or exemption prescribed by law or regulation or required from, by or with a Governmental Agency; and
- (b) timing - in relation to anything which a Governmental Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action;

**“Authorised Officer”** means:

- (a) Finance Party - in respect of a Finance Party:
- (i) *individual* - if the Finance Party is a natural person, the Finance Party itself; or
  - (ii) *Corporation* - if the Finance Party is a corporation, any director or any person from time to time nominated by that Finance Party by notice to the Secured Party as an authorised officer to sign notices or documents in connection with any of the Finance Documents, such notice to be accompanied by specimen signatures of those persons so appointed; and
- (b) Secured Party - in respect of the Secured Party, any person whose title or office *includes* the word ‘director’, ‘associate director’, ‘manager’, ‘counsel’, ‘legal representative’, ‘company secretary’ or cognate expressions or any person from time to time nominated as an Authorised Officer by the Secured Party; and
- (c) Controller / Attorney - in relation to a Controller or Attorney which is a corporation, any ‘officer’ (as that expression is defined in the Corporations Act) of that Controller or Attorney;

**“Business Day”** means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in section 9 (*Dictionary*) of the Corporations Act) are open for general banking business in:

- (a) notices - for the purposes of clause 25 (*Notices*), the city where the notice or other communication is received; and
- (b) otherwise - for all other purposes, the capital city of the State;

**“Claims”** *includes* all direct (but not indirect) claims, allegations, demands, notices, actions, liens, proceedings, suits, litigation, prosecutions, arbitrations, investigations, judgments, awards and Losses of any kind made against a person concerned, however arising, on any basis whatsoever (*including* under to or in connection with a Finance Document or its subject matter); whether present, unascertained, immediate, future or contingent; whether based in contract (*including* under any acknowledgement, agreement, certification, warranty or indemnity or any other breach, actual or anticipatory), in restitution in tort (*including* negligence), strict liability, under statute, on an ‘as much as he has earned’ basis, under quasi- contract, for unjust enrichment or under any other principle of law or equity; and whether involving a third party or a party to this deed or otherwise;

**“Collateral Security”** means any agreement which grants a Security Interest to the Secured Party, or any Guarantee in favour of the Secured Party, or other agreement entered into, in each case now or in the future, by any person which is supplemental or collateral to, or in contemplation of, this deed or which is by way of further assurance and intended to be collateral or primary security for the Secured Obligations;

**“Control”** means:

- (a) corporates - in relation to a body corporate (*including* a body corporate in the capacity as trustee of any trust property), the ability of any person to exercise control over the body corporate by virtue of the holding of voting shares in that body corporate or by any other means, *including* the ability directly or indirectly to remove or appoint all or a majority of the directors of the body corporate; and
- (b) individuals - in relation to an individual, the ability of any person to direct that person to act in accordance with their instructions whether by operation of any law, agreement, arrangement, understanding, custom or any other means;

**“Controller”** has the meaning given to the word 'controller' in section 9 (*Dictionary*) of the Corporations Act, and *includes* any Personnel of such persons;

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

**“Costs”** *includes* charges and expenses, *including* those incurred in connection with advisers;

**“Enforcing Party”** means the Secured Party or any agent, administrator, Attorney or Controller appointed under any Finance Document or any Applicable Law;

**“Event of Default”** means any of the events specified in clause 14.1;

**“Finance Documents”** means:

- (a) deed - this deed;
- (b) STD - the Security Trust Deed;
- (c) SPNDP - the Secured Promissory Note Deed Poll;
- (d) IM - the Information Memorandum;
- (e) security - all other agreements at any time evidencing or relating to the Secured Obligations;
- (f) Collateral Security - any Collateral Security;
- (g) STD - any other agreement which constitutes a Finance Document under the Security Trust Deed;
- (h) agreed - any other agreement which the parties agree will be a Finance Document for the purposes of this deed (and when referred to in relation to any particular person, means every Finance Document to which that person is a party); and
- (i) related - a document entered into or given under or in connection with, or the purpose of amending or novating any of the above documents; and

**“Finance Party”** means the Grantor, the Principal Obligor and any other person (*other* than the Security Beneficiaries) that is a party to the Finance Documents;

“**Financial Institution**” means the entity described as such in Schedule 1;

“**Further Losses**”:

- (a) included - *includes* indirect, incidental, consequential, special, exemplary or punitive loss or damage arising from a breach of contract, tort (*including* negligence), under statute or any other basis in law or equity, whether actual or potential and whether or not foreseeable, *including*: loss or anticipated loss of, or failure to realise, income, revenue, profits and/or anticipated savings; economic loss, loss of or failure to realise anticipated savings or benefits, loss or denial of business, bargain, contract, expectation, opportunity, goodwill, rental or other benefit; loss of use; loss of production; loss of access to markets; loss of reputation, future reputation or publicity; damage to credit rating; remote, abnormal or unforeseeable loss, or any similar loss; special, exemplary, punitive, incidental, indirect or other similar forms of loss or damage; loss or damage arising out of any delay, postponement, or interruption to business, *including* the cost of overheads incurred during business interruption; any other loss or anticipated loss or damage whatsoever in the nature of, or consequential upon, in relation to or arising out of the foregoing; but
- (b) not included - *excludes* loss or damage directly resulting from, or which a party is aware could be a direct result of, or which would have been in the contemplation of reasonable businesspeople as directly resulting from, a breach of a Finance Document, however caused, such as:
- (i) *expenses* - additional expense incurred by the Secured Party in having security provided by others;
- (ii) *time* - management time expended due to the breach of the Finance Document; and
- (iii) *costs* - cost of implementing remedial measures to work around the breach;

“**Governmental Agency**” means a government or government department, commission, authority, agency, court, tribunal, public, regulatory or other person or body, a governmental, semi-governmental, quasi-governmental, statutory, administrative, fiscal or judicial person, body or entity or a person, body or entity who is charged with the administration of any law, *including* any self-regulatory organisation established under statute or any securities exchange, and *including* the Australian Securities and Investments Commission (ASIC), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Prudential Regulation Authority (APRA), the Reserve Bank of Australia (RBA), the Therapeutic Goods Administration (TGA) and any Taxation Authority;

“**Grantor**” means the party described as such in Schedule 1;

“**GST**” has the meaning given in the GST law;

“**GST law**” has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Guarantee**” means any guarantee, indemnity, letter of credit, performance bond, letter of comfort or suretyship, or any other obligation or irrevocable offer (whatever it is called and whatever its nature):

- (a) payment - to pay or to purchase;

- (b) funds - to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of;
- (c) indemnity - to indemnify any person against the consequences of default in the payment of; or
- (d) responsibility - to be responsible otherwise for,

an obligation, indebtedness or monetary liability of another person, a dividend, distribution, capital or premium on shares, stock or other interests, or the insolvency or financial condition of another person;

“**Information Memorandum**” means the information memorandum, by whatever name called (such as brochure, or disclosure or offer document), issued from time to time by or on behalf of the Principal Obligor to prospective or actual Noteholders regarding the details of arrangements relating to the Notes;

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

- (a) corporation - in the case of a corporation:
  - (i) *winding up* - an application is made to a court or a meeting is convened, or a resolution is passed, or a notice is issued or any step is taken for the corporation to be wound up or dissolved or for the appointment of a Controller, inspector, administrator (whether voluntary or otherwise), liquidator, provisional liquidator, trustee or other similar person to the corporation or in respect of any of its assets be appointed (*unless* the application is frivolous, vexatious, or is withdrawn, struck out or dismissed within seven (7) days after it is made);
  - (ii) *Liquidation* - the corporation is in Liquidation;
  - (iii) *creditor protection* - the corporation seeks or obtains protection from its creditors under any Applicable Law;
  - (iv) *Process* - any attachment, distress, execution or other Process is made against any asset of the corporation, which is not paid within ten (10) Business Days, *unless* being contested in good faith;
  - (v) *cessation* - the corporation ceases to carry on all or a substantial part of its business;
  - (vi) *reorganisation* - *except* to reconstruct or amalgamate while solvent, the corporation enters into, or resolves to enter into, an arrangement or composition with, or assignment for the benefit of, all or any of its creditors, or it, or anyone on its behalf, proposes a reorganisation, moratorium, scheme of arrangement, deed of company arrangement or other administration involving any of them or the winding up or dissolution of the corporation;
  - (vii) *insolvency* - the corporation is, states that it is or is presumed under any Applicable Law to be, insolvent;
  - (viii) *administration* - the corporation becomes ‘insolvent under administration’ as defined in section 9 (*Dictionary*) of the Corporations Act or action is taken which could result in that event;



- (ix) *statutory demand* - as a result of the operation of section 459F(1) (*where a company fails to comply with a statutory demand*) of the Corporations Act, the corporation is taken to have failed to comply with a statutory demand;
  - (x) *garnishing* - a garnishee notice, or a notice under section 120 (*enforcement of security interests in liquid assets - general*) of the PPSA, is given to:
    - (A) DEBTOR - a debtor of that corporation; or
    - (B) OTHER - any other person that otherwise owes or may owe money at any time to that corporation,in connection with any money that the corporation is said to owe, which is not paid within ten (10) Business Days, *unless* being contested in good faith; or
  - (xi) *other* - anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (x) (*inclusive*) of this definition under the law of any jurisdiction happens to the corporation; or
- (b) individual - in the case of a natural person:
- (i) *bankrupt* - the person has a bankruptcy notice issued against the person;
  - (ii) *bankruptcy* - a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
  - (iii) *garnishing* - a garnishee notice, or a notice under section 120 (*enforcement of security interests in liquid assets - general*) of the PPSA, is given to:
    - (A) DEBTOR - a debtor of that person; or
    - (B) OTHER - any other person that otherwise owes or may owe money at any time to that person,in connection with any money that the person is said to owe;
  - (iv) *creditors* - the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
  - (v) *moratorium* - the person proposes or effects a moratorium involving any of the person's creditors;
  - (vi) *suspension* - the person stops or suspends, or threatens to stop or suspend:
    - (A) DEBTS - the payment of all or a class of its debts; or
    - (B) BUSINESS - the conduct of all or a substantial part of its business;
  - (vii) *insolvency* - the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any Applicable Law;
  - (viii) *other* - anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (vii) (*inclusive*) of this definition under the law of any jurisdiction happens to the person; or
  - (ix) *incapacity* - the person dies, is imprisoned or becomes incapable of managing his or her own affairs;

**“Liquidation”** includes provisional liquidation, administration, receivership, compromise, arrangement, amalgamation, official management, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors;

**“Losses”** means all losses, liabilities, debts, accounts, damages, payments, Costs, disbursements, charges, expenses (*including* legal fees and disbursements, on a full indemnity basis), Costs of investigation, litigation, settlement, judgment, Taxes, interest, penalties and fines, incurred by or awarded against the person concerned, however arising; whether directly or indirectly; whether present, unascertained, immediate, future or contingent; whether based in contract, tort or statute; and whether involving a third party or a party to this deed or otherwise, and *including* (for the avoidance of doubt) any Further Losses;

**“Material Adverse Effect”** means, in the opinion of the Secured Party, a material adverse effect on:

- (a) performance - the ability of any Finance Party to perform its obligations under a Finance Document;
- (b) condition - the financial condition or business of any Finance Party;
- (c) rights - the ability of the Secured Party to exercise its rights under any Finance Document; or
- (d) security - the attachment, enforceability, perfection, priority or value of this deed or any Security Interest granted to the Secured Party,

*regardless* of whether that material adverse effect arises as a result of the acts or omissions of a Finance Party or a Governmental Agency;

**“Note”** means a secured, redeemable promissory note issued by the Principal Obligor from time to time in accordance with the Secured Promissory Note Deed Poll;

**“Noteholder”** means the registered holder of a Note;

**“Obligations”** means all covenants, conditions, stipulations, warranties, Guarantees, undertakings, assurances, agreements and other obligations of any nature (whether present or future and express or implied) of any Finance Party to, or for the benefit of, the Secured Party under, or contemplated by, any of the Finance Documents;

**“Permitted Transaction”** means a transaction described as such in Schedule 1:

**“Personnel”** means a party’s officers, employees, agents, representatives, delegates, consultants and/or advisers;

**“PPSA”** means the *Personal Property Securities Act 2009* (Cth);

**“PPS Register”** means the Personal Property Securities Register established under section 147 (*Personal Property Securities Register*) of the PPSA;

**“Principal Obligor”** means the entity described as such in Schedule 1;

**“Process”** means any process issued by a court or other tribunal or authority by which a person is empowered or required to take possession of or to hold, sell or otherwise deal with any Secured Property;

**“Secured Moneys”** means all amounts that at any time, for any reason or circumstance in connection with the Finance Documents (*including* transactions in connection with them) or

otherwise, whether at law or otherwise, and whether or not of a type within the contemplation of the parties at the date of this deed:

- (a) owing - are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by the Finance Parties to the Security Beneficiaries;
- (b) paid - the Security Beneficiaries have advanced or paid on behalf of a Finance Party or at a Finance Party's express or implied request;
- (c) payable - the Security Beneficiaries are liable to pay by reason of any act or omission on any Finance Party's part, or that the Security Beneficiaries have paid or advanced in protecting or maintaining the Secured Property or any Finance Document following an act or omission on the part of any a Finance Party; or
- (d) future - are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs,

and this definition applies:

- (i) *capacity* - irrespective of the capacity in which the Finance Parties or the Security Beneficiaries became entitled to, or liable in respect of, the amount concerned;
- (ii) *liability* - whether the Finance Parties or the Security Beneficiaries are liable as principal debtor, as surety, or otherwise;
- (iii) *liability* - whether any Finance Party is liable alone, or together with another person;
- (iv) *assignment of obligation* - even if the Finance Parties owe an amount or obligation to the Security Beneficiaries because it was assigned to the Security Beneficiaries, whether or not:
  - (A) TIME - the assignment was before, at the same time as, or after the date of this deed or any other Finance Document;
  - (B) AWARENESS - the Finance Parties consented to or were aware of the assignment; or
  - (C) SECURITY - the assigned obligation was secured before the assignment;
- (v) *assignment of document* - even if this deed or any other Finance Document was assigned to the Security Beneficiaries, whether or not:
  - (A) AWARENESS - the Finance Parties consented to or was aware of the assignment; or
  - (B) UNSECURED - any of the Secured Money was previously unsecured; or
  - (C) *trustee* - if any Finance Party is a trustee, whether or not it has a right of indemnity from the relevant trust fund;

**"Secured Obligations"** means all obligations for the payment or repayment of the Secured Moneys and the other Obligations and *includes* any part of the same;

**"Secured Party"** means the party described as such in Schedule 1;

“**Secured Promissory Note Deed Poll**” means the Secured Promissory Note Deed poll dated on or about the date of this deed and entered into by the Principal Obligor under which the Principal Obligor may issue Notes from time to time;

“**Secured Property**” means all right, title and interest of the Grantor in the items described as such in Schedule 1;

“**Security Beneficiary**” has the meaning given in the Security Trust Deed;

“**Security Interest**” means an interest or encumbrance of any nature whatsoever, *including*:

- (a) PPSA - a security interest within the meaning of section 12 (*meaning of security interest*) of the PPSA;
- (b) property interest - any interest or equity of any person (*including* any right to acquire, option or right of pre-emption) or any other mortgage, pledge, lien, charge, assignment, hypothecation, security, interest, or title retention arrangement in relation to any property (whether or not it is personal property);
- (c) payment / performance - any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (whether or not it is personal property);
- (d) set-off / withholding - a right of set-off or right to withhold payment of a deposit or other money;
- (e) ownership / use - a right of any person to purchase, occupy or use an asset (*including* under an option, agreement to purchase, licence, lease, or hire purchase);
- (f) property - an easement, restrictive covenant, caveat or similar restriction over property (*except* an easement or covenant whose burden is noted on the certificate of title to the land concerned);
- (g) trust / third party - a trust or other third party interest;
- (h) Tax - a notice under section 255 (*Person in receipt or control of money from non-resident*) of the *Income Tax Assessment Act 1936* (Cth), section 260-5 (*Commissioner may collect amounts from third party*) in Schedule 1 (*Collection and recovery of income tax and other liabilities*) to the *Taxation Administration Act 1953* (Cth) or any similar legislation; and/or
- (i) agreement - an agreement to create any of the above or to allow any of them to exist; and/or
- (j) Guarantee - a Guarantee;

“**Security Trust Deed**” means the Security Trust Deed dated on or about the date of this deed entered into by the Principal Obligor, the Secured Party and other parties, under which certain parties provide security for the payment by the Principal Obligor of amounts due in respect of the Notes, to be held by the Secured Party trustee on behalf of the Noteholders;

“**State**” means the territory of the Commonwealth of Australia described as such in Schedule 1;

“**Statement**” means any statement, representation, warranty, undertaking, promise, inducement, covenant, agreement, forecast or guarantee;

“**Tax**” or “**Taxation**” means any tax, (*including* any consumption tax, goods and services tax and value added tax), duty (*including* stamp duty, financial institutions duty, transaction duty and bank account debt tax), levy, charge, impost, rates, fee, deduction, compulsory loan or withholding tax, however it is described, which is (or is able to be) assessed, levied, imposed or collected by or payable to any Taxation Authority, wherever chargeable and whether of Australia or any other jurisdiction and *includes* any interest, fine, penalty, charge, fee, expense or other amount imposed or made on or in respect of any of the above, but *excludes* tax on the overall net income of the Secured Party; and

“**Taxation Authority**” means the Australian Taxation Office (ATO) in Australia, the State Revenue Office (SRO) or equivalent of any state or territory of Australia, and any other governmental agency or other authority whatsoever competent to impose any Taxation, whether in Australia or elsewhere.

## 1.2 PPSA definitions

In this deed, *unless* the context requires otherwise, the following terms have the meanings given to them in the PPSA: “**account**”, “**amendment demand**”; “**attaches**”; “**attachment**”; “**circulating asset**”; “**control**”; “**financing change statement**”; “**financing statement**”; “**inventory**”; “**investment instrument**”; “**intermediated security**”; “**document of title**”; “**perfection**”; “**personal property**”; “**proceeds**”; “**purchase money security interest**”; “**registration**”; “**serial number**”; and “**verification statement**”.

## 1.3 Interpretation

In this deed, *unless* the context otherwise requires:

- (a) headings - the index and any headings are for ease of reference only and do not affect the interpretation of this deed;
- (b) inclusion - specifying anything in this deed after the words ‘including’, ‘includes’ or ‘for example’ or similar expressions does not limit what else is included, *unless* there is express wording to the contrary;
- (c) examples - if an example is given of anything (*including* a right, obligation or concept), such as by saying it *includes* something else, the example does not limit the scope of that thing;
- (d) references - a reference to a clause, party, attachment, exhibit, Schedule or Annexure is a reference to a clause of, and a party, attachment, exhibit, schedule and annexure to, this deed and a reference to this deed *includes* any attachment, exhibit, schedule and annexure;
- (e) attachments - the background, the execution page, the Schedules and the Annexures (if any) are each incorporated in and form part of this deed;
- (f) number - a reference to the singular *includes* the plural and the other way around;
- (g) gender - a reference to a given gender *includes* all other genders;
- (h) grammar - other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (i) definitions - words or phrases appearing in a certain context in this deed which, when used in a similar context in the Corporations Act would have a particular meaning as at the date of this deed, have that meaning in this deed;

- (j) person - a reference to a person or party *includes* a natural person, a company or any other type of entity or body recognised by law, whether or not it is incorporated or has a separate legal identity, and any executor, administrator, successor in law, permitted substitutes and permitted assigns of the person (and, where applicable, the person's legal personal representatives);
- (k) legislation - a reference to any legislation or legislative provision *includes* any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision, and *includes* all subordinate legislation, regulations or instruments issued under it;
- (l) government - a reference to any governmental or statutory body *includes* any body which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body;
- (m) documents - a reference to any agreement or document (*including* this deed) is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time, *except* to the extent prohibited by the agreement or document;
- (n) agreement - a reference to an agreement *includes* an undertaking or other binding arrangement or understanding, whether or not in writing;
- (o) thing - a reference to any thing (*including* a right, obligation or concept) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one (1) or more of them;
- (p) writing - a reference to writing *includes* any mode of reproducing words, figures or symbols in tangible and permanently visible form and *includes* a facsimile transmission and electronic mail, and any notification, demand, agreement, consent, approval or other communication required under this deed must be in writing;
- (q) information - a reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- (r) currency - a reference to Australian dollars, dollars, \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia;
- (s) time
  - (i) *general* - a reference to time is to local time in the capital city of the State; and
  - (ii) *timing* - the expression 'at any time' *includes* reference to past, present and future time and the performance of any action from time to time;
- (t) periods - if a period of time dates from a given day or the day of an act or event, it is to be calculated *exclusive* of that day;
- (u) action - if the time for performing an obligation under this deed expires on a day which is not a Business Day, then the person must do it on or by the next Business Day, *unless* that day falls in the next calendar month, in which case the person must do it on or by the previous Business Day;

- (v) construction - no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for proposing or preparing it or because that party relies on it to protect itself;
- (w) language - the language in all parts of this deed will be in all cases construed in accordance with its fair and common meaning and not strictly for or against any of the parties;
- (x) conduct - a reference to conduct *includes* an omission, statement or undertaking, whether or not in writing;
- (y) liability - *unless* the contrary intention appears:
  - (i) *binding* - if a party consists of more than one (1) person, this deed binds each of them separately and any two (2) or more of them jointly; and
  - (ii) *benefit* - an obligation or Statement:
    - (A) FOR - in favour of more than one (1) person is for the benefit of them separately and jointly; and
    - (B) BY - given or made by two (2) or more persons binds all of them jointly and each severally; and
- (z) legal terms - a reference to any Australian legal term for any action, remedy, method or form of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing will, in respect of any jurisdiction outside Australia relevant to the transactions contemplated by or the terms of this deed, be deemed to *include* a reference to the corresponding or most similar legal term in that jurisdiction.

#### 1.4 **Additional interpretations**

In this deed, *unless* the context otherwise requires:

- (a) indebtedness - a reference to "**indebtedness**" *includes* any obligation (whether present or future, actual or contingent, secured or unsecured and whether incurred alone, severally, jointly and severally as principal, surety or otherwise) relating to the payment or repayment of money;
- (b) disposal - to "**dispose**" of any property *includes* to sell, lend, lease, discount, factor, subordinate, give, transfer or otherwise part with possession of in any way, or to grant an option in respect of or any right or interest (legal or equitable) in that property (*other* than the creation of any Security Interest) or to agree to do any of the foregoing;
- (c) accounting - a reference to an accounting term is to be interpreted in accordance with Australian Accounting Standards;
- (d) persons - where any Finance Party is comprised of two (2) or more persons:
  - (i) *inclusion* - a reference to that Finance Party *includes* each and every person; and
  - (ii) *binding* - the obligations on the part of that Finance Party bind each person jointly and severally;



- (e) firm - if a Finance Party is a firm, the expression “**Finance Party**” *includes* the person(s) from time to time carrying on business in the name of such firm or under the name in which the business of such firm may from time to time be conducted;
- (f) act - a reference to an “**act**” *includes* an omission and doing an act *includes* executing a document;
- (g) right - a reference to a “**right**” *includes* an interest, power, remedy, privilege and cause of action however arising;
- (h) law - the word “**law**” *includes* any statute;
- (i) demand - the words “**on demand**” mean on the receipt by the Grantor in accordance with the notice provisions of this deed of any demand that has been signed by an Authorised Officer of the Secured Party; and
- (j) personal property - a reference to any of the Grantor’s personal property *includes* any personal property in which the Grantor has sufficient rights to grant the Secured Party a Security Interest under this deed, whether now or in the future.

## 1.5 Discretion

Notwithstanding anything else in this deed:

- (a) unfettered - if the Secured Party has the discretion to require or determine something, consent to something, or act in a certain way under a Finance Document, that discretion is unfettered and absolute;
- (b) exercise - the Secured Party may exercise its discretion without obligation, despite any previous waiver and in addition to any other rights or remedies conferred by the Finance Document or by law; and
- (c) determinations - any determination made by the Secured Party will be in the Secured Party’s sole and absolute discretion and will be conclusive and binding, *except* in the case of manifest error,

*provided that* in the case of any right or obligation in this deed involving the Secured Party’s opinion, that opinion must be formed on reasonable grounds and acting reasonably.

## 2. GRANTOR MUST PAY SECURED MONEYS

### 2.1 General obligation

The Grantor must pay the Secured Moneys in accordance with the terms of any agreement in writing to do so between the Grantor and any Security Beneficiary.

### 2.2 Qualification

However, if either:

- (a) no agreement - there is no such agreement; or
- (b) default - an Event of Default is continuing,

the Grantor must pay the Secured Party (or as it may direct) on written demand by the Secured Party that part of the Secured Moneys specified in the demand.



### **3. SECURITY**

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#### **3.1 Security Interest**

- (a) Grant - The Grantor grants a Security Interest in the Secured Property to the Secured Party for the purpose of security of payment of the Secured Moneys, which Security Interest is in the nature of an assignment and mortgage by way of security.
- (b) Property - The Grantor does this:
  - (i) *trustee* - in relation to any Secured Property subject to any trust of which it is trustee, as trustee of that trust; and
  - (ii) *beneficiary* - in relation to any other Secured Property, as beneficial owner.

#### **3.2 Mandatory action**

To the extent that any law requires that something must be done (such as obtaining consent) before the Grantor may validly grant a Security Interest over any of the Secured Property, the Security Interest under clause 3.1 only takes effect in relation to that Secured Property when the thing required is done. The Grantor must do anything necessary to ensure that it is done, immediately.

#### **3.3 Consideration**

The Grantor acknowledges granting the Security Interest created under this deed and incurring obligations and giving rights under this deed for valuable consideration received from the Secured Party.

#### **3.4 Release**

- (a) Provision - If all Secured Moneys have been finally paid, and the Grantor makes a request, the Secured Party will promptly provide a release of the Secured Property from this deed (subject always to clause 22) and:
  - (i) *title* - deliver to the Grantor all title documents (*including* certificates of title) held by it in respect of the Secured Property; and
  - (ii) *notification* - notify any relevant authority (including the Financial Institution) of the effect of that release.
- (b) PPS Register
  - (i) *Financing change statement* - However, the Secured Party need only register a financing change statement on the PPS Register to end the registration in respect of the Secured Property if the Secured Property constitutes all the collateral which is subject to the registration (for example, because the Secured Property is registered by serial number or all the collateral within the collateral class specified in the registration is being released).
  - (ii) *Amendment demand* - *Except* where there is a manifest error in respect of a registration, the Grantor must not issue an amendment demand in connection with any registration in respect of which the Secured Property does not constitute all the collateral which is subject to the registration.

### 3.5 Variations and replacements

- (a) Changes - The Grantor acknowledges that the Finance Documents may be varied or replaced from time to time.
- (b) Secured Moneys - The Grantor confirms that the Secured Moneys *include* any amount payable under any Finance Document as varied or replaced, and that this applies *regardless* of:
  - (i) *method* - how a Finance Document is varied or replaced;
  - (ii) *reasons* - the reasons for the variation or replacement; and
  - (iii) *amounts / obligations* - whether the Secured Moneys decrease or increase or the Finance Documents are otherwise more onerous as a result of the variation or replacement.

## 4. DEALINGS

### 4.1 Restricted dealings with any Secured Property

Subject to the terms of any other Finance Document, without the prior written consent of the Secured Party, the Grantor must not, and must not agree, attempt or take any step to, do any of the following, *other* than in respect of a Permitted Transaction:

- (a) disposal - dispose of the Secured Property;
- (b) interests - create or allow to exist a Security Interest in connection with the Secured Property (although the Grantor is not in breach of this clause 4.1(b) if a Security Interest arises by operation of statute to secure an amount payable to an authority and the Grantor pays the amount within fourteen (14) days after its due date for payment);
- (c) waiver / release - waive any of the Grantor's rights or release any person from its obligations in connection with the Secured Property;
- (d) dealing - assign or otherwise deal with the Secured Property, this deed or any interest in them, or allow any interest in them to arise or be varied, *other* than in accordance with the terms of the Finance Documents.

### 4.2 Where law allows for creation of Security Interest without consent

If a law entitles the Grantor to create another Security Interest in connection with the Secured Property without the consent of the Secured Party, this clause 4 does not operate to require the Grantor to obtain the Secured Party's consent before creating that other Security Interest. However:

- (a) notification - if the Grantor intends to create another Security Interest, it must notify the Secured Party at least seven (7) days before it proposes to do so; and
- (b) priority - if the Secured Party requests an agreement under clause 5.1 and the Grantor has not complied with that request by the time the Security Interest is created, financial accommodation need not be or continue to be made available under any Finance Document.

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## **5. OTHER SECURITY INTERESTS**

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### **5.1 Priority agreement**

If the Secured Party asks, the Grantor must obtain an agreement on terms acceptable to the Secured Party regulating priority between the Security Interest created under this deed and any other Security Interest in connection with the Secured Property.

### **5.2 Amount secured by other Security Interest**

The Grantor must ensure that the amount secured under any other Security Interest in connection with the Secured Property is not increased without the Secured Party's consent.

### **5.3 Obligations under other Security Interest**

The Grantor must comply with all obligations under any other Security Interest in connection with the Secured Property.

### **5.4 Secured Party may rely on third party certificates**

The Secured Party may rely on a certificate from any other person with an Security Interest in connection with the Secured Property as to the amount that is owed to that other person under or in respect of a Security Interest.

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## **6. EXERCISE OF RIGHTS**

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### **6.1 Before an Event of Default**

Until an Event of Default occurs or the Secured Property is registered in the name of the Secured Party (or its nominee):

- (a) income - the Grantor is entitled to retain all interest or other income in respect of the Secured Property;
- (b) directing - the Grantor may exercise any directing power in respect of the Secured Property as it sees fit; and
- (c) no directing - the Secured Party may not exercise any directing power in respect of the Secured Property without the Grantor's consent.

### **6.2 On and after an Event of Default**

On the occurrence of an Event of Default and while an Event of Default is subsisting, or if the Secured Property is registered in the name of the Secured Party (or its nominee), then all rights of the Grantor under clause 6.1 immediately cease and:

- (a) income - the Grantor must ensure that all interest or other income in respect of the Secured Property is paid directly to the Secured Party; and
- (b) rights - the Secured Party is entitled to exercise the rights referred to in clause 6.1(b).

### **6.3 No obligation on Secured Party**

- (a) No action - The Secured Party need not:
  - (i) *income* - do anything to obtain payment of any interest or other income in respect of the Secured Property;

- (ii) *rights* - exercise rights in respect of the Secured Property; or
- (iii) *dealings* - deal with the Secured Property,  
even if it has reason to believe that the value of the Secured Property may fall.
- (b) No liability - The Secured Party is not responsible for loss as a result of such a failure to act or delay in so acting.

## **7. MAINTAINING SECURED PROPERTY**

The Grantor must:

- (a) positive obligations
  - (i) *calls & Taxes* - pay on time all amounts for which the Grantor is liable as owner of the Secured Property, *including* charges and Taxes;
  - (ii) *notices* - give the Secured Party a copy of any notice and, at the Secured Party's request, any report, given to the holder of the Secured Property;
  - (iii) *laws* - comply with all laws and requirements of Governmental Agencies and the Grantor's other obligations in connection with the Secured Property, to the extent that failure to do so would, or would be likely to, have a Material Adverse Effect;
  - (iv) *maintain Authorisations* - obtain, renew on time and comply with the terms of each Authorisation necessary to enter into this deed, comply with obligations under it and allow it to be enforced; and
  - (v) *change of Grantor's details* - notify the Secured Party at least fourteen (14) days before:
    - (A) NAME - the Grantor changes its name;
    - (B) NUMBER - any ABN, ARBN or ARSN allocated to the Grantor changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN, ARBN or ARSN, one is allocated or otherwise starts to apply, to it); or
    - (C) TRUST / PARTNERSHIP - the Grantor becomes trustee of a trust, or a partner in a partnership, *other* than as described in this deed; and
- (b) negative obligations - subject to any Permitted Transaction:
  - (i) *value* - not do anything or permit anything to be done, or fail to do anything, that would, or would be likely to, materially lower the value of the Secured Property;
  - (ii) *Material Adverse Effect* - not do anything that would, or would be likely to, have a Material Adverse Effect;
  - (iii) *ranking* - not do anything that may result in the Secured Party's rights ranking in priority behind any claim of the Grantor over the Secured Property; and
  - (iv) *control* - not to allow any person, *other* than the Secured Party, to have a Security Interest over the Secured Property which is perfected by control.

## **8. REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERTAKINGS**

### **8.1 Security Trust Deed**

The Grantor represents, warrants, covenants and undertakes to the Secured Party that all its representations, warranties, covenants and undertakings in the Security Trust Deed are true, or will be true when made, in all material respects.

### **8.2 Additional representations, warranties, covenants and undertakings**

The Grantor represents, warrants, covenants and undertakes to the Secured Party that as at the date of this deed:

- (a) corporation - where it is a corporation:
  - (i) *status* - it is a company limited by shares under the Corporations Act; and
  - (ii) *benefit* - its directors are satisfied that entering into this deed is in the best interests of, and for the benefit of, the Grantor as a whole.
- (b) power - it has full legal capacity and power to:
  - (i) *capacity* - own its property and to carry on its business; and
  - (ii) *deed* - enter into the Finance Documents and to carry out the transactions that they contemplate;
- (c) authority - it has taken all corporate and/or other action that is necessary or desirable to authorise its entry into the Finance Documents and its carrying out of the transactions that they contemplate;
- (d) Authorisations - it holds each Authorisation that is necessary or desirable to:
  - (i) *transactions* - enable it to execute properly the Finance Documents and to carry out the transactions that they contemplate;
  - (ii) *validity* - ensure that each Finance Document is legal, valid, binding and admissible in evidence; and
  - (iii) *business* - enable it properly to own its assets and carry on its business, and is complying with the terms of any such Authorisation;
- (e) documents effective - each Finance Document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (*except* to the extent limited by equitable principles and laws affecting creditors' rights generally);
- (f) ranking - its payment obligations under each Finance Document rank ahead of all of its unsecured and unsubordinated payment obligations (whether present, future, actual or contingent), other than obligations that are mandatorily preferred by law;
- (g) no contravention - neither its execution of the Finance Documents, nor the carrying out by it of the transactions that they contemplate, does or will:
  - (i) *law* - contravene any law to which it or its property is subject or any order of any Governmental Agency that is binding on it or its property;
  - (ii) *Authorisation* - contravene any Authorisation;

- (iii) *constitution* - contravene its constitutional documents;
- (iv) *undertaking* - contravene any undertaking or instrument binding on it or its property; or
- (v) *debt* - require it to make payment any or delivery in respect of any financial indebtedness before it would otherwise be obliged to do so;
- (h) no Security Interests - *other* than as permitted by any Finance Document:
  - (i) *grant* - the Grantor has, and will at all times have, sole legal and beneficial ownership of, or sufficient rights to grant a Security Interest to the Secured Party in, all Secured Property and no Security Interest (nor any agreement to create any Security Interest) exists over or affects any Secured Property, *except* as permitted by the Finance Documents; and
  - (ii) *perfection* - without limiting clause 8.2(h)(i), no person, *except* the Secured Party, has perfected a Security Interest in any Secured Property by possession or control under the PPSA;
- (i) no other names - the Grantor has never been known (legally or otherwise) by any name other than the name(s) specified in Schedule 1;
- (j) no immunity - neither the Grantor nor any of the Secured Property has any immunity from suit or from execution or attachment;
- (k) no litigation - no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of it or any of its Personnel after due inquiry, threatened which, if adversely decided, would have a Material Adverse Effect on its ability to perform its obligations under the Finance Documents;
- (l) information
  - (i) *general* - all information that it has given to the Secured Party in connection with any Finance Document is true and accurate in all material respects and not misleading in any material respect (*including* by omission); and
  - (ii) *forecasts* - any forecasts and opinions in any such information are fair and reasonable (and were made or formed after due inquiry and consideration),  
as at the date of this deed, or if given later, when given;
- (m) information on Secured Property - the Secured Party has been told about all rights that affect or are likely to affect, the Secured Property, *including* encumbrances, or the rights of a beneficiary under a trust; and
- (n) no default - no actual or potential Event of Default has occurred and is continuing, and it is not in breach of any other document or agreement in a manner that could have a Material Adverse Effect on it.

### 8.3 Capacity as trustee

Where the Grantor is a party to this deed in its capacity as trustee of any trust (“**Trustee Party**”), it represents, warrants, covenants and undertakes to the Secured Party that:

- (a) Associated Trust - the trust for which it acts as trustee (“**Associated Trust**”), is a valid and subsisting trust as at the date of this deed;

- (b) capacity - the Trustee Party has entered into this deed both in its capacity as trustee of the Associated Trust under the deed or other instrument creating the Associated Trust (as amended from time to time) ("**Associated Trust Deed**") and in its personal capacity;
- (c) powers - all the powers and discretions conferred on the Trustee Party as trustee of the Associated Trust are capable of being validly exercised by it as trustee of the Associated Trust, no action has been taken to vary or revoke those powers and discretions, and the representations, warranties, covenants and undertakings given by the Trustee Party to the other parties in this deed are given under relevant powers set out in the Associated Trust Deed;
- (d) trustee - the Trustee Party is the sole trustee of the Associated Trust, no action has been taken to replace the Trustee Party as sole trustee of the Associated Trust and, as sole trustee, the Trustee Party has full and unfettered power under the Associated Trust Deed (and, if a corporation, under its constitution) to enter into and execute this deed and to perform the obligations imposed on it under this deed on behalf of the Associated Trust and to do all things required by this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Associated Trust Deed;
- (e) authorisations - all necessary resolutions have been passed as required by the Associated Trust Deed (and, if a corporation, by its constitution) in order to make this deed fully binding on the Trustee Party;
- (f) benefit - the execution and performance of this deed is for the benefit of the Associated Trust;
- (g) default - the Trustee Party is not now in default and, no default having occurred, no default is subsisting under the Associated Trust Deed;
- (h) indemnity - there is not now, and the Trustee Party has not done and will not do anything by virtue of which there has been, is or will in the future be, any restriction or limitation on the right of the Trustee Party to be indemnified fully out of the assets of the Associated Trust for obligations and liabilities undertaken by the Trustee Party in its capacity as trustee of the Associated Trust under this deed and no action has been taken to limit or restrict this right; and
- (i) circumstances - there is no material fact or circumstance relating to the assets, matters or affairs of the Associated Trust that might, if disclosed, be expected to affect the decision of the other parties, acting reasonably, to enter into this deed.

#### 8.4 **Future Secured Property**

Whenever any Secured Property is acquired by the Grantor or comes into existence after the date of this deed, the Grantor will be deemed to have given the representations, warranties, covenants and undertakings set out in this clause 8 in respect of that property.

#### 8.5 **Reliance**

The Grantor acknowledges that the Secured Party has entered into or otherwise receives the benefit of each relevant Finance Document in reliance on the representations, warranties, covenants and undertakings in this clause 8.



**8.6 Repetition**

The representations, warranties, covenants and undertakings contained in this clause 8 will be deemed to be repeated by the Grantor every day for so long as any of the Secured Obligations remain outstanding.

**9. PAYMENTS**

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**9.1 Manner of payment**

The Grantor must make all payments under this deed:

- (a) no deduction - in full without set-off or counterclaim, and without any deduction in respect of Taxes, *unless* prohibited by law; and
- (b) currency - if the payment relates to the Secured Money, in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.

**9.2 Currency of payment**

The Grantor waives any right it has in any jurisdiction to pay an amount, *other* than in the currency in which it is due. However, if the Secured Party receives an amount in a currency, *other* than that in which it is due:

- (a) conversion - it may convert the amount received into the due currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (*including* spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate, and it may deduct its usual Costs in connection with the conversion; and
- (b) amount - the Grantor satisfies its obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the Costs of the conversion.

**10. COSTS AND INDEMNITIES**

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**10.1 What Grantor must pay**

To the extent not already provided for under the other Finance Documents, the Grantor must pay or reimburse the Secured Party on demand for:

- (a) Secured Party's Costs - the Secured Party's reasonable Costs in connection with:
  - (i) *deed* - the negotiation, preparation, execution and registration of this deed, making searches and enquiries in connection with the Grantor and its assets, and taking advice in relation to its rights in connection with the Grantor and its assets;
  - (ii) *administration* - the general on-going administration of this deed (*including* giving and considering consents, waivers, variations, discharges and releases and producing title documents);
- (b) other Costs - the Secured Party's and any Controller's Costs in otherwise acting in connection with this deed, such as enforcing or preserving rights (or considering doing so), or doing anything in connection with any enquiry by a Governmental Agency involving the Grantor or any of its Affiliates; and



- (c) Taxes / fees - stamp duty, registration and similar Taxes and fees paid, or that the Secured Party reasonably believes are payable, in connection with this deed or a payment or receipt or any other transaction contemplated by this deed (*including* fines and penalties in connection with any of these amounts). However, the Grantor need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Secured Party in sufficient cleared funds for the Secured Party to be able to pay the Taxes or fees by the due date.

## 10.2 Indemnity

To the extent not already provided for under the other Finance Documents, the Grantor must at its own cost indemnify, keep indemnified, defend, hold harmless and make good the Secured Party from and against, and pay the Secured Party on demand the amount of, all and any Claims and/or Losses whatsoever which the Secured Party may suffer or incur arising out of, associated with, or in relation to:

- (a) default - an actual or potential Event of Default;
- (b) exercise - any person exercising, or attempting to exercise, a right or remedy in connection with this deed after an actual or potential Event of Default;
- (c) property / deed - the Secured Property or this deed; and/or
- (d) appointee - any indemnity the Secured Party gives a Controller or administrator of the Grantor.

## 10.3 Items included in Costs, Claims and/or Losses

To the extent not already provided for under the other Finance Documents, the Grantor agrees that:

- (a) legal - the Costs, Claims and/or Losses referred to in clauses 10.1, 10.2 and 14.3 *include* legal costs in accordance with any written agreement as to legal costs (whether or not the Grantor is a party to that agreement) or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis;
- (b) appointees - the Costs referred to in clauses 10.1(a) and 10.1(b) *include* those paid, or that the Secured Party reasonably believes are payable, to persons engaged by the Secured Party in connection with this deed (such as consultants).

## 10.4 Payment of third party Losses

To the extent not already provided for under the other Finance Documents, the Grantor must pay the Secured Party on demand an amount equal to any Losses of the kind referred to in clause 10.2 suffered or incurred by:

- (a) appointee - any Controller or Attorney;
- (b) beneficiaries - any Security Beneficiary;
- (c) Personnel - any of the Secured Party's Personnel; or
- (d) enforcement - following the enforcement of the Security by the Secured Party or any transferee of the Secured Property.

**10.5 Currency conversion on judgment debt**

If a judgment, order or proof of debt for an amount in connection with this deed is expressed in a currency, *other* than the currency in which the amount is due under this deed, the Grantor must at its own cost indemnify, keep indemnified, defend, hold harmless and make good the Secured Party from and against, and pay the Secured Party on demand the amount of, all and any Claims and/or Losses whatsoever which the Secured Party may suffer or incur arising out of, associated with, or in relation to:

- (a) difference - any difference arising from converting the other currency if the rate of exchange used by the Secured Party under clause 9.2 for converting currency when it receives a payment in the other currency is less favourable to the Secured Party than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) Costs - the Costs of conversion.

**10.6 Payment for Grantor's obligations**

*Except* as expressly provided in the Finance Documents, the Grantor must pay for anything that it must, will or agrees to do under this deed, *including* paying its own Costs.

**11. APPLICATION OF PAYMENTS**

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The Secured Party must apply money it receives under this deed in accordance with the terms of the Security Trust Deed.

**12. ADMINISTRATIVE MATTERS**

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**12.1 Deposit of documents**

The Grantor must deposit with the Secured Party all documents the Secured Party requests relating to the Secured Property.

**12.2 Registration**

- (a) Action - The Secured Party may (at the Grantor's expense) apply for any registration, or give any notification, in connection with the Security Interest created under this deed.
- (b) Class - This *includes* registration under the PPSA for whatever collateral class the Secured Property thinks fit.
- (c) Consent - The Grantor consents to any such registration or notification and, in the absence of manifest error in respect of such registration or notification, must not make any amendment demand.

**12.3 Further steps**

The Grantor must do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Secured Party asks and considers necessary or desirable to:

- (a) Security - in a manner consistent with this deed, provide more effective security over the Secured Property for payment of the Secured Moneys;

- (b) effectiveness - ensure that the Security Interest created under this deed is enforceable, perfected (*including*, where possible, by control in addition to registration) and otherwise effective;
- (c) priority - enable the Secured Party to apply for any registration, or give any notification, in connection with a Security Interest created under this deed so that the Security Interest has the priority required by the Secured Party;
- (d) rights - enable the Secured Party to exercise the Secured Party's rights in connection with the Secured Property;
- (e) binding - bind the Grantor and any other person intended to be bound under this deed;
- (f) attorney - enable the Secured Party to register the power of attorney in clause 19 or a similar power given under this deed; or
- (g) compliance - show whether the Grantor is complying with this deed.

#### 12.4 **Authority to fill in blanks**

The Grantor agrees that the Secured Party may complete and fill in any blanks in this deed or a document connected with it (such as Corporations Act forms, financing statements, financing change statements, amendment demands or transfers of the Secured Property).

#### 12.5 **Supply of information**

If the Secured Party asks, the Grantor must (to the extent possible) supply the Secured Party with any information about or documents affecting:

- (a) property - the Secured Property; or
- (b) deed - this deed or the Security Interest created under this deed.

#### 12.6 **Costs of further steps**

- (a) Grantor - Everything the Grantor is required to do under this clause 12 is at the Grantor's expense.
- (b) Secured Party - The Grantor must pay or reimburse the reasonable Costs of the Secured Party in connection with anything the Grantor is required to do under this clause 12.

#### 12.7 **Personal Property Securities Act**

This clause 12 *includes* anything the Secured Party asks the Grantor to do in connection with the PPSA.

### 13. **RIGHTS SECURED PARTY MAY EXERCISE AT ANY TIME**

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#### 13.1 **Authority to deal**

- (a) Dealing - Subject to the terms of any other Finance Document, the Secured Party may assign or otherwise deal with its rights under this deed in any way it considers appropriate.
- (b) No claim - If the Secured Party does this, the Grantor may not claim against any assignee (or any other person who has an interest in this deed) any right of set-off or

other rights the Grantor has against the Secured Party, *other* than payments in accordance with the Finance Documents.

**13.2 Right to rectify**

- (a) Failure - The Secured Party may do anything which the Grantor should have done under this deed but which the Grantor either has not done or, in the Secured Party's opinion, has not done properly.
- (b) Default - If an Event of Default has occurred and is subsisting, the Secured Party may do all things necessary or desirable, in the Secured Party's opinion, to make good or attempt to make good that default to the satisfaction of the Secured Party. If the Secured Party does so, the Grantor must pay the Secured Party's Costs on demand.

**14. DEFAULT**

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**14.1 Events of Default**

An "**Event of Default**" occurs:

- (a) non-payment - if any Finance Party fails to pay any amount that is due and payable by it under any Finance Document on its due date;
- (b) non-performance - if any Finance Party fails to perform, satisfy, or procure the performance or satisfaction of, any of the Secured Obligations at the times and in the way specified in the relevant Finance Document;
- (c) cross-default - if any other financial accommodation of a Finance Party or any subsidiary of a Finance Party becomes repayable or payable before its due date other than at the Finance Party's option;
- (d) other obligations - if the Grantor fails to comply with any of its obligations under this deed or another Finance Document (*other* than a failure referred to elsewhere in this clause 14.1) and:
  - (i) *unremediable* - the Secured Party considers that the failure cannot be remedied; or
  - (ii) *not remedied* - the Secured Party considers that the failure can be remedied, and the failure is not remedied within ten (10) Business Days after it occurs;
- (e) misrepresentation - if any Statement made by, or repeated by, any Finance Party in or in connection with any Finance Document is untrue or misleading (whether by omissions or otherwise) in any material respect when so made or repeated;
- (f) Insolvency Event - if an Insolvency Event occurs in respect of any Finance Party or any of its subsidiaries;
- (g) Material Adverse Effect - if an event or a change occurs which could, or could in the opinion of the Secured Party, have a Material Adverse Effect on the business, assets or financial condition of a Finance Party or any of its subsidiaries, or on the Grantor's ability to perform its obligations under this deed;
- (h) Security Interest - if the Grantor or any of its subsidiaries creates or permits to exist any Security Interest over any of its property, *other* than as permitted under a Finance Document;

- (i) distress of execution - any distress, attachment, execution, judgment or other Process is levied, issued, enforced or obtained on or against any of the Secured Property;
- (j) priority - this deed or any Collateral Security does not have, or ceases to have its intended priority or any Security Interest fails to attach under this deed or any Collateral Security to any property that is intended to be the subject of this deed or a Collateral Security;
- (k) inability to perform - if the Grantor ceases for any reason to be able lawfully to carry out all the transactions which this deed contemplates may be carried out by it;
- (l) provisions void - if all or any material provision of this deed is or becomes void, voidable, illegal or unenforceable or of limited force (other than because of equitable principles or laws affecting creditors' rights generally), or the Grantor claims this to be the case; or
- (m) change of control - if, in the Secured Party's opinion, there is a change in the identity of any of the persons who are able to Control the Grantor.

#### 14.2 **Ensure no default**

The Grantor must ensure that no Event of Default occurs.

#### 14.3 **Investigation of default**

- (a) Appointment - If the Secured Party reasonably believes that an Event of Default is, or may be, continuing, the Secured Party may appoint one (1) or more persons to investigate this and authorise the appointed person to conduct all searches and enquiries they consider appropriate in connection with the Grantor and the assets of the Grantor.
- (b) Co-operation - The Grantor must co-operate with the appointed person and comply with every reasonable request they make.
- (c) Costs - If there is or was an Event of Default, the Grantor must pay the Secured Party's Costs in connection with the investigation.

#### 14.4 **Secured Party's powers on default**

While an Event of Default is continuing, the Secured Party may do one (1) or more of the following, in addition to anything else the law allows the Secured Party to do as Secured Party:

- (a) suit - sue the Grantor for the Secured Moneys;
- (b) appointment - appoint one (1) or more Controllers; or
- (c) action - do anything that a Controller could do under clause 17.4.

#### 14.5 **Order of enforcement**

- (a) Priority - The Secured Party may enforce the Security Interest created under this deed before it enforces other rights or remedies:
  - (i) *persons* - against any other person; or
  - (ii) *documents* - under another document, such as another Security Interest.
- (b) Multiple - If the Secured Party has more than one (1) Security Interest, it may enforce them in any order it chooses.

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**15. OTHER ENFORCEMENT MATTERS**

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**15.1 No merger of security**

- (a) Negative effect - Nothing in any Finance Document merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
- (i) *interest* - any Security Interest in favour of the Secured Party at any time;
  - (ii) *indemnity* - any indemnity in favour of any Enforcing Party contained in any Finance Document; or
  - (iii) *rights*- any right, power, authority, discretion or remedy which any Enforcing Party may have against the Grantor or any other person at any time.
- (b) Other rights - No Security Interest, *including* the Security Interest created under this deed and/or any Collateral Security, held by the Secured Party in any way prejudicially affects any right, power, Authorisation, discretion or remedy of an Enforcing Party under any Finance Document.

**15.2 No obligation to marshal**

An Enforcing Party is not required to marshal, enforce, apply under, appropriate, recover or exercise:

- (a) interests - any Security Interest, Guarantee or Collateral Security or other document or agreement held, at any time, by the Secured Party; or
- (b) assets - any money or asset which the Secured Party, at any time, holds or is entitled to receive.

**15.3 Other Security Interest over Secured Property**

- (a) Certificates - Any Enforcing Party may, in the absence of manifest error, rely on the certificate of a holder of another Security Interest affecting or purporting to affect the Secured Property as to the amount and property secured by that other Security Interest.
- (b) Amounts - Any Enforcing Party may at any time pay or agree to pay the amount certified by the holder of an actual or purported Security Interest to be necessary to discharge it or some of the indebtedness secured by it or to acquire it. From the date of payment that amount will be part of the Secured Moneys and the Grantor must indemnify the relevant Enforcing Party on demand against that amount.

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**16. EXCLUSION OF TIME PERIODS**

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**16.1 No notice required unless mandatory**

Neither the Secured Party nor any Controller need give the Grantor any notice or demand or allow time to elapse before exercising a right under this deed or conferred by law (*including* a right to sell), *unless* the notice, demand or lapse of time is required by law and cannot be *excluded*.

## 16.2 Mandatory notice period

If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this deed or conferred by law may be exercised, then:

- (a) mandatory - when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the Secured Party; or
- (b) stated - when the law provides that a period of notice or lapse of time may be stipulated or fixed by this deed, then one (1) day is stipulated and fixed as that period of notice or lapse of time *including*, if applicable, as the period of notice or lapse of time during which:
  - (i) *default* - an Event of Default must continue before a notice is given or requirement otherwise made for payment of the Secured Moneys or the observance of other obligations under this deed; and
  - (ii) *non-compliance* - a notice or request for payment of the Secured Moneys or the observance of other obligations under this deed must remain not complied with before the Secured Party or a Controller may exercise rights.

## 17. CONTROLLER

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### 17.1 Terms of appointment of Controller

In exercising its power to appoint a Controller, the Secured Party may:

- (a) appointment - appoint a Controller to all or any part of the Secured Property or its income; and
- (b) details - set a Controller's remuneration at any figure the Secured Party determines appropriate, remove a Controller and appoint a new or additional Controller.

### 17.2 More than one (1) Controller

If the Secured Party appoints more than one (1) Controller, the Secured Party may specify whether they may act individually or jointly.

### 17.3 Controller is Grantor's agent

- (a) Agent - Any Controller appointed under this deed is the Grantor's agent, *unless* the Secured Party notifies the Grantor that the Controller is to act as the Secured Party's agent.
- (b) Responsibility - The Grantor is solely responsible for anything done, or not done, by a Controller and for the Controller's remuneration and Costs.

### 17.4 Controller's powers

*Unless* the terms of appointment restrict a Controller's powers, the Controller may do one (1) or more of the following:

- (a) dealing - sell, transfer or otherwise dispose of the Secured Property;
- (b) registration - obtain registration of the Secured Property in the name of the Secured Party (or its nominee);

- (c) non-corporations - if the Grantor is not a corporation to which the Corporation Act applies, do anything which the law would allow a Controller to do if the Grantor was a corporation incorporated (or deemed to be incorporated) under the Corporations Act; and/or
- (d) other - do anything else the law allows an owner or a Controller of the Secured Property to do.

## **18. DISPOSAL OF SECURED PROPERTY IS FINAL**

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The Grantor agrees that if the Secured Party or a Controller sells, transfers or otherwise disposes of the Secured Property:

- (a) no challenge - the Grantor must not challenge the acquirer's right to acquire the Secured Property (*including* on the ground that the Secured Party or the Controller was not entitled to dispose of the Secured Property or that the Grantor did not receive notice of the intended disposal) and the Grantor must not seek to reclaim that property; and
- (b) no checking - the person who acquires the Secured Property need not check whether the Secured Party or the Controller has the right to dispose of the Secured Property or whether the Secured Party or the Controller exercises that right properly.

## **19. POWER OF ATTORNEY**

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### **19.1 Appointment**

While an Event of Default subsists, the Grantor irrevocably appoints the Secured Party, each Authorised Officer of the Secured Party, and each Controller individually, as the Grantor's attorney and agrees to ratify anything an Attorney does under clause 19.2.

### **19.2 Powers**

If an Event of Default is continuing, or the Secured Party reasonably believes that an Event of Default may have occurred, an Attorney may:

- (a) actions - do anything which the Grantor can lawfully authorise an attorney to do in connection with this deed, the Secured Property, or which the Attorney believes is expedient to give effect to any of the Secured Party's or a Controller's rights (and these things may be done in the Grantor's name or the Attorney's name, and they *include* signing and delivering documents, selling or transferring the Secured Property, and starting, conducting and defending legal proceedings) and sending any instructions, messages and communications by which the Secured Property can be transferred or otherwise dealt with;
- (b) delegation - delegate their powers (*including* this power) and revoke a delegation; and
- (c) powers - exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.



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**20. REINSTATEMENT OF RIGHTS**

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**20.1 Voidability of transactions**

- (a) Making claims - Under law relating to an Insolvency Event, a person may claim that a transaction (*including* a payment) in connection with the Secured Moneys is void or voidable.
- (b) Successful claims - If a claim is made and upheld, conceded or compromised, then:
  - (i) *entitlement* - the Secured Party is immediately entitled as against the Grantor to the rights in respect of the Secured Moneys to which it was entitled immediately before the transaction; and
  - (ii) *action* - on request from the Secured Party, the Grantor must do anything (*including* signing any document) to restore to the Secured Party any Security Interest (*including* the Security Interest created under this deed) it held from the Grantor immediately before the transaction.

**20.2 Survival**

The Grantor's obligations under this clause 20 are continuing obligations, independent of the Grantor's other obligations under this deed and continue after this deed ends.

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**21. EXCLUSION OF PPSA PROVISIONS**

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**21.1 Exclusion**

The Grantor agrees that to the extent the law permits:

- (a) exclusion - them to be *excluded*, the following sections of the PPSA are *excluded*:
  - (i) section 142 (*Entitled persons may redeem collateral*); and
  - (ii) section 143 (*Entitled persons may reinstate security agreement*);
- (b) non-compliance - the Secured Party need not comply with the following provisions of the PPSA:
  - (i) section 95 (*Secured party must give notice of removal of accession*);
  - (ii) section 118 (*Enforcing security interests in accordance with land law decisions*);
  - (iii) section 121(4) (*regarding written notice of action*);
  - (iv) section 125 (*Obligation to dispose of or retain collateral*);
  - (v) section 130 (*Notice of disposal of collateral*);
  - (vi) section 132(3)(d) (*regarding other amounts paid*);
  - (vii) section 132(4) (*Statement of account if no disposal*); and
  - (viii) any other provision of the PPSA notified to the Grantor by the Secured Party after the date of this deed; and

- (c) notice - neither the Secured Party nor any Controller need give any notice required under any provision of the PPSA (*except* section 135 (*Notice of retention of collateral*)).

## 21.2 Application

This clause 21 applies despite any other provision of this deed.

## 22. SECURED PROPERTY TO WHICH PPSA DOES NOT APPLY

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### 22.1 Non-PPSA Secured Property

This clause 22 applies to any Secured Property to which the PPSA does not apply.

### 22.2 Nature of Security Interest

To the extent that the PPSA does not apply to the Secured Property, the Security Interest created under this deed is:

- (a) fixed - a fixed charge over:
- (i) *general property* - any property in relation to which the Grantor has or is to grant a mortgage or charge in favour of the Secured Party; and
  - (ii) *non-circulating* - the Secured Property which is not a circulating asset; and
- (b) floating - a floating charge over the Secured Property which is a circulating asset.

### 22.3 Conversion from floating to fixed

Where the Security Interest created under this deed is floating (whether under the terms of this deed or at law), it immediately and automatically becomes fixed:

- (a) notified - over any Secured Property the Secured Party notifies the Grantor is to be subject to a fixed charge; and
- (b) action - over any Secured Property affected if, in respect of that Secured Property:
- (i) *dealings* - the Grantor breaches an obligation under clause 4 (although the Secured Party may notify only if the Secured Party reasonably considers that an Event of Default is continuing);
  - (ii) *execution* - distress is levied or a judgment, order or Security Interest is enforced, becomes enforceable, or would become enforceable by the giving of notice or following lapse of time or fulfilment of a condition; or
  - (iii) *priority* - any person takes any step, or attempts or agrees to do anything, which may result in Taxes, or an amount owing to an authority, ranking ahead of the floating charge (*including* issuing a notice or direction that has the effect of giving an authority a preference, priority or advantage over creditors); and
- (c) insolvency - over all the Secured Property if an Insolvency Event occurs in respect of the Grantor; and
- (d) law - if the law provides that the Security Interest created under this deed becomes fixed.

**22.4 Conversion from fixed to floating**

- (a) Notice - If any Secured Property becomes subject to a fixed charge under clause 22.3, the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Secured Property specified in the notice is no longer subject to a fixed charge and is again subject to a floating charge.
- (b) Multiple - Secured Property can become subject to a floating or a fixed charge under this clause 22.4 and clause 22.3 any number of times.

**23. ACTION BY GRANTOR**

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The Grantor must do everything within its power which in the Secured Party's opinion is necessary or desirable to assist and support the Secured Party in the exercise of its rights and powers under this deed.

**24. CONFIDENTIALITY**

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**24.1 Disclosure**

Each party must not disclose information provided by any other party that is not publicly available (*including* the existence or contents of any Finance Document), *except*:

- (a) deed - to any person in connection with an exercise of rights or a dealing with rights or obligations under this deed (*including* preparatory steps such as negotiating with any potential transferee or assignee of the Secured Party's rights or other person who is considering contracting with the Secured Party or a Controller in connection with this deed);
- (b) people - to Personnel, legal and other advisers and auditors of the Grantor, the Secured Party or a Controller;
- (c) Affiliates - to any party to this deed (*including* for these purposes any Security Beneficiary) or any Affiliate of any party to this deed, *provided that* the recipient agrees to act consistently with this clause 24;
- (d) consent - with the consent of the party who provided the information (such consent not to be unreasonably withheld or delayed); or
- (e) required - any disclosure the disclosing party reasonably believes is required by any law, securities exchange or rating agency (*except* that this clause 24.1(e) does not permit the Secured Party to disclose any information of the kind referred to in section 275(4) (*Compliance with request*) of the PPSA, *unless* section 275(7) (*regarding non-application*) of the PPSA applies).

**24.2 Consent**

Each party consents to disclosures made in accordance with this clause 24.

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## 25. NOTICES

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### 25.1 How to give a notice

A notice, demand, agreement, consent, approval or other communication under this deed (a “**Notice**”) may be made or given by a party or the lawyer for that party, and is only effective if it is:

- (a) nature - in English, in legible writing, signed by or on behalf of the person giving it or their Authorised Officer;
- (b) address - addressed to the person to whom it is to be given; and
- (c) method - either:
  - (i) *delivery / mail* - delivered or sent by pre-paid express post (by airmail, if the addressee is overseas) to that person's address; or
  - (ii) *fax* - sent by facsimile message to that person's facsimile number; or
  - (iii) *email* - sent by electronic mail to that persons email address.

### 25.2 When a notice is given

A Notice that complies with this clause 24 is regarded as given and received:

- (a) delivery - if it is delivered in person or by being left at the party's address for service, upon delivery;
- (b) mail - if it is sent by mail:
  - (i) *domestic* - within Australia: two (2) Business Days after posting; or
  - (ii) *foreign* - to or from a place outside Australia: ten (10) Business Days after posting;
- (c) fax - if it is delivered or sent by facsimile, upon receipt of a report from the sender's machine that states that the facsimile was sent in full; or
- (d) email - if it is delivered or sent by electronic mail, one (1) hour after being sent, *unless* the sender receives a report from the sender's electronic mail server that states that the electronic mail message was not sent by the sender or received by the addressee,

but if the delivery or receipt occurs on a day which is not a Business Day or at a time after 5:00 pm (both the day and time being in the place of receipt) it is regarded as having been received at 9:00 am on the next following Business Day.

### 25.3 Address for notices

For the purposes of this clause 24, a person's address for service is that set out in Schedule 1, or as the person notifies the sender.

### 25.4 Serving documents

Without preventing any other method of service any document in a court action may be served on a party by being delivered or left at that party's address for service of notice set out in this deed.

**25.5 Reliance**

A Notice given in accordance with this clause 24 can be relied on by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

**25.6 Facsimile transmission**

A facsimile transmission is regarded as legible, *unless* the addressee telephones the sender within six (6) hours after the transmission is received or regarded as received under this clause 24 and informs the sender that it is not legible.

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**26. FURTHER ASSURANCES**

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**26.1 Actions**

The Grantor must, at the Grantor's own expense, whenever requested by the Secured Party, promptly do or cause to be done, and cause each Finance Party to do or cause to be done, anything which the Secured Party considers necessary or desirable to:

- (a) deed - give full effect to this deed; or
- (b) rights - more fully secure the rights, remedies and powers of the Secured Party under this deed or to enable the Secured Party to exercise those rights, remedies and powers,

*including* perfecting and protecting of any Security Interest intended to be created by or under this deed or for facilitating the realisation of the same or for the protection of all or any of its rights and interests under or in relation to this deed or any other Finance Document.

**26.2 Deed**

The Secured Party may complete any document executed by the Grantor or make any amendment to this deed that the Secured Party considers necessary for registration or to ensure that this deed is effective.

**26.3 Registration**

The Grantor must promptly provide the Secured Party with all information that the Secured Party needs in order to ensure that any registration of its Security Interests on the PPS Register or any other register that the Secured Party chooses is, and remains, fully effective or perfected, or both, and that each Security Interest in favour of the Secured Party has the priority required by the Secured Party.

**26.4 Registration and verification statements**

- (a) Registration - The Grantor acknowledges that the Secured Party may register one (1) or more financing statements in relation to the Secured Party's Security Interests.
- (b) Notice - If permitted by the PPSA, the Grantor waives the Grantor's right under section 157 (*Verification statements - secured parties to give notice to grantors*) of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

**26.5 PPSA Confidentiality**

- (a) Disclosure - The Grantor and the Secured Party agree not to disclose information of the kind mentioned in section 275(1) (*regarding Secured party to provide certain*

*information relating to security interest*) of the PPSA, *except* in the circumstances required by sections 275(7)(b) to (e) of the PPSA.

- (b) Authorisation - The Grantor agrees that the Grantor will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d), if the Secured Party approves.
- (c) Compliance - Nothing in this clause 26.5 will prevent any disclosure by the Secured Party that it believes is necessary to comply with its other obligations under the PPSA.
- (d) Confidentiality - To the extent that it is not inconsistent with this clause 26.5 constituting a “confidentiality agreement” for the purposes of section 275(6)(a) of the PPSA, the Grantor agrees that the Secured Party may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that the Secured Party is not doing so in response to a request by an “interested person” (as defined in section 275(9) of the PPSA).

## **27. GENERAL**

### **27.1 Acknowledgement**

Each party acknowledges that it has been, or had the opportunity to be, separately represented and advised by advisors of their own choice, *including* legal counsel, to assist the party in understanding and evaluating the risks and merits associated with the transactions contemplated in this deed.

### **27.2 Entire agreement**

The Finance Documents (together with the documents referred to in or contemplated by them) embody the entire agreement and understanding between the parties concerning their subject matter and succeeds and cancels all other agreements and understandings concerning their subject matter and any Statement or other term and condition of any nature not contained in them is of no force or effect.

### **27.3 Severability**

- (a) Enforceability - A construction of this deed that results in all provisions being enforceable is to be preferred to a construction that does not.
- (b) Invalidity - Despite the application of clause 27.3(a), if a provision of this deed is illegal, unenforceable or void in any jurisdiction:
  - (i) *omission* - and it would be legal, enforceable, valid and not have a contrary meaning if words were omitted, then those words are omitted; and
  - (ii) *severance* - in any other case, the whole provision is severed, and the remainder of this deed continues in force, *unless* this would materially change the intended effect of this deed, and *provided that* if the provision subsequently becomes legal and enforceable, the provision will be reinstated.

**27.4 Waiver**

A right may only be waived in writing, signed by the Secured Party or a Controller, and

- (a) conduct - no other conduct of the Secured Party (*including* a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) occasion - a waiver of a right on one (1) or more occasions does not operate as a waiver of that right if it arises again;
- (c) exercise - a single or partial exercise of a right will not prevent any other exercise of that right or the exercise of any other right; and
- (d) liability - the Secured Party will not be liable for any Loss of the Grantor caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

**27.5 Principal obligations**

This deed and each Security Interest is:

- (a) principal - a principal obligation and is not ancillary or collateral to any other Security Interest (*other* than another Collateral Security) or other obligation however created; and
- (b) independent - independent of, and unaffected by any other Security Interest or other obligation however created which the Secured Party may hold at any time in respect of the Secured Moneys.

**27.6 Continuing security**

The Security Interest created under this deed is a continuing security despite any intervening payment, settlement or other thing, until the Secured Party releases the Secured Property from the Security Interest created under this deed.

**27.7 Notification from Grantor**

If the Grantor is required under this deed to notify the Secured Party about anything, it must do so in writing.

**27.8 No notice required unless mandatory**

Before exercising a right under this deed or conferred by law (*including* a right to sell), neither the Secured Party nor any Controller need give the Grantor any notice or demand, or allow a lapse of time, that is required by law, *unless* the notice, demand or lapse of time cannot be *excluded*.

**27.9 Notices, certificates or demands as evidence**

A notice or certificate from or demand by the Secured Party stating:

- (a) payable - that a specified sum of money is owing or payable under this deed;
- (b) default - that an Event of Default has occurred or is continuing; or
- (c) other - any other fact or determination relevant to the rights or obligations of the Secured Party or the Grantor under this deed,

is taken to be correct, *unless* the contrary is proved or in the case of manifest error.

**27.10 Authorised Officers and communications**

The Grantor irrevocably authorises the Secured Party to rely on:

- (a) Authorised Officers - a certificate by any person purporting to be a director or secretary of the Grantor as to the identity and signatures of its Authorised Officers, and the Grantor represents, warrants, covenants and undertakes that those persons have been authorised to give notices and communications under or in connection with this deed; and
- (b) signature - any notice or other document contemplated by this deed which bears the purported signature (whether given by facsimile or otherwise) of an Authorised Officer of the Grantor.

**27.11 No amendments without agreement**

This deed may not be modified, amended, supplemented, replaced, novated, discharged or abandoned, *unless* by a document signed by the parties.

**27.12 Assignment**

- (a) Grantor - The Grantor must not transfer, assign, encumber, dispose of, declare a trust over or otherwise create an interest in or deal with any of its rights or obligations under any Finance Document without the prior written consent of the Secured Party.
- (b) Secured Party - The Secured Party may transfer, assign, encumber, dispose of, declare a trust over or otherwise create an interest in or deal with any of its rights or obligations under any Finance Document without the consent of the Grantor, and may disclose to any potential holder of the right or interest any information in relation to any Finance Document or any party to any of them.

**27.13 Relationship**

*Except* where this deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

**27.14 Survival after ending**

Any provision of this deed which by its nature or intention is intended to survive ending of this deed continues to apply after expiration or other ending of this deed, and a provision of this deed which can and is intended to operate after its end will remain in full force and effect.

**27.15 Indemnities**

- (a) Survival - Each indemnity in this deed is a continuing obligation, separate from the other obligations of the parties, and continues after the expiry or ending of this deed.
- (b) Enforcement - It is not necessary for the Secured Party to incur expense or make payment before enforcing a right of indemnity under this deed, and the Secured Party may enforce a right of indemnity at any time (*including* before it has incurred loss).
- (c) Recovery - The Secured Party may recover a payment under an indemnity in this deed before it makes the payment in respect of which the indemnity is given.



**27.16 Time of essence**

Time is of the essence in respect of all dates and times for performance the Grantor of the Secured Obligations and/or any other obligation under this deed.

**27.17 Prompt performance**

Subject to clause 27.16:

- (a) specified - if this deed specifies when the Grantor agrees to, must or will perform an obligation, the Grantor agrees to, must and will perform it by the time specified; and
- (b) reasonable - the Grantor agrees to, must and will perform all other obligations within a reasonable time.

**27.18 Default by Secured Party**

A breach of, or default under, a Finance Document by the Secured Party does not affect any obligation of any Finance Party (*except* in respect of the Secured Party) under any other Finance Document.

**27.19 No liability for Loss**

Neither the Secured Party nor a Controller is liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under this deed, *except* in the case of its own fraud, gross negligence or wilful misconduct.

**27.20 Conflict of interest**

The Secured Party's and any Controller's rights and remedies under this deed may be exercised even if this involves a conflict of duty or the Secured Party or Controller has a personal interest in their exercise.

**27.21 Discretion in exercising rights**

The Secured Party or a Controller may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (*including* by imposing conditions), *unless* this deed expressly states otherwise.

**27.22 Approvals and consents**

- (a) Consents - The Secured Party or a Controller may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion, *unless* this deed expressly provides otherwise.
- (b) Compliance - The Grantor must comply with all conditions in any approval or consent the Secured Party or a Controller gives in connection with this deed.

**27.23 Rights cumulative**

Any right or remedy that the Secured Party or a Controller may have under this deed is in addition to, and does not replace or limit, any other right that the Secured Party or a Controller may have.

**27.24 Confidentiality**

Subject to law, the parties must maintain absolute confidentiality concerning the existence and terms of this deed.

**27.25 No effect on Security Interests and Guarantees**

The Grantor confirms that neither its obligations under, nor any of the rights, powers and remedies conferred upon the Secured Party by, each Finance Document which is a Security Interest or Guarantee or by law is discharged, impaired or otherwise affected by the provisions of any Finance Document.

**27.26 Other Security Interests or judgments**

- (a) No effect - Nothing in this deed merges with or adversely affects, or is adversely affected by, any of the following:
- (i) *other interests* - any Security Interest, Guarantee or other right or remedy to which the Secured Party is entitled; or
  - (ii) *judgments* - a judgment which the Secured Party obtains against the Grantor or the Principal Obligor in connection with the Secured Moneys.
- (b) Exercise - The Secured Party may still exercise its rights under this deed as well as under the judgment, other Security Interest, Guarantee ,or right or remedy.

**27.27 Payments**

- (a) Payments - *Except* to the extent expressly provided to the contrary in this deed or agreed to by the parties, all:
- (i) *direction* - references in this deed to payments to a party will be construed to *include* payments to another person upon the direction of that party; and
  - (ii) *manner* - payments to be made under this deed must be made:
    - (A) METHOD - by cash, electronic funds transfer, unendorsed bank cheque or other immediately available funds;
    - (B) AMOUNT - without any set-off or counterclaim; and
    - (C) DEDUCTIONS - *excluding* in respect of interest, free of all deductions and withholdings, *except* those required by law (in which event such deduction or withholding must not exceed the minimum amount required by law).
- (b) Interest - Where any sum of money is due to be paid (or procured to be paid) by one (1) party to another under the terms of this deed but is not paid on the due date the sum will bear interest at the rate which is two percent (2%) each year above the rate for the time being fixed under section 2 (*Penalty interest rate*) of the *Penalty Interest Rates Act 1983* (Vic) from and *including* the due date until but *excluding* the date of actual payment.

**27.28 Receipts**

The receipt of a Controller, the Secured Party or an Authorised Officer of the Secured Party releases the person paying money to the Controller or the Secured Party in connection with this deed from:

- (a) payability - liability to enquire whether the Secured Moneys has become payable;
- (b) received - liability for the money paid or expressed to be received; and

- (c) application - being concerned to see to its application or being answerable or accountable for its loss or misapplication.

**27.29 Set off**

- (a) Secured Party may set off - Without any demand or notice, the Secured Party may (but is not obliged to), if an Event of Default is subsisting, set off and apply any indebtedness it owes (whatever the currency) to the Grantor or the Principal Obligor, as the case may be, against any money owing to it by the Grantor or the Principal Obligor, as the case may be, under any Finance Document:

- (i) *joint / several* - whether the amount owed by the Secured Party, or the Grantor or the Principal Obligor (as the case may be), is owed by it alone or with any other person; and
- (ii) *payable* - whether or not the amount owed by the Secured Party, or the Grantor or the Principal Obligor (as the case may be), is immediately payable,

and the Secured Party may, and the Grantor irrevocably authorises the Secured Party to, do anything necessary or desirable (*including* to sign any document, vary the date for payment of any amount owing and effect appropriate currency exchanges) for that purpose.

- (b) Grantor must not set off - The Grantor must not (either directly or indirectly) claim, exercise or attempt to exercise a right of set off or counterclaim against the Secured Party or any other right which might have the effect of reducing the Secured Moneys.
- (c) Application - This clause 27.29 applies despite any other agreement between the Grantor and the Secured Party.

**27.30 Costs, expenses and Taxes**

- (a) Costs - Whether or not any of the Secured Moneys are outstanding, the Grantor must pay:

- (i) *deed / PPSA* - on demand all Costs and expenses of whatever nature and any Taxes on the same incurred by the Secured Party in or in connection with the negotiation, preparation, execution, stamping, registration and carrying into effect (as applicable) of this deed or any amendment of, supplement to, or waiver in respect of, this deed and any action taken by the Secured Party under or in relation to the PPSA, *including* any registration, or any response to an amendment demand or a request under section 275 (*Secured party to provide certain information relating to security interest*) of the PPSA; and
- (ii) *enforcement / protection* - on demand all Costs and expenses of whatever nature and any Taxes on the same incurred by the Secured Party in or in connection with enforcing or protecting or endeavouring to enforce or protect, any rights under this deed (*including* all Costs and expenses incurred in protecting the Secured Party's Security Interest on the Grantor making any demand) or any amendment of supplement to or waiver in respect of this deed.

- (b) Taxes - Whether or not any of the Secured Moneys are outstanding, the Grantor must pay all stamp, registration and other documentary Taxes (*including* any GST and any fines, penalties and interest) to which this deed, or any payment made or to be made under this deed, is or at any time may be subject and will indemnify and hold harmless

the Secured Party against all Costs directly or indirectly resulting from any failure to pay or any delay in paying any such Taxes.

- (c) Costs secured - The Grantor must pay on demand all Costs and expenses, Taxes and other amounts payable under this clause 27.30, *including* all remuneration payable to any Controller, and will in the meantime form part of the Secured Obligations and will be part of the Security Interest created by this deed.

#### 27.31 Counterparts

- (a) Instrument - This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one (1) and the same instrument.
- (b) Copies - A copy of a counterpart sent by facsimile machine or electronic mail in portable document format (PDF):
- (i) *original* - must be treated as an original counterpart;
  - (ii) *execution* - is sufficient evidence of execution of the original; and
  - (iii) *evidence* - may be produced in evidence for all purposes in place of the original.

#### 27.32 Each signatory bound

This deed binds each person who signs as Grantor even if another person who was intended to sign does not sign it or is not bound by it.

#### 27.33 Attorneys and representatives

Where this deed is executed on behalf of a party by an attorney or representative, that attorney or representative by executing this deed declares and warrants that he or she:

- (a) appointment - has been duly appointed; and
- (b) revocation - has no notice of the power of attorney or other authorisation under the authority of which he or she executes this deed having been revoked.

#### 27.34 Law and regulation

- (a) Rights and obligations are unaffected - Rights given to the Secured Party or any Controller under this deed and the Grantor's liabilities under it are not affected by anything which might otherwise affect them at law.
- (b) Inconsistent law - To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.
- (c) Exclusion of moratorium - To the extent not *excluded* by law, a provision of any legislation which at any time directly or indirectly lessens, stays, postpones, prevents or otherwise prejudicially affects any power is negated and *excluded* from this deed and each other Finance Document, and all relief and protection conferred by or under that legislation is also negated and *excluded*.
- (d) Supervening legislation - Any present or future legislation which operates to vary the obligations of the Grantor in connection with this deed with the result where the Secured Party's rights, powers or remedies are adversely affected (*including* by way of delay or postponement) is *excluded, except* to the extent that its exclusion is prohibited or rendered ineffective by law.

- (e) Superannuation legislation - If the *Superannuation Industry (Supervision) Act 1993* (Cth) prohibits the Grantor from mortgaging any of the Secured Property, this deed does not extend to that Secured Property.
- (f) Code of Banking Practice - The parties agree that the Code of Banking Practice does not apply to this deed and the transactions in connection with it.

**27.35 Governing law, jurisdiction and service of process**

- (a) Law - This deed is to be governed by and construed in accordance with all Applicable Laws in force in the State from time to time.
- (b) Jurisdiction - Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of and operating within the State and any courts competent to hear appeals from those courts. Each party waives any right it has to object to an action being brought in those courts, *including* by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.
- (c) Service - Without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of notices under this deed.

**SPECIFIC SECURITY DEED POLL (BANK ACCOUNT)  
- M101 NOMINEES PTY LTD**



**Signing**

**EXECUTED** as a deed poll on the date first (1<sup>st</sup>) written in Schedule 1.

(1) **Grantor:**

**SIGNED, SEALED and DELIVERED** as a **DEED** )  
**POLL** by **M101 NOMINEES PTY LTD (ACN 636** )  
**908 159)** in accordance with section 127(1) of the )  
*Corporations Act 2001 (Cth)* )

Signature of Witness

A handwritten signature in black ink, appearing to read "John Alford".

Name of Witness  
(Please print)

JOHN ALFORD

Signature of sole Director / Company Secretary  
(Delete as applicable)

A handwritten signature in black ink, appearing to read "James Mawhinney".

Name of sole Director / Company Secretary  
(Please print)

JAMES MAWHINNEY

## Schedule 1 Key Terms

Item	Information
<b>1. Date of deed</b>	24 October 2019.
<b>2. Financial Institution</b>	<p>Name: <b>Australia &amp; New Zealand Banking Group Ltd</b> (ABN 11 005 357 522)</p> <p>Address: Ground Floor, 55 Collins Street, Melbourne VIC 3000</p> <p>Telephone number: +61 (0)3 8306 4700</p> <p>Facsimile number:</p> <p>Mobile number:</p> <p>Email address: <a href="mailto:mitchell.ellis@anz.com">mitchell.ellis@anz.com</a></p> <p>Website: <a href="http://www.anz.com.au">www.anz.com.au</a></p> <p>Attention: Mr. Mitchell Ellis, <i>Personal Banker - Retail</i></p>
<b>3. Grantor</b>	<p>Name: <b>M101 Nominees Pty Ltd</b> (ACN 636 908 159)</p> <p>Address: Level 27, 101 Collins Street, Melbourne VIC 3000</p> <p>Telephone number: +61 (0)3 9001 0243</p> <p>Facsimile number: +61 (0)3 8080 6471</p> <p>Mobile number: +61 (0)410 852 368 (<i>James Mawhinney</i>)</p> <p>Email address: <a href="mailto:enquiries@mayfairplatinum.com">enquiries@mayfairplatinum.com</a></p> <p>Website: <a href="http://www.mayfairplatinum.com">www.mayfairplatinum.com</a></p> <p>Attention: the Directors</p>
<b>4. Permitted Transaction</b>	<p>Means the Grantor's use of all or any part of the Secured Property from time to time only and solely for ongoing investment and capital management purposes across the corporate group of which the Grantor is a member (the "<b>Grantor Group</b>"), <i>provided that</i> simultaneously with (or as soon as possible following) the use of all or any part of the Secured Property, the Security Trustee receives (or already holds) the benefit of first (1<sup>st</sup>) ranking Security Interest(s) in assets, registered in the relevant statutory register, in favour of the Security Trustee under the terms of, and covered as 'Security Property' (within the meaning of the Security Trust Deed) by, the Security Trust Deed, of a value which is at <i>least</i> equal to the value of the Secured Property so used (<i>provided that</i> the Security Trustee at all times holds 'Security Property' (within the meaning of the Security Trust Deed) under the Security Trust Deed of a value which is at <i>least</i> equal to all amounts due in respect of all Notes outstanding), where such assets must be either:</p> <p>4.1 <u>real estate</u> - Australian real estate, owned by a member of the Grantor Group, in respect of which a first (1<sup>st</sup>) ranking mortgage in favour of the Security Trustee is registered in the Land Registry of the relevant Australian State or Territory;</p>

**SPECIFIC SECURITY DEED POLL (BANK ACCOUNT)**  
**- M101 NOMINEES PTY LTD**



Item	Information
	<p>4.2 <u>specific assets</u> - specific, identifiable, tangible assets, with or without a serial number, owned by a member of the Grantor Group, in respect of which a first (1<sup>st</sup>) ranking security interest granted under a specific security agreement or deed in favour of the Security Trustee is registered in the PPS Register; or</p> <p>4.3 <u>general assets</u> - all or other present and after-acquired property owned by a member of the Grantor Group, in respect of which a first (1<sup>st</sup>) ranking security interest granted under a general security agreement or deed in favour of the Security Trustee is registered in the PPS Register,</p> <p>where in each case relevant values are determined at least yearly.</p>
<b>5. Principal Obligor</b>	The Grantor.
<b>6. Secured Party</b>	<p>Name: <b>PAG Holdings (Australia) Pty Ltd</b>  (ACN 636 870 963,  AFSL Auth. Rep. No. 001 278 649  of <u>Perpetuity Capital Pty Ltd</u>  (ABN 60 149 630 973, AFSL 405364))  (as trustee of the  <u>Mayfair 101 Secured Notes Security Trust</u>)</p> <p>Address: c/- Pinnacle Group, Level 7, 10 Queens Road,  Melbourne VIC 3004</p> <p>Telephone number: +61 (0)3 8391 1600</p> <p>Facsimile number: –</p> <p>Mobile number: –</p> <p>Email address: <a href="mailto:craigvanwegen@pinnaclegroup.com.au">craigvanwegen@pinnaclegroup.com.au</a>;  <a href="mailto:norafairbanks@pinnaclegroup.com.au">norafairbanks@pinnaclegroup.com.au</a></p> <p>Website: <a href="http://www.pinnaclegroup.com.au">www.pinnaclegroup.com.au</a></p> <p>Attention: the Directors</p>
<b>7. Secured Property</b>	<p>The account of the Grantor with the Financial Institution with the following details, and all monies from time to time in that account:</p> <p>Account Name: M101 Nominees Pty Ltd</p> <p>Account No.: 423-270-918</p> <p>BSB: 013-030</p> <p>Financial Institution: Australia &amp; New Zealand Banking Group Ltd</p> <p>Branch: Ground Floor, 55 Collins Street, Melbourne VIC 3000</p> <p>Reference: Mayfair 101 Secured Notes Money.</p>
<b>8. State</b>	Victoria.