

# Current Terms and Conditions for Business Finance

Together with:

- Memorandum of Provisions for Land Mortgages
- Security Interest Provisions for General Security Interests and Asset Security Interests

Issued 01 July 2017



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\* Business Credit Card will no longer be available for sale from March 2014.

## WHY READ THIS BOOKLET?

Welcome to the Commonwealth Bank of Australia's Current Terms and Conditions for Business Finance.

This document defines the basic obligations of customers who obtain commercial finance from the Commonwealth Bank of Australia and of customers and guarantors who provide Security.

Depending on the type of Facility you are taking out, there may be other terms and conditions specific to that Facility that you also need to read and understand.

This booklet contains a number of product-specific sections that contain additional terms and conditions relevant to your Facility.

## How to use this booklet

This booklet has four sections: Current Terms and Conditions for Business Finance (Parts A to F); Other Information (Parts G to J); Memorandum of Provisions for Land Mortgages; Security Interest Provisions for General Security Interests and Asset Security Interests.

The Current Terms and Conditions for Business Finance consist of three sections: General terms & conditions (Part A), Specific terms & conditions (Parts B to E) and Meanings of words (Part F).

You only need to read Part A and the part (or the section of the Part) that applies to the type of Facility you are taking out. For example, if you are taking out a BetterBusiness Loan please read all of the General terms and conditions (Part A), plus the specific terms and conditions for BetterBusiness Loans (section B.1.).

If there are any inconsistencies between the general terms and conditions in Part A and the Part applicable to the type of Facility, the terms and conditions in the applicable Part prevail.

You should also read Meanings of words (Part F), so that you know what certain words used in this document mean.

If you are providing a Land Mortgage then you will need to read the Memorandum of Provisions for Land Mortgages (Section 3). If you are providing a General Security Interest or Asset Security Interest then you need to read the Security Interest Provisions for General Security Interests and Asset Security Interests (Section 4).

## Why you need to know the terms & conditions

It's important that you take the time to read and understand all of the general terms and conditions *and* any product-specific terms and conditions that apply to your Facility.

When you take out a Facility, you sign a Contract with us that defines what you have to do in return for receiving the Facility. Knowing your obligations and the consequences of not meeting them is essential.

## What happens when you sign

By signing the Offer Document that defines the details of your Facility, you are agreeing to abide by all of the terms and conditions in this document. These include obligations to keep us informed of changes in your circumstances.

It is important to understand that we take no responsibility for any decision you make to enter into this Contract.

## Need more information?

If you're not completely sure that you understand the terms and conditions in this document, we recommend that you get legal or financial advice. You can also get more information by talking to your relationship manager, business banker or broker, or by calling us on **13 1998**.

## Code of Banking Practice

The relevant provisions of the Code of Banking Practice apply to the Facility if you are an individual or a small business that:

- has fewer than 20 full-time (or equivalent) people, or
- manufactures goods and has fewer than 100 full-time (or equivalent) people.

## The Better Banking Book

The Better Banking Book published by us contains useful information about:

- your rights and obligations and our rights and obligations
- account opening procedures
- our duty to keep your personal and financial information safe and secure
- how we handle complaints
- using bank cheques
- why you need to read this booklet.

You can get a copy:

- at any branch of the Commonwealth Bank
- by calling **13 2221** (24 hours a day, 7 days a week)
- asking your relationship manager for a copy
- by visiting our website [www.commbank.com.au](http://www.commbank.com.au)

## Why read this booklet? (cont.)

### If you have a complaint

Please contact your relationship manager or the manager of the department that handles the matter and explain the problem.

Our staff will review the situation and, if possible, resolve it immediately. If the matter has not been resolved to your satisfaction, please contact our Customer Relations team:

at [www.commbank.com.au/contact-us/compliments-complaints](http://www.commbank.com.au/contact-us/compliments-complaints)

- by telephone on **1800 805 605**
- by facsimile on **1800 028 542**
- or by writing to us, care of:

Customer Relations  
Commonwealth Bank Group  
Reply Paid 41  
Sydney NSW 2001

When we receive your enquiry or complaint, we will investigate the cause of your concern and respond to you as quickly as possible. If we can't resolve the matter quickly, we will keep you informed of progress.

If after giving us the opportunity to resolve your complaint, you feel we have not resolved it satisfactorily, you may also lodge a written complaint with the Financial Ombudsman Service at:

#### Financial Ombudsman Service

GPO Box 3  
Melbourne Vic 3001  
Phone: 1300 78 08 08  
Fax: (03) 9613 6399  
Email: [info@fos.org.au](mailto:info@fos.org.au)  
Website: [www.fos.org.au](http://www.fos.org.au)

### Privacy information

You should read the information on our privacy and information practices in Part G.

### Sanctions and refusing service

Australia, as a member state of the United Nations, is obliged to implement United Nations Security Council sanctions. Australia also may be required to implement other international sanctions and sometimes imposes unilateral sanctions. Sanctions can cover various subject matters including financial restrictions. Consequently, the Bank may be prohibited from dealing with certain persons or entities.

This means that if we are aware that you are a proscribed person or Entity, then we may be required to suspend, cancel or refuse you services or close or terminate any account, Facility, transaction, arrangement or agreement with you.

We may also be required to freeze your assets. You could incur significant costs as a result of these actions.

### National Credit Code

The National Credit Code regulates all credit provided to individuals in Australia for predominantly personal, domestic or household purposes or for investment in residential property. It does not apply to borrowings used mainly for business or investment (other than in residential property) purposes nor loans to companies nor Norfolk Island residents.

Under the National Credit Code we must tell you what your rights and obligations are before you enter into any credit arrangement. The law requires us to fully disclose relevant information about your arrangement in a written Contract, including Interest rates, fees, commissions and other information.

Please read the Credit Guide in Part I if we may enter into a credit Contract with you regulated by the National Credit Code. It describes our obligation not to enter into an unsuitable Contract with you.

Further information about your Contract and the National Credit Code is set out in Part J.

# 1. CURRENT TERMS AND CONDITIONS FOR BUSINESS FINANCE

## A. GENERAL TERMS & CONDITIONS

This chapter contains the terms and conditions that, unless otherwise stated, apply to all the types of Facilities in this document. You should read these terms and conditions as well as those that are specific to your Facility type.

### A.1 Conditions you need to meet before we provide the Facility

*This section explains the basic conditions we require you to meet for us to give you the Facility and when we can withdraw our offer to provide the Facility.*

Unless our offer of the Facility has lapsed or been withdrawn, we will only provide credit or other accommodation under the Facility if you have complied with the following conditions:

<b>Identity check</b>	<ul style="list-style-type: none"> <li>We have identified you (and, if you are a trustee, all beneficiaries of your trust) and anyone else authorised to operate the Facility.</li> </ul>
<b>Information we require</b>	<ul style="list-style-type: none"> <li>You have given us all the information we have asked for, and it is complete, correct and not misleading.</li> </ul>
<b>Your age</b>	<ul style="list-style-type: none"> <li>You are at least 18 years old.</li> </ul>
<b>Bankruptcy</b>	<ul style="list-style-type: none"> <li>You are not an undischarged bankrupt and have not assigned your estate or made any other arrangements with your creditors.</li> </ul>
<b>Default</b>	<ul style="list-style-type: none"> <li>You are not in default under any term or condition of the Contract.</li> </ul>
<b>Security</b>	<ul style="list-style-type: none"> <li>We are satisfied with the valuation and title to the property or goods being used as security for the Facility.</li> <li>You have done everything and paid any amounts required to give us the interest we require in the security property.</li> <li>The Guarantor (if we have asked for a Guarantee) has not withdrawn or given notice to limit their Guarantee or become an un-discharged bankrupt.</li> </ul>

<b>Your account and our loan authority</b>	<ul style="list-style-type: none"> <li>You have an account with us or another acceptable institution and have authorised us to debit that account with your payments and all fees and charges, or other amounts you must pay under the Contract.</li> <li>You have given any authority we require.</li> </ul>
<b>Documentation</b>	<ul style="list-style-type: none"> <li>We have received all relevant documents from you.</li> <li>All documents provided by you have been properly executed and are enforceable.</li> <li>You have provided properly completed additional documents and forms as we reasonably require (in a form acceptable to us).</li> </ul>
<b>Insurance</b>	<ul style="list-style-type: none"> <li>If we so direct, you must have insured the Security Property with a reputable insurer to the level and against the risk we require.</li> <li>You have given us evidence that you are so insured.</li> <li>The insurer agrees to provide insurance if we require Lender's mortgage insurance.</li> </ul>
<b>Additional conditions</b>	<ul style="list-style-type: none"> <li>Any additional conditions set out in the Offer Document.</li> </ul>

### Progressive funding

If the Facility is to be funded by progressive drawings, you must also satisfy our requirements for the funding of each drawing.

For example, for each drawing we may require satisfactory evidence of the value of work completed, reports from persons we nominate, or both.

### Facility maturity

The Amount Owing is payable at the maturity date. You acknowledge that we are not required to refinance any residual balance of a Facility as further set out in clause A.5.6.

### Counterparts

The Offer Document may be executed in any number of counterparts. All of those counterparts taken together are deemed to constitute one and the same instrument.

### Trustees

If you are a trustee, other conditions apply (see A.11 *Trustees*).

## General terms & conditions (cont.)

### A.2 When we can withdraw our offer

Except as otherwise stated, we can withdraw our offer to fund a Loan or provide financial accommodation if we don't receive a signed copy of the Offer Document within one month of us sending it to you or your agent.

For some products this period is two months (see the relevant product specific terms & conditions).

When we receive your signed copy of the Offer Document you must use the Facility within one month unless we specify a different period in the Offer Document. If you don't we may cancel the Facility.

We will keep this offer open for a longer period if:

- you provide these documents and agree to pay us in advance a monthly commitment fee, and
- all conditions we require before funding have been satisfied.

We can withdraw our offer or cancel a Facility at any time prior to your use of the Facility if we reasonably consider that, due to a change in your financial circumstances, you will not be able to meet your obligations under the Contract.

We may also cancel the Facility if you do not meet all conditions before funding.

If the terms in respect of a Fixed Rate Period:

- have not been agreed within one month of the date we receive a signed copy of the Offer Document then (subject to our right to withdraw from the Facility), you authorise us to debit any of your accounts with us a monthly commitment fee in accordance with the Letter of Offer or as otherwise agreed; or
- have been agreed but the Facility is not fully funded on the date agreed, then we may in our discretion cancel the Facility.

### A.3 General provisions

You must carry out all of your obligations on time.

#### A.3.1 Helping us

You must do anything we reasonably ask to enable us to obtain effective title of the security property and as we reasonably require to:

- exercise our rights
- provide a more effective Security over the Security Property or to perfect the Security over the Security Property
- perfect the Security over any bank accounts or any other property, which are part of the Security Property
- enable us to register or perfect the Security with the agreed priority, including any registration required or permitted by law
- determine whether you are complying with the Contract.

You:

- irrevocably authorise us to date and fill in any blanks and to make amendments (where the amendments are consistent with information provided by you or your representative) in or to any Real Property Mortgage or other document you sign now or in the future to enable us to register the Security and to ensure you give us the Security Interest we require;
- acknowledge that we investigate the title to the Security Property for our own purpose only and we are not responsible to you for that investigation and are not liable if there subsequently proves to be any defects in respect of the Security Property; and
- acknowledge that the Security covers all moneys which the Borrower owes to us now or in the future under the Offer Document and any facility you have acknowledged that it extends to.

You must:

- provide to us all negotiable instruments which are part of the Security Property and all documents of title or certificates (for example, share certificates) relating to the Security Property
- allow us to obtain possession or control of any negotiable instruments or marketable securities or other similar interests, in any case, which are part of the Security Property
- ensure that all property which is intended to be subject to the Security is subject to it, and
- show us whether you are complying with the Security.

#### A.3.2 Keeping us informed

You must ensure that you are not in Default under the Contract and tell us within 30 days if you become aware that you, or a party to the Contract, is in material Default or about to materially Default.

You must tell us if:

- you change your address or contact details
- you believe we have made an offer to you that is not specified in the Offer Document or Account Confirmation Document
- anyone is appointed to investigate your affairs or those of a Guarantor
- any Security Property is materially contaminated or has any environmental clean up notice issued
- there is any material litigation, dispute or claim made against you or your business.

If we ask, you must give us any information or documents we, acting reasonably, require that might affect:

- the Security Property, or
- the Security Interest.



If we ask, you will promptly tell us the serial numbers of any serial numbered goods that are part of the Security Property.

### **A.3.3 Keeping records and providing financial information**

You must keep proper accounts and records according to current laws and generally accepted practices that give a true and fair view of the state of your financial position. You must give us copies of them on our request, acting reasonably.

We can require at any time that your Accounts be audited or that you supply us with any information we reasonably require about you, your business or related matters, including information to comply with any laws (e.g. anti money-laundering).

#### **Company accounts and information**

You must give us copies of:

- your Accounts and those of all related parties whenever we reasonably require them
- a certified copy of your constitution, if we ask for it
- un-audited Management Accounts within 35 days of the end of each month if we ask for them.

You must also give us the following company information each year within 120 days of the end of the financial year:

- copies of your annual Accounts
- balance sheets and income statements for your directors, shareholders, proprietors and Guarantors
- monthly cash flow projections for the following financial year
- a list of all outstanding accounts payable and receivable, noting how long they have been outstanding
- a list of stock you hold.

### **A.3.4 Changes to your company**

#### **Material changes to your company**

You must not materially change the form, nature, or beneficial ownership, management or Control of the company without our consent. If you become aware of any such change you must inform us in writing within 10 days.

You must inform us in writing if any Entity becomes a related party where the Bank provides or is committed to provide financial accommodation to that Entity.

#### **Cross-Guarantee**

You must not enter into a Cross-Guarantee without our written consent. If you have already entered into a Cross-Guarantee you must not revoke, cancel, waive or change any aspect of it without our written consent.

If you become aware of any proposal that you should enter into a Cross Guarantee, or that you should revoke, cancel, waive or change aspects of an existing Cross Guarantee you must inform us in writing within 10 days.

#### **Borrowing or raising money**

If you wish to borrow or raise money exceeding \$5000 (other than to repay the Facility in full) which could have a Material Adverse Effect, you should obtain our prior written consent. We will not unreasonably withhold consent.

### **A.3.5 Electronic Transactions**

Access to transactions on and instructions given for Loan Accounts and Facilities through CommBiz are subject to the CommBiz Terms and Conditions. Transactions on, access to and instructions given for Loan Accounts and Facilities through electronic terminals and NetBank are subject to our Electronic Banking Terms and Conditions.

Transactions through CommBiz, NetBank or electronic terminals on most accounts are processed on the day they are made or scheduled to occur. However, due to processing requirements, some such-transactions made in the early hours of one day may be processed as if the transaction was made the previous day.

### **A.3.6 Authorised Representatives**

#### **Appointment**

You appoint the Authorised Representatives to separately act as your agent to give us oral instructions (including by telephone), written instructions or electronic instructions (including by facsimile or e-mail or, if available, through CommBiz or NetBank) (Instructions) and agree terms in connection with any Facility (and where there are multiple Borrowers, each Authorised Representative is authorised to act on behalf of all of the Borrowers). For example, an Authorised Representative may do the following:

- request drawdowns and redraws
- withdraw and transfer funds
- provide payment instructions
- give and cancel authorities for periodical payments
- overdraw a Loan Account to any extent we allow;
- agree interest rates and interest periods
- agree repayment amounts and frequency
- request rollovers
- if a Bill Facility is provided, give instructions in connection with Bills, for example, whether the Bills are to be drawn or endorsed, agree the discount rate, agree the face value and the term, draw Bills on the third party drawer's behalf and provide payment instructions

## General terms & conditions (cont.)

- agree the necessary particulars if any Facility is varied or added under the Contract or at the end of any Fixed Rate Period
- agree the particulars necessary to complete any agreement ancillary to any Facility under the Contract, including any derivative agreement or any other arrangement relating to the hedging of the interest rate under any Facility
- sign any additional authority which appoints another Authorised Representative
- obtain statements of account and any information required concerning the account(s) generally
- elect, where applicable, on your behalf to receive statements of account and notices electronically (instead of by mail,) by us making them available on our NetBank or CommBiz service and sending you an email notification, and cancel that election
- change the mailing address or your email address including, if you have elected to receive statements of account and notices electronically, the email address which we notify that statements and notices are available;
- agree the terms for each of the above matters.

### Further Terms

The appointment is subject to the following terms

- we are authorised to rely on all Instructions apparently received from any person who is or purports to be an Authorised Representative and we are not obliged to enquire whether the person with who we are speaking or from who we have received written Instructions is the Authorised Representative they purport to be or to enquire whether any act purporting to be done in accordance with this authority is a proper exercise of that authority; and
- you release us from all liability arising from, and indemnify us for any loss which we may incur as a result of, this appointment reduced to the extent of our negligence, wilful misconduct or fraud.

We will not accept instructions through CommBiz or NetBank from an Authorised Representative unless you have signed our usual form of authority to receive instructions through CommBiz or NetBank.

### Cancellation

You or we may cancel any appointment on written notice to the other specifying the date of the authority and the Authorised Representative who the cancellation applies to.

This authority is in addition to and not in substitution for any existing authority in connection with any Facility and will not be revoked by any other authority given by you to us unless we agree otherwise in writing.

### A.3.7 Power of attorney

You irrevocably appoint each of our Authorised Signatories separately as your attorney. Each attorney can at any time:

- draw, sign, accept and present on your behalf (whether as drawer or acceptor) any Bills drawn in accordance with a Bill Facility
- complete or change any aspect of a Schedule or other Offer Document that is incomplete or inaccurate
- do all acts to make the Contract complete and enforceable
- endorse any negotiable instrument.

If you are in Default, each attorney can:

- do anything you must do under the Contract
- sign any document to help us transfer legal title of the Security Property if we sell it
- do any other act to protect our interest under, or enforce, the Security
- delegate their powers (including this power) and revoke a delegation.
- You indemnify us against all costs and losses which may incur in respect of this power of attorney reduced to the extent of our negligence, wilful misconduct or fraud.

### A.3.8 How we fund the Facility

We will fund the Facility:

- (a) by paying the Facility in accordance with the Contract and your written instructions or, at our discretion, your electronic or verbal instructions; or
- (b) in accordance with any instructions received from your solicitor or other financial institution to complete the purchase, sale or transfer of security; or
- (c) when you or anyone you authorise asks for credit in a manner approved by us (for example, by having a cheque presented to us for payment or by a withdrawal at an electronic terminal)

At the same time, if your Facility is a Loan, we will record your debt with us by debiting the Loan Account.

### A.3.9 Authority to debit Account

For the purpose of complying with any instructions given in accordance with clause A.3.8, you authorise us to debit any moneys in excess of the amount of the loan/facility given to you by us, to an account you have with us which you nominate.



## A.4 The security property

'Security property' means property provided as collateral for a Facility that, in substance, secures payment or performance of an obligation under the Facility. This could be real estate, a car, a piece of equipment, shares or any other asset we consider acceptable.

This section explains what you agree to do to make sure that the security property remains valid while you pay off the Facility.

### A.4.1 Providing security

You must secure the Facility in the form we reasonably require as described in the Offer Document. At all times, we must be satisfied with the valuation and title to the Security Property.

You must do everything and pay any amounts reasonably required to give us, and to maintain, the Security Interest we require in the Security Property.

### A.4.2 Looking after the Security Property

You must keep the Security Property for the Facility in good condition and working order.

You and any Grantor must also:

- tell us as soon as reasonably possible if the Security Property is lost, stolen or damaged in any material way
- where the Security Property comprises specialised equipment, ensure that Security Property is only used or operated by qualified people
- repair the Security Property as we reasonably direct, at your expense
- not allow anything to happen that would enable any person or court to seize the Security Property lawfully, in payment for any debt or obligation of yours
- not move the Security Property except as permitted under the Security Interest, or do anything that might materially reduce its value or put our Security Interest in it at risk
- allow us to inspect the Security Property whenever we ask to on reasonable notice
- comply with all legal requirements relating to the Security Property.

### Real property as security

If the Security Property is real property (such as land), you and any Grantor must:

- comply with the Environmental Laws applying to the Security Property
- take all reasonable measures to detect and prevent any offence under the Environmental Law
- ensure that the Security Property is not contaminated and does not pollute so as to cause notices or complaints from any environmental or regulatory authority

- ensure that the occupation and use of the Security Property doesn't breach Environmental Law
- ensure that there are no outstanding notices or complaints from any environmental or regulatory authority
- ensure that there is no proposal to revoke, suspend, modify or not renew any authorisation or approval under any Environmental Law relating to any Security Property or the conduct of any business on a Security Property
- ensure that no proceedings or suits have started, no Court Orders have been issued and no penalty has been imposed for an offence under any Environmental Law which could have a Material Adverse Effect.

You must tell us within 30 days if you believe that you can't meet any of these obligations.

### Environmental assessments

You must comply with all relevant Environmental Laws or standards that apply to the Security Property and conduct assessments or environmental audits at our reasonable request, using experts of our reasonable choosing and at your reasonable expense. You must give us the expert's findings in a signed written report.

### A.4.3 Dealing in the Security Property

You must not:

- sell, mortgage, pledge, charge, let, hire or otherwise dispose of the Security Property without our permission except as permitted under the Security Interest
- deposit the Security Property with anyone else as security or payment for a debt or obligation.

### A.4.4 Priority

If the Security Property already has an existing mortgage or charge or Security Interest over it, then you must establish a priority position with the current mortgagee, chargeholder or holder of the Security Interest that is satisfactory to us.

### A.4.5 Insuring the Security Property

*This clause does not apply to SuperGear Facilities. SuperGear Facilities are subject to specific insurance requirements specified in the SuperGear customer agreement (see Section C. SuperGear).*

### Maintaining insurance

If we have told you we require any insurance, at all times you must maintain that insurance with a reputable insurer to the level and against the risk we reasonably require and give us evidence that you have it.

You must insure the Security Property with a reputable insurer for its full value at all times against all usual risks, at your own expense. The insurance Contract must note our interest as mortgagee, holder of a Security Interest or owner, and you agree to assign us your rights under the policy if we reasonably request it.

## General terms & conditions (cont.)

You must also:

- tell us promptly if something happens to the Security Property that could result in a material insurance claim
- give us evidence of the insurance cover whenever we ask for it
- ensure that the policy is not cancelled or reduced, and tell us immediately if this happens or is likely to happen.

### Making insurance claims

You must make all insurance claims you are entitled to make which affect the value or the condition of the Security Property. If the insurer refuses all or part of a claim you must tell us promptly. We can take over your rights to pursue or settle a claim on reasonable terms at any time.

You must also ensure that the insurer pays the proceeds of any claim which affect the value or the condition of the Security Property to you or to us or as we direct.

If you receive the proceeds of a claim which affects the value or the condition of the Security Property, you must tell us promptly, hold the proceeds for us and use them as we direct.

### What happens to claim money we receive

If we receive the proceeds of a claim, from the date we get the money we will use it to do any of the following:

- repair the Security Property (if possible)
- pay anyone with a previous claim on the money
- pay the Amount Owing on the Facility.

If any money is left over, we will pay it first to anyone else who is legally entitled to it, then to reduce any other debt you owe us secured by the Security Property and then pay any remainder to you.

### A.4.6 Inspecting the Security Property

If we do an inspection or valuation of the Security Property, and we require you to pay for the inspection or valuation, a copy of the associated report can be made available to you upon request unless you are in default.

### A.4.7 Other securities

You agree that any other security as set out in an Offer Document, or which you acknowledge will secure your obligations, will, along with the original security, secure all amounts you owe now or in the future under this Contract.

### A.4.8 Changing Security

*This clause A.4.8 only applies to BetterBusiness Loans, Bill Facilities, Market Rate Loans, Lines of Credit, Overdrafts, Capital Equity Facilities, Multi-Option Facilities and Trade Finance.*

We will, on a case-by-case basis, consider any request by you to substitute Security for the Facility if all Security Providers and all Guarantors consent to the change and the value of Security over the substitute

Security Property is to our reasonable satisfaction. You cannot make the request if you are in Default. We can impose reasonable conditions such as requiring payment of our usual fee and a simultaneous discharge of the existing Security and provision of the new Security.

## A.5 Payments

*This section explains what we expect you to pay, when and how.*

### A.5.1 What you pay

The Offer Document or Account Confirmation Document defines the amount of your repayments. If we agree with you to change repayments we can confirm the change in the Account Confirmation Document.

The Account Confirmation Document will be available through NetBank or can be provided to you on request.

#### Principal

Unless you have an interest-only Loan, you must repay a portion of the principal of any Loan in each repayment. If the Term of your Loan exceeds the interest-only period, and the interest-only period has expired, your repayments will include a portion of the principal along with interest payments until the Loan has been fully repaid even though the Offer Document or Account Confirmation Document may not have specified those principal repayments.

#### Interest

You must pay an amount of interest on the principal of any Loan in each repayment. See *Calculating and paying interest* on page 12 for more information.

#### Fees

The Offer Document or Account Confirmation Document defines the amount of the fees and when you must pay them. By signing the Offer Document or Account Confirmation Document you agree to pay these amounts at those times.

You must also pay:

- all duties, fees, taxes (excluding taxes on our income), charges and legal fees connected with the Contract and any transaction under it, as well as any interest, penalties, fines or expenses in connection with these duties
- any reasonable costs that we incur because you have failed to do something that you must do under the Contract
- our usual transaction fees and charges
- our reasonable Costs of enforcing the Contract and any security
- we may also debit your Nominated Account or Loan Account to pay amounts in connection with the Security Property where you have failed to pay by the due date, without informing you in advance.

If you have to pay any taxes or duties of any kind from an amount you owe to us, you must:

- pay these amounts on time to the relevant authority
- pay us the amount deducted so that we receive the full amount you owe us
- pay us the amount of any taxes or duties that we incur if you have had to pay us more under the preceding dot point.

If we can apply for a refund or credit of any of these taxes or duties, and you have met the above requirements, we will do our best to apply for the refund or credit and pay whatever part of it is owed to you.

### **Fees if you terminate before funding**

If you terminate the Contract before we provide the Facility, we can keep the fees and charges accrued under the Contract or demand payment of them.

### **Other amounts**

If an amount becomes owing that is not specifically defined in the Offer Document or Account Confirmation Document, you must pay it when we reasonably ask you to.

### **A.5.2 When you pay**

The offer Document or Account Confirmation Document defines when the first and each subsequent payment is due, until the end of its Term. If we change any aspect of the payment frequency during the Term, we will write to you in advance.

If the Loan is not repaid at the end of its Term, we may require you to repay it in full at any time but until we do, we will continue the Loan on an interest only basis.

We can debit any and all fees, charges, duties and taxes to your account whenever they become due. We will use any payment you make to pay these amounts before applying the payment to the Facility itself.

### **Payment dates**

You must make the payment on the Facility at the frequency defined in the Offer Document or Account Confirmation Document (e.g. monthly) or Part B Specific terms and conditions.

If a payment is due on the 29th, 30th or 31st day of a month that does not have that date, we will deduct the payment on the last day of that month.

### **A.5.3 How you pay**

The Offer Document or Account Confirmation Document defines how you intend to make repayments. Clause A.7.4 describes how changes to repayments may occur.

### **Cheques**

Some Facilities allow you to pay by cheque. If you pay by cheque you must allow time for the cheque to clear by the payment date. If the cheque is not honoured then we treat the payment as if it had never been made.

### **Direct debit**

If the Facility allows you to pay by direct debit, you must nominate a Nominated Account acceptable to us from which we will draw repayments and fees and charges or arrange for an Acceptable Third Party to give us an authority to debit repayments and fees and charges to a Nominated Account. You authorise us to debit from your Nominated Account, or must arrange for an Acceptable Third Party to give us an authority to debit their Nominated Account with, payments of principal, interest and all fees, charges, taxes, duties you owe us until the loan has been fully paid out even after the loan has passed its contracted maturity date. You can revoke your authority only if you give us authority to debit another account or when we have received all the amounts you owe us. If an Acceptable Third Party cancels the authority they have given us, you must nominate another Nominated Account and give us an authority to debit that account.

You must ensure that this Nominated Account is open and contains enough money to cover each payment on the day it is due to be debited.

If the Nominated Account doesn't have enough money in it on the payment date we can:

- debit the account at a later date with all or part of the payment due
- debit the account anyway (this is not considered a waiver of our right to enforce the Contract) and charge you an overdrawing fee
- debit any or all of the amount from any other accounts you have authorised us to debit for that Facility, without informing you in advance
- treat the payment as if it had never been made, in which case we can charge you a fee and cancel the direct debit if we choose.

If a Nominated Account is closed, we may debit any other account in your name with amounts which otherwise would have been debited to the Nominated Account.

### **A.5.4 Allocating payments**

If you have more than one Facility and don't pay the required amount on each of those Facilities (or pay more than the required amount), we can decide how to allocate any payment you make, unless you specify how you want the payment allocated.

### **Multiple accounts**

If your Facility is a Loan with multiple accounts or sub-accounts and the Nominated Account doesn't have enough money in it on the payment date, we can take the interest payment from any of these accounts.

## General terms & conditions (cont.)

### A.5.5 Account details

#### Changing account details

If you want to change the details of the Nominated Account in any way you must tell us by visiting a branch or contacting your Relationship Manager. Changes can take up to 21 days to take effect.

### A.5.6 Residual Balance

The Bank may consider re-financing the Residual Balance at the Facility maturity date. Any request to refinance the residual balance should be presented to the Bank at least two months prior to the Facility maturity date along with latest financial data and would be considered by the Bank on a fresh transaction basis.

Any request to refinance the residual balance would be subject to the Bank's credit policies and processes at that time. No commitment is given or implied that the Bank will refinance the residual balance at the Facility maturity date.

### A.5.7 Mistaken Credits

If we are reasonably satisfied that funds have been paid to your Loan Account due to a Mistaken Internet Payment (MIP) and there are sufficient credit funds in your Loan Account, we may debit your Loan Account with the amount of the MIP and return the funds to the payer or their financial institution. Where a claim of a MIP is made within 10 business days after the payment was made we may debit your Loan Account without giving notice to you. Where a claim of a MIP is made between 10 or more business days and 7 months after the payment was made we will notify you if we propose to debit your Loan Account with the amount of the MIP and, before we returning them, allow you 10 business days to establish that you are entitled to the funds. We may prevent you from withdrawing the amount of a claimed MIP from your Loan Account while we investigate that claim, including while we wait on and consider your response to any notification we send you.

## A.6 If you default

*This section explains how you can get into default and what happens then.*

### A.6.1 When are you in Default?

You are in Default in the following situations:

#### Failing to pay

- you don't pay any amount owed to us on time
- you have to pay any present or future debts exceeding \$5,000 owed to a third party earlier than expected because of default, or you don't pay your debts exceeding \$5,000 to a third party when they are due

- you, a Guarantor or a Grantor become Insolvent or subject to any form of administration, or a receiver or manager is appointed over any of your assets
- you, a Guarantor or a Grantor stop paying creditors generally, admit that you or they can't pay your or their bills, or stop carrying on business (or threaten to)
- you, a Guarantor, a Grantor or indemnifier is in default on any Security given to us for the Contract
- if a court or any other authority issues an order or attachment notice over money we owe you, a Guarantor or a Grantor which is not set aside
- we decide that you or anyone associated with the Facility is a Proscribed Person.

### Companies

If you are a company you are *also* in Default if:

- you take any action to start winding-up
- the appointment of an administrator or provisional liquidator is proposed or approved
- we decide there has been any unacceptable material change in the legal or beneficial ownership, management or Control of the company or any Related Party
- an Entity that has borrowed money from us becomes a Related Party and we decide that the aggregate amount lent to both is too high
- a receiver is appointed over the company or any part of it
- you, a Guarantor or a Grantor are deregistered

### General

- you don't keep to the other terms and conditions of this Contract or any other Contract you have with us
- anything happens that in our reasonable opinion could have a Material Adverse Effect
- you propose or enter into any arrangement with your creditors in respect of present or future liquidity problems
- you or anyone else connected with the Facility or Security gives us incorrect or misleading information, at any time the result of which materially increases our credit risk or the risk attached to the security provider or the guarantor.

### The Security Property

- the goods or property being used as security are lost, stolen, seized, sold or damaged beyond repair which could have a Material Adverse Effect
- a court order is issued against the Security Property or any of your assets which could have a Material Adverse Effect



Each of the above situations is a separate event and this clause is to be read as if such situation was a separately expressed event constituting a Default under the Contract.

## **A.6.2 What happens when you are in Default?**

### **We may send you a default notice**

If you are in Default we can choose to enforce this Contract. If we decide to do this we will give you a default notice except as set out below.

The notice will tell you what the Default is and ask you to fix it by a specified date. It will also contain any information the law requires us to give you.

If you can fix the Default, you have the time specified in the notice to do so after we give you the default notice. If we give you a notice, you will be given at least 30 days to fix the Default. If you have not fixed it by then we can enforce the Contract.

In some circumstances we do not have to give you a notice under the National Credit Code. For example, a court may excuse us from giving a notice or we may have made reasonable attempts to locate you without success.

Unless it is required by law, we do not have to give you a notice or wait for the Default to be fixed where we believe on reasonable grounds that:

- you cannot fix the Default (for example, an administrator or receiver is appointed to you; a petition is granted or order is made for your bankruptcy or winding-up; you enter an arrangement under Part X of the Bankruptcy Act 1966 (Cth) or a scheme of arrangement with your creditors);
- we were induced by your fraud to enter into the Contract,
- urgent action is necessary to protect the Security Property, for example, that the Secured Property may perish before the end of 14 days (excluding public holidays) after the day we take possession or control of the Secured Property.
- that you have removed or disposed of the Secured Property or intend to remove or dispose of the Secured Property without our permission;
  - we have made reasonable attempts to find you without success; or
  - a court authorises us to begin Enforcement Proceedings.

### **If you don't fix the Default**

If you don't fix the Default within the time specified in any notice, or if we do not give you a notice, we can:

- cancel this Contract and any other Contract
- decide that all amounts you owe us are due immediately, without further notice (if the Loan is subject to the National Credit Code, we will tell you in the notice if we may do this)
- increase the interest rate or interest margin and remove any interest concession or margin on giving 10 business days' written notice
- debit any account you have authorised us to debit
- sue you for the money you owe us
- take possession of the Security Property, sell it or appoint a receiver to do so
- decide not to give you any un-drawn portion of the Facility
- decide not to comply with any other of our obligations under the Contract
- refuse any of your transactions or those of a Proscribed Person
- cancel any Facility
- stop providing a product or service
- refuse our consent to any dealings with you or any Guarantors
- do anything else the law allows us to do.

We can exercise these rights despite any delay or previous waiver of these rights unless we have expressly agreed not to or it would be unconscionable to exercise that right later.

### **Taking possession**

If we decide to take possession of the goods or Security Property, you must do everything reasonably necessary to make sure we can. If we appoint a receiver or other controller, they can do anything they think is in our interests and delegate their powers (with our written consent).

### **Expenses and damages**

You must pay us for any reasonable expenses we incur in exercising our rights under the Contract, including Break Costs. We can set off against the amount you owe us, any amount we owe or may owe to you in the future (for example, interest we owe you on an un-matured term deposit).

If part of your Facility is at a fixed rate, you must also pay our reasonable estimate of the loss we will incur because of the Facility not continuing to the end of the Fixed Rate Period.

## General terms & conditions (cont.)

### A.7 Calculating and paying interest

*Interest is the price you pay to use the money we lend you. This section explains how we calculate it and how you agree to pay it.*

#### A.7.1 How we calculate interest

We start calculating interest daily from the day we lend you the money. We calculate the daily rate by dividing the Interest rate defined in the Offer Document or Account Confirmation Document by 365 (even in a leap year). If the Interest rate is variable, it may change from day to day.

After we have completed the processing of transactions to the Loan Account, we will calculate interest on the last calendar day of each month, or of any other agreed interest charging cycle, and charge interest and fees the next day.

#### Interest in Advance

Some Loans allow you to pay interest in advance. If we agree to this we charge interest from the first day of the advance period, and for the whole period, on the first day.

#### A.7.2 Default Interest

*This clause only applies to BetterBusiness Loans, Bill Facilities, Market Rate Loans, SuperGear, Commonwealth Portfolio Loans, Business Lines of Credit, Agribusiness Lines of Credit, Overdrafts, Capital Equity Facilities, Trade Finance and Contingent Liabilities and Multi-Option Facilities.*

You must pay us Default Interest on any amount (including interest) which you fail to pay on the due date. We charge Default Interest:

- at an Interest rate equal to our monthly Overdraft Index Rate plus a margin of 4.5% per annum (except Commonwealth Portfolio Loans where the interest rate for the excess credit will be 2% higher than the interest rate applying to the loan at the time), and
- daily on the overdue amount from the due date of payment of the amount until the amount is paid.

You must pay any Default Interest on the day you pay off the Loan, unless you have already paid it. This does not affect your obligation to make all payments on time.

#### A.7.3 Interest on unpaid interest, fees and charges

We charge interest on unpaid interest, fees and charges. The interest only becomes part of the principal when we make an entry in our books to add it to the principal, which we may do at any time without notice. Until we do this, the unpaid amounts are charged to the Loan or Nominated Account but are considered not part of the principal.

You agree to pay any fees, charges, taxes or duties that apply to the interest payments (e.g. a direct debit fee).

#### A.7.4 Rate increases

If interest rates increase, or you have redrawn special repayments, your repayments may not be enough to repay the Loan. In this case we may reset the loan repayments so the Loan is repaid by the end of the loan Term.

We are not obliged to increase repayments if interest rates increase and it is your responsibility to ensure the Facility is repaid at the end of its Term. If rates increase and you ask, we will increase repayments so that the Loan will be repaid on or about the end of the Term.

If rates decrease or you have made a special payment, unless you have chosen to pay a higher repayment amount than the minimum required repayment, we may decrease the repayments so that the loan will be repaid by the end of the loan Term.

#### A.7.5 Court orders

If any obligation to pay us an amount becomes part of a court order, we will charge interest on that amount separately, using the higher of the rate in the Offer Document or Account Confirmation Document or the rate in the court order.

#### A.7.6 Early repayment of Interest in Advance

If we agree to you paying off the Loan early, we will reduce the amount you owe on that date, including fees or charges (such as any Early Repayment Adjustment), by the proportion of the interest paid in advance for each complete month left in the interest in advance period.

### A.8 Notices and communication

*During the course of a Facility, we may have to tell you about things that have changed (such as Interest rates), and you may also need to inform us of things that have changed (such as your address).*

#### A.8.1 Sending notices

All notices to us must be in writing. You can give us notices in person at a branch, by post, by fax or by e-mail. To fax, post or e-mail a notice you must send it to the address, fax number or email address we have provided. You must tell us as soon as you change your address.

We can give you a notice or confirmation:

- in person
- by leaving it at your last known address
- by pre-paid post (to your last known address)
- by fax (to your last known number)
- in accordance with clause A.8.2
- in any other way permitted by law.



## A.8.2 Notices sent by email or via our website

If you have given us your email address and we are permitted by law to send information by electronic communication, we can email notices to you directly or tell you by email that you can retrieve them from our website.

We will email you promptly and tell you about the nature of the information available. You agree that changes to these terms and conditions may also be made by notifying you that the changes are available on our website or, if you conduct loan transactions via our online platforms (including, without limitation, NetBank or CommBiz), you agree we may notify you via the online platforms.

We may notify you by written notice that changes to these terms and conditions are available on our website, subject to any requirements of the Code of Banking Practice.

### Changing your details

You can change your email address by notifying us at any time. You can also give us notice to end your agreement to receive information by electronic communication.

### Copies of electronic information

If we send you information by electronic communication, we will provide a hard copy of the information if you ask within 7 years of the electronic communication.

## A.8.3 When do our notices take effect?

Our notices to you take effect from the time you are deemed to receive them as set out below unless a later date is shown on the notice.

### Post

Notices sent by post take effect on the day they would be received in the ordinary course of post.

### Fax

Notices sent by a fax machine take effect at the time shown in a transmission report, if the machine creates a report showing that the fax was sent in full.

### Email

Notices sent by email take effect on the day the email enters the system of the host of your email address or your internet service provider.

### Effectiveness of notices

Notices are considered fully effective, despite the fact that at the date of the service you are:

- lacking in mental capacity
- dead
- bankrupt

- Insolvent
- absent from your usual residence
- as a corporation, in the course of liquidation or have had an administrator or receiver appointed.

## A.8.4 Statements

Depending on the product we may or may not send you regular statements. See the section in Part B relevant to your Facility type.

## A.9 Changing the Facility

*During the Term of a Facility you may want to change things (such as the amount you've borrowed or the Facility Term) and we may want to change things (such as the frequency of repayments). This section explains how these changes can be made.*

### A.9.1 Written approval

No term or right of the Contract can be varied except in writing, signed by all bound parties, except as otherwise provided in these terms and conditions.

### A.9.2 Changes you request

If you request a change in the details of the Facility and we agree to the change, we will send you a Letter of Variation, Offer Document or Account Confirmation Document or a combination of those documents defining the new arrangement. If we ask you to sign and return a copy of the Offer Document or Schedule, by doing so you agree to the new Facility details.

### A.9.3 Changes to Interest Rates

From time to time we may reduce or increase our reference Interest Rates. Our variable reference Interest Rates are published on our website: [www.commbank.com.au](http://www.commbank.com.au)

From time to time we may change the Interest Rate or margin applying to a variable Interest Rate Loan. One way that this can happen is if the variable Interest Rate is based on a reference rate that changes.

We advertise any reduction or increase in the variable reference Interest Rates in leading daily newspapers in each State and Territory no later than the day on which the change takes effect.

If the Interest Rate is not set by reference to a reference Interest Rate, we may either:

- give you written notice of any increase no later than the day the change takes effect, or
- advertise the increase in leading daily newspapers in each State and Territory no later than the day on which the change takes effect. We will confirm the advertised Interest Rate to you with the next statement of account we give you under the Contract.

## General terms & conditions (cont.)

### A.9.4 Changes to rates during Fixed Rate Period

The fixed Interest Rate or Fixed Bill Rate is set on the date the Facility is funded unless we have agreed an earlier time. During a fixed Interest Rate period or Fixed Bill Rate period, we may charge a new fee or vary the liquidity fee at any time, but we may only increase the Interest Rate, the margin or line fee in one of the below circumstances:

- if a Change of Law occurs, which in our reasonable opinion to a material extent will:
  - increase our cost to commit, provide, maintain or fund a Fixed Rate Facility
  - reduce any amount received or receivable by us for the Fixed Rate Facility
  - reduce our effective return, including the return on our capital, under a Fixed Rate Facility
- if we reasonably consider that your credit worthiness or probability of default has deteriorated.

#### Amount of the Change

Except for the charging of a new fee or a change in the liquidity fee, any increase will be by an amount which we determine is necessary to compensate us for:

- our increased risk due to the deterioration in your credit worthiness or probability of default
- the increase in our costs or the reduction in the effective return to us.

In determining the amount of any increase in costs or reduction in effective return, we may use averaging, attribution and/or such other methods of calculation as we commonly use and/or any other reasonable method of calculation.

#### Termination of a concession

When a package concession applying to the Facility terminates, we can increase the rate to that which would otherwise apply if we have told you in the Offer Document that we are entitled to do this.

Otherwise we will not change the Interest rate applying to a fixed or guaranteed Interest rate Loan during a fixed or guaranteed Interest rate period.

#### Notifying you of changes

We will give you written notice of any change to the margin or Interest rate no later than the day on which the change takes effect.

### A.9.5 Changes to Facility features

We may from time to time:

- change any variable Interest rate we pay or charge
- add, change or remove fees or charges or the frequency of charging of any fee or charge
- change the frequency of repayment

- change your Loan Account number (for example, we may change the number when the type of Interest rate applying to the Loan or the Loan Type changes).

Each of these changes is a separate right and this clause is to be read as if such change was a separately expressed right.

### A.9.6 Changes to terms and conditions

We may from time to time change any terms and conditions to:

- change the basis on which interest is charged or paid
- replace any reference Interest rate with any other reference Interest rate
- change the frequency with which interest is charged or paid
- change the link to any reference Interest rate or how we describe it
- change the minimum balance to which an account keeping fee applies
- add, change or remove any concessions or benefits (for example, special deals for loans packaged with other products)
- adopt or implement any legal requirement, decision, recommendation, regulatory guidance or standard of any court, tribunal, ombudsman service or regulator
- accommodate changes in the needs or requirements of our customers, such as new product features or services
- correct errors, inconsistencies, inadvertent omissions, inaccuracies or ambiguities
- bring us into line with our competitors, industry or market practice or best practice in Australia or overseas
- reflect changes in technology or our processes including our computer systems.

Without limiting our rights, we may from time to time change any of the terms and conditions for reasons other than the ones mentioned above (e.g. due to unforeseen events).

Each of these changes is a separate right and this clause is to be read as if such change was a separately expressed right.

### A.9.7 Notifying you of changes

#### When we give written notice in all cases

We will provide you with written notice at least 30 days before the introduction of a new fee or a change takes effect to the method by which, or the frequency with which, interest is calculated or charged.

If the change relates to an interest rate and clause A.9.3 applies we give notice in accordance with that clause.

#### Changes to fees, or charges

If the change is to a fee, we may notify you by an advertisement in a leading daily newspaper in your state or territory.

If the Loan is a Commonwealth Portfolio Loan regulated by the National Credit Code we will send a written confirmation of any newspaper notice before or when we send you your next statement of account.

### **Changes to repayments**

If you are a small business (as defined in the Code of Banking Practice) and we reasonably consider that the increase in repayments will be materially adverse to you, we will give you notice of the increase at least 45 days before it takes effect, unless you have agreed with the Bank to change the repayments. We can confirm any agreed change by phone, email, electronically or fax without the need of a written notification.

Unless you have agreed with the Bank to change the repayments, any change will be recorded in the Account Confirmation Document and/or statement which we will send you after the change and which can be accessed through NetBank or can be provided to you on request.

### **Other changes to the Terms and Conditions**

Unless your Loan is regulated by the National Credit Code, we will notify you of other variations to the Terms and Conditions by advertisement in the national media or local media or in writing to you, no later than the day on which the variation takes effect, except where the interest rate is linked to money market rates or some other external reference rate, changes to which we cannot notify you of in advance.

If we make a variation to only your Contract (and not to the terms and conditions applying to other borrowers), and we reasonably consider the variation will be materially adverse to you, we will give you a reasonable period of notice (not less than 45 days) in writing of that variation, unless we consider a shorter notice period is necessary for us to avoid or reduce an increase in the credit risk to us.

If your Loan is regulated by the National Credit Code, we generally will send you written notice of other variations to the Terms and Conditions 30 days before the change.

We do not give you prior notice and will notify you of the change before or when we send you the next statement of account we give you under the Contract if the change:

- reduces your obligations;
- extends the time for payment of any amount under the Contract; or
- is to the Loan Account number and does not otherwise change the Contract.

### **If you don't approve of a change**

If we make a change that you do not like, you can cancel the Contract by repaying the Facility.

Depending on your Contract, you may have to pay fees and charges, including an Early Repayment Adjustment and an Administrative Fee.

## **A.10 Exercising our rights**

*We have legal rights that we can use to enforce this Contract. This section explains how we can use or 'exercise' those rights.*

### **A.10.1 How we can exercise our rights**

We can enforce this Contract before or after we enforce our rights under any security. If we don't exercise a right fully or at a given time, we can still exercise it later unless we have expressly agreed not to or it would be unconscionable to exercise that right or remedy later. Any of our Authorised Officers or any lawyer or agent we authorise can exercise our rights under this Contract.

Our rights under this Contract are in addition to other rights provided by law independently of it.

At any time we can assign or otherwise deal with our rights and/or obligations under this Contract in any way we consider appropriate. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under this Contract.

### **A.10.2 Liability for loss**

We are not liable for loss caused by exercising, trying to exercise, failing to exercise, or delaying exercising, a right under this Contract, unless the loss is caused by our negligence.

### **A.10.3 Restrictions**

Anything we do under this Contract is subject to any restriction imposed on us by law, including the National Credit Code if it applies. If the law allows us to modify the restriction and we have modified it in this Contract, then what we do is subject to the modified restriction.

### **A.10.4 Exclusions**

Any law that limits our rights under this Contract is excluded, unless the law doesn't allow us to exclude it. The rights we have under this Contract are independent of those we have under any Security, or what the law says we have, and we can exercise them even if we obtain an order or judgment against you.

### **A.10.5 Refunds**

If a trustee in bankruptcy or a liquidator or other person asks us, or if a court orders us, to refund a payment we have received and we are obliged or reasonably agree to make a refund, we may treat the original payment as if it had not been made.

We are then entitled to our rights under any Security or Guarantee as if the payment had never been made (i.e. you are in Default) and you must do what we ask to return to us the benefit of any Security or Guarantee discharged in reliance on the original payment.

## General terms & conditions (cont.)

### A.10.6 Applicable laws

The Contract is governed by the laws in the state or territory in which your address is located, as defined in the Offer Document. If required by a law relating to foreign investment, you must have a suitable advice from the Commonwealth Government allowing you to take an interest in the Security Property.

### A.10.7 Consents

You must comply with all our requirements in any consent we give in connection with the Contract. We will only refuse our consent if it is reasonable to refuse it. If we give our consent we may impose reasonable conditions.

### A.10.8 Statements of amount payable and certifications

A written statement signed by one of our Authorised Officers is sufficient evidence of the respective balances of the Facility owing unless you decide to contest the statement in court.

### A.10.9 Acts of brokers

If a third party (such as a broker or referral agent) introduces you to us or arranges the Contract with us on your behalf, we may pay them a commission. Whether we pay commission or not, they are not our agent and we are not liable for any of their actions or omissions.

## A.11 Trustees

*If you are entering into the Facility or providing security to secure the Facility as the trustee of a trust, the terms and conditions in this section apply to you.*

### A.11.1 Conditions

If you are a trustee, you must:

- be the sole trustee of the trust or, if there is more than one trustee, be all the trustees of the trust
- have the power under the trust deed to enter into and observe your obligations under the Contract
- enter into the Contract in your personal capacity and in your capacity as trustee of the trust and for the benefit of the beneficiaries of the trust
- have all the necessary authorisations required to sign the Contract and perform your obligations
- have a right to be fully indemnified for all your obligations under the Contract out of the property you hold on trust.

You also confirm that:

- the trust is validly constituted and has not been terminated
- there is either:
  - no conflict of interest affecting you as trustee (or your related parties or directors) which prevents you from entering into or performing your obligations under the Contract; or

- the trust deed permits you to enter into and perform your obligations under the Contract despite any conflict of interest that may affect you (or your related parties or directors)

- the trust fund is big enough to satisfy your right of indemnity
- the trustee is not in default under the trust deed and no action has been taken or proposed to terminate the trust
- you have complied with your trust obligations (as have any directors or officers if the trustee is a corporation)
- you have taken every necessary action to authorise you to execute the Facility and perform your obligations under the Contract
- executing the Facility is not a breach of trust on your part
- our rights under the Contract have priority over the interest of the beneficiaries of the trust.

### A.11.2 What you agree to do

You agree to give us a copy of the trust deed and any other documents that disclose all the terms of the trust.

When you sign the Contract as a trustee, you agree to:

- at our request, exercise or hold for us your right of indemnity from the trust fund and the beneficiaries in order to pay us any money owed under the Contract
- observe and perform your obligations as trustee of the trust
- cause any successor trustee to abide by these terms and conditions.

### A.11.3 What you agree not to do

Without our consent you will not do anything to:

- retire or be removed or replaced as trustee of the trust or allow additional trustees of the trust to be appointed
- terminate the trust, vary the trust deed in a way that impacts on the ability of the trustee to fulfil its obligations under the Contract, or re-settle the trust fund or determine a vesting date
- limit your right of indemnity from the trust fund for obligations under the Contract.

### A.11.4 Additional reporting obligations

As part of Australia's international obligations in relation to combating tax evasion, we may require you to provide additional information. Until you provide us with this information, we may prevent you from withdrawing any funds that you deposit.

*For example, if you are the trustee of a trust, you need to tell us if the settlor or any beneficiary of the trust is a tax resident of a country other than Australia. If the settlor or any beneficiary is itself an entity, this requirement applies to all individuals who are an ultimate beneficial owner of that entity.*



We may then require you to obtain (and/or provide on their behalf) each individual's name, address, date of birth and tax residency details.

Where you are a trustee, you do not have to give us this information in relation to the settlor if their identity is not known or, if they have no ongoing involvement with the trust and their tax residency is not known. In this case, you confirm that after reasonable enquiry, you have no reason to believe that the settlor is tax resident in a country outside Australia.

You must keep this information up to date, and notify us promptly of any change.

If you need to get in touch with us:

- From Australia call 1300 077 141 between 9am – 5pm, Monday – Friday (your local state time)
- From overseas call +61 2 9283 6096 between 9am – 8pm, Monday – Friday (Sydney/Melbourne Time). Call charges may apply

## A.12 Your declaration

By signing the Offer Document you are making the following declarations.

### A.12.1 All parties

By signing the Schedule or Offer Document, you declare that:

- you are the owner of any goods or property which you give us security over for this Facility, or have told us of any joint owners
- where a Guarantor gives us security over goods or property, they are the owner of those goods or property, or you have told us of any joint owners
- the security property is not, and will not become, subject to any kind of competing Security Interest or obligation
- you are not in default on any other credit agreement and that no event has occurred that may put you in default in the future
- you don't breach any laws or obligations to anyone else by signing this Contract
- all the information you have given us is correct, complete and not misleading in any respect the result of which would materially increase our credit risk or the risk attached to the security provider or guarantor
- if this is a commercial Facility, you will use it only for business or investment purposes
- you have sole responsibility for managing your financial affairs so that you can repay the Facility.

### A.12.2 Companies

If you are a company, you also declare that:

- the company is financially sound and not under threat of liquidation
- there is no current, pending or threatened legal action, arbitration or administration proceedings against the company that could have a Material Adverse Effect

- you will tell us promptly of any intentions to materially change the company's structure, ownership or financial position that could affect your ability to repay this Facility.
- the Transaction either:
  - (a) benefits the company, does not give rise to any conflict of interest and, where the Transaction involves a related party of a public company, it does not breach Chapter 2E of the Corporations Act; or
  - (b) a resolution approving the Transaction has been duly passed by the shareholders of the company.
- where the Transaction involves the giving of financial assistance by a company to acquire shares in it, the financial assistance is permitted under section 260A(1) of the Corporations Act.

### A.12.3 Continuation of statements, confirmations and declarations

You acknowledge that:

- we rely on all of the statements, confirmations and declarations in the documents being true each time you use any of your Facilities
- you repeat the statements, confirmations and declarations every time you accept a new Offer Document from us
- the statements, confirmations and declarations also apply to any Guarantor or Grantor.

## A.13 Financial covenants

*Note: This section applies only to commercial lending Facility Contracts and only to the extent stated in the Offer Document.*

### A.13.1 Conditions After Funding

You agree to limit your annual expenditure on capital goods to the amount (if any) set out in the Conditions After Funding.

You agree to ensure that the minimum net sum of loans to the company from directors, shareholders, beneficiaries and related parties will be above the limit (if any) defined in the Conditions After Funding.

You agree to ensure that the following financial elements are always at least the amount (if any) specified in the Conditions After Funding, the original Offer Document, or any Offer Document provided for the relevant period, whichever is higher:

- |                           |   |
|---------------------------|---|
| ■ Current Ratio           | ■ Earnings Before Interest                    |
| ■ Quick Asset Ratio       | ■ Earnings Before Interest And Tax            |
| ■ Liquidity Ratio         | ■ Ratio of Net worth to total tangible assets |
| ■ Business Asset Ratio    | ■ Total Interest Bearing Debt to Net worth.   |
| ■ Interest Coverage Ratio |   |
| ■ Net Worth               |   |
| ■ Net Profit Before Tax   |   |

## Specific terms & conditions (cont.)

These values are based on the financial information you agree to provide in *A.3.3 Keeping records and providing financial information*.

### Credit Exposure Limit

If the Loan is intended to give you funds to meet your working capital or refinancing needs, as these amounts may fluctuate, the Offer Document may include a Credit Exposure Limit which defines the maximum amount we are willing to lend.

If a Credit Exposure Limit is stated in the Offer Document, that limit is calculated as a percentage of your qualifying Current Assets. Both the percentage and the deemed value of your qualifying Current Assets (the VQCA floor) are defined in the Offer Document.

If the value of your qualifying Current Assets falls below the VQCA floor at any time, the Credit Exposure Limit falls by a proportional percentage. If this happens you must repay immediately any amount over the Credit Exposure Limit.

### Aggregate Facility Limit

If a Credit Exposure limit is stated in the Offer Document, that limit applies across all of your Facilities at any particular time. The Aggregate Facility Limit is defined in the Offer Document and decreases by the amount of the loan principal you have paid off. The total amount of your Facilities with us may not exceed this Credit Exposure Limit at any time.

### A.13.2 Other covenants

If we specify any other financial covenants in our Offer Document you agree to comply with them.

## A.14 Refusal of Service

Despite any right under these terms and conditions, if it appears to us that you or a signatory may:

- be a proscribed person or entity under the *Charter of the United Nations Act 1945* (Cth) and the *Autonomous Sanctions Act 2011* (Cth) and associated regulations;
- be in breach of the laws of the any jurisdiction relating to money laundering or counterterrorism;
- appear in a list of persons with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or
- act on behalf, or for the benefit of, a person listed above;

we may immediately:

- refuse to process any transaction of yours;
- suspend the provision of a product or service to you;
- refuse to allow or to facilitate any assets of yours held by us to be used or dealt with; and/or
- terminate your Facility.

We will be under no liability to you if we do any or all of these things in good faith.

## A.15 Variations to Terms and Conditions.

If your Approved Limits (including those to other associated Borrowers as reasonably determined by us) are less than, and have always been less than, \$3 million, the following changes to the Terms and conditions apply:

- Second sentence of clause A.4.1 is amended to read as follows:  
“At all times, we must be satisfied with the title to the Security Property”

- clause A.6.1 is amended to read as follows:

### A.6.1 When are you in Default?

You are in Default in the following situations:

- you don't pay any amount owed to us on time
- you, a Guarantor or a Security Provider, become bankrupt or Insolvent, or subject to any form of administration, or a receiver or manager is appointed over any of your or their assets or there is any other material creditor enforcement against you or them
- you fail to maintain insurance over the security or provide proper financial accounts to us
- you, a Guarantor or a Security Provider is in default on any Security given to us for the Contract
- we decide there has been any unacceptable material change in the legal or beneficial ownership, management or Control of you or any Related Party
- you lose your Licence or permit to conduct the business
- you or anyone else connected with the Facility or Security gives us incorrect or misleading information, at any time the result of which materially increases our risk to you, or the security provider or the guarantor
- we determine that it is, or will become, illegal or contrary to law for us to continue to provide the loan or you use the loan for a non-approved purpose
- you breach a financial covenant where your loan is a property development loan, foreign currency loan, SuperGear Loan or margin lending.

Each of the above situations is a separate event and this clause is to be read as if such situation was a separately expressed event constituting a Default under the Contract.



## B-F. SPECIFIC TERMS & CONDITIONS

*This chapter contains the terms and conditions that are particular to each type of Facility. You don't need to read all of it, only the section that relates to the type of Facility you are taking out.*

### B. COMMERCIAL LENDING

#### About these products

*This section contains the terms and conditions for the following Facilities:*

- B.1 BetterBusiness Loans
- B.2 Bill Facilities
- B.3 Lines of Credit, Overdrafts and Capital Equity Facilities
- B.4 Multi-Option Facility
- B.5 Market Rate Loan
- B.6 Commonwealth Portfolio Loan.

#### B.1 BetterBusiness Loans

*A BetterBusiness Loan lets you finance the purchase of capital items over the medium to long term. This product is suitable for businesses of all sizes and not-for-profit organisations.*

*A BetterBusiness Loan provides loans with a term of at least 1 year. It offers the choice of fixed or variable Interest rates and the choice of repayment options.*

##### B.1.1 Facility Limits

The Limit is the maximum amount of credit we make available to you under the Loan. For details of the Limit please refer to our Offer Document. We review your Limit each year and may cancel or reduce it by giving you 30 days' written notice. Unless you are in Default, we will only do this if we reasonably consider that, due to a change in your financial circumstances, you will not be able to meet your obligations under the Contract. You may not make further drawings on the Loan during the 30 day notice period.

##### B.1.2 Drawing on your funds

You must give us instructions to draw on the Loan. Within three months of the date of the Offer Document you must fund the entire Loan amount in one single drawing, unless the Offer Document provides otherwise or we agree to fund it by progressive drawings. We will not provide funds if you are in Default.

##### Nominated Account

Prior to the loan being funded, you must open an account with the Commonwealth Bank or nominate a Nominated Account or arrange for an Acceptable Third Party to give us an authority to debit their Nominated Account with, payments of principal, interest and all fees, charges, taxes, duties you owe us until the loan has been fully paid out. We may require that this Nominated Account be held with us in our discretion.

This Nominated Account must always have enough funds in it to allow us to debit it for any fees, charges, instalments of principal payments and any accrued interest. If an authority to debit a Nominated Account is cancelled, you must nominate another Nominated Account and arrange an authority for us to debit that account.

##### B.1.3 When we won't provide loan funds

We can refuse to give you loan funds if you don't meet the conditions in clause A.1.

##### B.1.4 How the repayment redraw facility works

When we refer to 'special repayments' in this clause we mean repayments made on your *BetterBusiness Loan – Variable Rate*, in addition to the regular contracted instalments or repayments you must make under the Contract.

We debit any amount you decide to redraw to the Loan Account. If you are not complying with the conditions in clause A.1 or you give any other person other than us interest in a security property we may not make the repayment redraw facility available. We can suspend or cancel your right to redraw special repayments at our discretion and we will notify you after this occurs.

Subject to our agreement and clause A.1, you can redraw on the repayment facility if all borrowers or authorised signatories to the Facility sign the Authority form and redraw at least \$2,000. If the functionality becomes available and subject to our agreement and clause A.1, your Authorised Representative can redraw on the repayment facility through CommBiz or NetBank if you have signed our usual form to authorise them to transact on your Loan Account through respectively CommBiz or NetBank which redraw is not subject to a minimum amount. The total available for redraw is the difference between the balance owing on the loan and the estimated contracted balance at that point in time as calculated by the Bank. Any additional repayments made above the regular contracted instalments or repayments may not always be available to you in full at a given time. This could be due to previous redraws paid, unpaid amounts, unchanged repayments or Interest rate increases. We may refuse to allow redraw at our absolute discretion, and we will notify you after this occurs, or require that you or your Authorised Representative agree to an increase in repayments as a condition of allowing redraw.

If you later decide to have portions of the Loan on both fixed and variable Interest rates, you may continue to use this redraw facility, but you must ask us to continue to make it available from the variable rate portion. Once you repay the Loan in full, you cannot later redraw. If you have made special repayments, at our absolute discretion and without notice to you, we may waive your obligation to make regular repayments for as long as the special repayments available in the Loan Account cover the required repayments. During this period, your loan balance will increase by the amount of interest plus any fees and charges charged to the Loan Account.

## Specific terms & conditions (cont.)

### B.1.5 Interest rate options

We offer a choice of Interest rates with a BetterBusiness Loan. These include:

- fixed
- fixed (residentially secured)
- variable.

For variable rate Loans we debit interest monthly to your Loan Account or the Nominated Account unless we have agreed to charge interest quarterly, half yearly or annually. For fixed rate Loans we debit interest monthly to your Loan account or the Nominated Account unless we have agreed to charge interest quarterly, half yearly or annually, or for you to pay interest in advance.

If we agree to charge interest other than monthly an additional interest margin will apply to the Interest rate and will be set out in your Account Confirmation Document which will be available once the facility has been funded.

### B.1.6 Fixed rate & Fixed Rate Residentially secured

Please refer to the Offer Document for the indicative Interest rate. We will set the actual fixed Interest rate on the day of funding or renewal along with the, first instalment due date, frequency of instalments and the Fixed Rate Period. We will send you a Letter of Confirmation or Account Confirmation Document setting out the fixed Interest rate terms agreed with you.

#### Funding or drawing on the Loan

Within three months of the date of the Offer Document or Account Confirmation Document you must fund the entire Loan amount in one single drawing, unless you ask us to postpone. If we agree to postpone you must comply with any conditions we impose.

If you don't fund or draw down within three months, or if you fail to comply with our conditions, then your Loan may lapse. In this event we may charge you an Early Repayment Adjustment fee to cover our losses.

We will calculate this Early Repayment Adjustment fee as if the Loan was funded on the date set out in the Letter of Confirmation as the Date of First Drawdown or Funding.

#### Exceeding the Fixed Rate Period

If your Loan Term exceeds the fixed rate maturity date we set in the Offer Document or Account Confirmation Document you can change the Interest rate on the remaining amount to a variable rate. This new rate will then be the usual variable rate at the time for BetterBusiness Loans plus a margin (if any). You must agree to all the terms of the amended Facility.

Alternatively, you can continue with a fixed Interest rate we offer. If you choose this option we will give you a replacement Offer Document or Account Confirmation Document outlining all new instalments of principal, interest payable and fees we charge.

You can ask for a quote on the rates to help you decide which option to choose. If you don't make a choice or we can't reach agreement about the terms of the Loan, we will continue the Loan but at the variable rate. The new variable rate will then be the usual variable rate at the time for BetterBusiness Loans as set out in the Offer Document or Account Confirmation Document. All other conditions are the same but we may vary the repayments under clause A.7.4.

#### Paying the Interest in Advance

We may allow you to pay the interest in advance for a maximum period of 12 months from an agreed date.

If you pay the interest in advance:

- we can still deduct any interest due on your account and any Default Interest on any overdue payments during the interest in advance period
- subject to clause A.9.4, we will debit any interest due, to your Loan or the Nominated Account during the interest in advance period
- we may debit your account if the interest has not been paid at the beginning of the interest in advance period.

You can apply for another interest in advance period at the end of the 12 months.

#### Pre-paying or changing existing details on your fixed rate Loan (including fixed rate residentially secured)

If you partially or fully pre-pay your Loan during any Fixed Rate Period, you must pay us any applicable Early Repayment Adjustment and Administration Fee. If during any Fixed Rate Period, you ask to change the existing Fixed Rate Period, repayment amounts, repayment frequency, interest rate or repayment type, we will treat this change as a Pre-payment of your Loan Account and you must pay us any applicable Early Repayment Adjustment.

To pre-pay you must give us two days' notice.

*Partial Pre-payments* – If we agree, you can make a partial Pre-payment, but you must pay at least the minimum amount outlined in the Offer Document or Account Confirmation Document, or \$25,000 if there is no minimum amount. We may vary the minimum amount at our discretion. You must also pay us the Early Repayment Adjustment (if any).

*Full Pre-payments* – If you wish to fully pre-pay the Loan or switch to a variable rate, we will calculate the amount of the Early Repayment Adjustment on the Pre-Payment date.

We will debit the Nominated Account with the Early Repayment Adjustment on the date of the Pre-payment or switch and unless you have repaid the Loan, thereafter charge interest at the variable Interest rate plus or minus any margin. You must pay the Early Repayment Adjustment when we ask you. We may also charge an Administration Fee.

## Calculating the Early Repayment Adjustment

If we work out that we made a loss because of the Pre-payment, we will charge the Early Repayment Adjustment.

We will make a reasonable estimate of that loss using our standard formula which takes into account the difference between:

- our wholesale market swap rate for the Fixed Rate Period on the date the Interest rate was fixed, and
- our wholesale market swap rate as at the date of the Pre-payment for the balance of the Fixed Rate Period.

We will also take into account any scheduled principal repayments and the current value of the Early Repayment Adjustment in the calculation. If the wholesale market swap rate at the Pre-payment date is lower, you must pay the Early Repayment Adjustment.

Our calculation may not be a true reflection of the actual transactions we may enter into as a result of the Pre-payment, or which we may have entered into when you fixed the Interest rate. There may not be specific transactions referable to the Loan because we manage our funding of Loans and Interest rates on a portfolio basis.

If you ask us, we will give you a statement setting out how we estimated our loss as a result of the Pre-payment or the formula we use to calculate our loss or both.

**Warning:** If the wholesale market swap rate falls, the Early Repayment Adjustment can be high. You can ask us for an estimate of an Early Repayment Adjustment at any time.

## Pre-paying the Loan during an Interest in Advance Period

You can pre-pay all or part of your Loan during an interest in advance period.

If you do this we will pay you a rebate of the interest paid in advance. We calculate this by multiplying the amount pre-paid by the Interest rate applying to the Loan, then multiplying the result by the number of days left in the interest in advance period, and then dividing the result by 365.

We will use this rebate to pay any fees, Early Repayment Adjustment or outstanding amounts on your Loan.

## Your obligations for early repayments after Default

If you Default, we may cancel any fixed interest rate loan in which case you must pay the Early Repayment Adjustment as our estimate of our damages.

We will calculate the Early Repayment Adjustments as if you had pre-paid the Loan on the date it ceased to be conducted at a fixed Interest rate. We may exercise our general default rights outlined in A.6.

## Our rights if you Default

If you Default we may debit the Early Repayment Adjustment to the Loan Account. We may also debit either the Loan or Nominated Account with all unpaid fees and charges.

## B.1.7 Fixed Rate – Residentially Secured

At the end of the Fixed Rate Period the interest changes to a variable interest rate unless you request and we agree otherwise. This variable rate is the rate current at the end of the fixed period for BetterBusiness Loans. These conditions and any margins will be stated in the new Offer Document or Account Confirmation Document.

## B.1.8 Variable Rate

We set the Interest rate by adding or subtracting a margin from an Index Rate which is stated in the Offer Document or Account Confirmation Document.

## Offset Interest rate explained

We calculate interest daily on the outstanding loan amount at the interest offset rate, for all amounts up to the credit balance of your offset account.

For funds above the credit balance of the offset account we will use the Interest rate applicable to the Loan. We will not pay credit interest to your offset account(s) even if it exceeds the Loan Account balance.

Assuming that the interest offset is available:

- we will debit the interest owing on a Loan to your interest offset account
- on your Default, we may apply any part of the balance in the offset account towards any balance of the loan account. We then may treat any credit balances changed as applied and may then deal with the accounts accordingly
- on your Default, we may refuse you access to the interest offset account
- your interest in the interest offset account is limited to any difference between the credit balance and the amounts which are owing or may become payable under the contract
- you declare that you do not hold the money in the offset account on trust.

If you switch to a *BetterBusiness Loan – Fixed Rate*, the interest offset arrangement will cease.

## Pre-paying your variable rate Loan

Your variable rate Loan is repayable at any time.

To partially or fully pre-pay your Loan you must give us two days' notice.

## Changing to a fixed rate

You can ask to change all or part of your Loan to a fixed rate for a specified period. If you do so, we will send you a new Offer Document or Account Confirmation Document detailing the new terms and fixed rate.

You must agree to all changes before the changes will take effect. We will then send you a Letter of Confirmation or Account Confirmation Document detailing the fixed rate and other terms agreed by your agent.

## Specific terms & conditions (cont.)

### B.1.9 Capped rate

*This clause only applies to existing capped rate Loans. We no longer offer new capped rate Loans.*

We set the capped rate by either adding or subtracting the margin (if any) stated in the Offer Document to or from the Index Rate, or to the sum of the Index Rate which was applied on the first day of the Loan. If you are in Default we may increase the margin to determine the capped rate.

The capped rate begins immediately after you agree it is to be applied and will continue to the expiry date stated in the Offer Document.

During the capped rate period, we may change the Interest rate if it doesn't exceed the capped rate agreed to in the Offer Document. We will notify you of any changes to Interest rates no later than the day the change takes effect.

At the end of the capped period you can continue on a variable rate with no cap or request a Fixed Rate Period.

### B.1.10 Variable Rate – Economiser

*This clause only applies to existing Economiser Loans. We no longer offer new Economiser Loans.*

All amounts are payable by the principal and interest instalments set out in the Offer Document. You must make payments in the frequency and amounts stated in the Offer Document.

You can change the repayments if the Interest rate changes so the Loan is paid by the date set in the Offer Document. You acknowledge we are not obliged to exercise our right to increase repayments under clause A.7.4 unless you ask us.

### Switching to another Interest rate

If you change to either a variable or fixed rate within three years of funding, an Early Repayment Adjustment fee will apply as if you had pre-paid the Loan.

### Pre-paying your Variable Rate Economiser Loan

If you repay the Loan in full within three years of funding, you must pay us an Early Repayment Adjustment determined by the interest applying to the principal amount outstanding on the date of repayment as follows:

Period which the Loan is paid	Additional interest payable
Within the 1st year	3 months'
Within the 2nd year	2 months'
Within the 3rd year	1 month's

### B.1.11 Fees and charges

We will debit the Nominated Account with all unpaid fees and charges you must pay under the Contract when they become due. This may include any new or any increased Government charge or duties.

If an authority to debit a Nominated Account is cancelled, you must nominate another Nominated Account and arrange an authority for us to debit that account. We may impose a new fee or vary existing fees at any time unless we believe you cannot make the payments subject to clause A.9.7.

### B.1.12 Cancelling and reducing Limits

You may cancel or reduce the Limit on the Loan at any time, although your obligations for credit we have previously provided continue. Also, if we are obliged to make further advances to any other Borrower, we can refuse any request by you to reduce or cancel the Limit.

### B.1.13 Withdrawing our approval

We may withdraw our approval if:

- we don't receive a signed Acceptance Document within one month of you receiving it
- you or your agent does not accept any of the conditions in the Acceptance Document signed by you within one month of us receiving it.

If we withdraw our approval we may keep any fees or retainers that you paid before withdrawal. We may not withdraw our approval if you give us the documents and you agree to pay in advance a monthly commitment fee until all conditions can be agreed upon by you and your agent.

### B.1.14 Statements

We will send you a statement of your account every three months, or every six months if you ask.

## B.2 Bill Facilities

*We also refer to this credit Facility as a 'BetterBusiness Bill Facility' or 'Bill Facility'. A Bill is a promise (IOU) to pay us a specified amount (the face value of the Bill) on a specified future date (the maturity date).*

*This product is for medium to large sized businesses and not-for-profit organisations looking for funds over the medium to long term. The minimum Bill Facility size is \$500,000.*

### B.2.1 Funding your Facility

We fund the Facility by crediting your account with the proceeds of Bills discounted by us.

### B.2.2 Facility Limits

The Limit is the maximum amount of credit we make available to you under the Facility. For details of the Limit please refer to the Offer Document. We review your Limit each year and may cancel or reduce the Limit by giving you 30 days' notice in writing. Unless you are in Default, we will only do this if we reasonably consider that due to a change in your financial circumstances you will not be able to meet your obligations under the Contract. You may not make further drawings on the Facility during the 30 day notice period.



### **B.2.3 Authorities you give**

You appoint, the Authorised Representatives to give us instructions on your behalf in accordance with clause A.3.6.

### **B.2.4 We can refuse to discount your Bills**

We can refuse to discount your Bills or a Replacement Bill under a Bill Facility if:

- the Facility has lapsed
- the Term of the Facility has expired
- you are in Default
- we have withdrawn approval of a Facility
- we reasonably consider that you may not be able to repay the Bills or meet your obligations under a Facility
- a Nominated Account is not open
- any of the conditions in clause A.1 are not satisfied at the time.

### **B.2.5 How to instruct us**

If your Bill Facility is not fixed, your Authorised Representatives may tell us on your behalf to draw and accept Bills when the Facility is an acceptance or endorsement Facility respectively. These instructions must be given to us at least one Business Day before the Bills are drawn or accepted.

These instructions must also state:

- the specific Bill Facility
- the date the Bills are to be discounted, or accepted and delivered
- the face value amount of the Bills to be drawn, or accepted
- the term for each of the Bills.

### **B.2.6 Written Confirmation**

You acknowledge that:

- on each occasion that an acceptance or endorsement of any Bills drawn under the Bill Facilities (each a transaction) is undertaken by us following Instructions given pursuant to this authority, we will as soon as practicable after completion of the transaction forward to you a written confirmation of the transaction
- you are responsible for verifying the details contained in the written confirmation. If there is any material error or the transaction was not authorised by you, you will immediately notify us in writing. If we reasonably believe after an investigation that the written confirmation correctly reflects the transaction and the Instructions received from you then, unless you can provide satisfactory evidence to the contrary, the transaction will be deemed to have been properly authorised.

### **B.2.7 Drawing Bills**

Only Authorised Signatories can draw Bills. If we accept Bills we are the acceptor and name you as the drawer and payee. If we endorse Bills we name a third party as the drawer and payee and name you the acceptor.

All Bills are for a minimum of \$100,000 unless we agree otherwise. Variable Bills are drawn for three months unless you instruct us to draw them for either one month, two months, four months, five months or six months.

All Bills will be drawn or accepted by us no later than 11:00am. If your Bill Rate is not fixed, before any new funding we will contact you and ask your instructions to draw or accept Bills at the current Bill Rate.

On this day we will discount the Bills at the applicable CBA Bill Rate or Bill Rate or, if we are endorsing the Bills, deliver the Bills at the direction of the Authorised Representative. If your Bill Rate is fixed, then on the agreed date of first drawdown, the Bank will draw or accept bills on your behalf:

- at the agreed fixed rate
- at the frequency agreed (either one month, three months or six months)
- for the agreed Face Value amount.

See clause B.2.10 *Replacement Bills* for subsequent rollover of Bills drawn under the Facility.

### **B.2.8 How are Bills discounted?**

On the day we draw or accept a Bill (including a Replacement Bill) under a Bill Facility:

- if the Bill Rate or CBA Bill Rate is fixed, we discount or arrange for the discounting of the Bills at the Fixed Bill Rate or CBA Fixed Bill Rate
- if the Bill Rate or CBA Bill Rate is not fixed, we discount or arrange for the discounting of the Bills at the Bill Rate or CBA Bill Rate applicable on that day
- for any other Bills, we deliver the Bills at the direction of your Authorised Representative.

### **B.2.9 Variable Bills**

We discount variable rate Bills using the Bill Rate or the CBA Bill Rate applying on the day the Bill is discounted.

#### **Retiring variable Bill Facilities**

You may retire a Bill with a variable Interest rate on a rollover date if you give us two days' written notice. We may agree to a shorter notification period.

#### **Changing to a Fixed Bill Rate**

If you want to change to a Fixed Bill Rate Facility then you must ask us. If we agree, then we will continue to apply the variable Bill Rate to all Bill Facilities until your Authorised Representative agrees with us on the:

- first drawdown date
- first instalment due date
- frequency of rollovers
- maturity date
- Fixed Bill Rate.

We will send you a Letter of Confirmation or a new Offer Document to confirm the agreed fixed rate details.

## Specific terms & conditions (cont.)

### B.2.10 Replacement Bills

#### Where your Bill Rate is fixed

If you have a Fixed Rate Bill Facility where we discount Bills, we will draw or accept Bills to replace maturing Bills on the rollover date. These 'Replacement Bills' will have the same value of the maturing Bill less the value of any scheduled reductions in the Limit of the Facility.

#### Where your Bill Rate is not fixed

If the Bill Rate or CBA Bill Rate is not fixed, the Replacement Bills will have a similar term as those being replaced, unless the day before the rollover date your Authorised Representative has instructed us on the terms of the Replacement Bills.

#### Paying Bill discount proceeds

We apply the proceeds from discounting Bills on any rollover date towards Bills which mature on the rollover date, unless we agree otherwise. We debit the Nominated Account with any Shortfall on the replacement of each maturing Bill.

### B.2.11 Repaying Fixed Rate Bills

You must reduce the outstanding value of Bills and additional amounts when notified and at the amounts and times set in the Offer Document. We may debit the face value of these retired Bills to either your Nominated Account or a bills-matured account we open in your name.

#### If your Facility Term exceeds the fixed rate period

If the Term of your Facility exceeds the fixed rate maturity date we set in the Offer Document, before the fixed rate maturity date you will need to choose one of the following options:

- continue the Facility for the remainder of the Term at the variable Bill Rate – the new variable Bill Rate or variable CBA Bill Rate will then be the applicable rate applying at the date the Bill is drawn and we set a margin, or
- continue with a new fixed rate we offer – if you choose the fixed rate option we will give you a new Letter of Offer which replaces the previous. This Letter of Offer will outline the new Fixed Bill Rate or fixed CBA Bill Rate, the margin and fee charges payable. You can ask for a quote on the rate to assist in deciding between these two options, or
- repay the Facility in full.

If you don't choose any of the above options or don't agree with the terms of the Loan, we will continue with the variable rate option outlined above. The new variable Bill Rate or variable CBA Bill Rate will then be the rate applying at the date the Bill is drawn and a margin set by us.

### B.2.12 Pre-paying your Bill Facility

If you wish to fully or partially pre-pay your variable or Fixed Rate Bill Facility you must give us written notice no later than two Business days, or earlier than three months, before the date of the intended Pre-payment.

#### Full face value Pre-payments

You can pre-pay the full face value on any, some or all of your Bills on any date.

#### Partial Pre-payments

You can only make a partial Pre-payment if:

- the partial Pre-payment is no less than the minimum amount stated in the Letter of Offer or, if no minimum is stated, then not less than \$100,000, and
- after the Pre-payment the reduced face value of the remaining Bill is not less than \$100,000.

#### Making a Pre-payment of a Fixed Rate Bill Facility

**Warning:** If you pre-pay Fixed Rate Bills during a Fixed Rate Period, you must pay us any applicable Early Repayment Adjustment. We will quote the Early Repayment Adjustment we are willing to agree to on the intended Pre-payment date.

If you accept the quote, you must make the Pre-payment on the date you nominated. We will debit or credit your Nominated Account with the amount quoted or apply any credit against the face value of Bills to be pre-paid.

If you accept the quote but fail to make the Pre-payment we may convert the Facility to a variable rate Facility and apply the variable Bill Rate or CBA Bill Rate, plus or minus any margin which we apply based on current market conditions and margins. We will also charge or apply the Early Repayment Adjustment amount quoted.

We will apply the discounted proceeds of the variable rate Bills to the face value of the Bills you have agreed will be pre-paid from the Fixed Rate Facility. An Authorised Representative may agree the date of first drawdown or funding, first rollover date, frequency of rollovers, and discount rate on your behalf. Also, you authorise us to draw or accept Bills on your behalf. Additionally, we may discount or arrange Bills on the rollover date, for any periods we think are necessary and amounts sufficient, to make the net proceeds from discounting those Bills equal to the amount aggregated.

#### Calculating the Early Repayment Adjustment

If we work out that we made a loss or benefit because of the Pre-payment of Fixed Rate Bills during a Fixed Rate Period, we will charge or credit an Early Repayment Adjustment.

We will make a reasonable estimate of that loss or benefit using our standard formula and applying market swap rates at the time of the quotation or Pre-payment to arrive at the termination rate.



The cost or benefit due to the Pre-payment will vary depending on the magnitude of the difference between the Fixed Bill Rate and the termination rate, the remaining Term to maturity, the size of the principal and any scheduled reductions in the face value of Bills.

Where the termination rate is less than your Fixed Bill Rate, the Pre-payment will result in a negative Early Repayment Adjustment and this amount plus the Administration Fee will be charged to your Nominated Account.

Alternatively, where the termination rate is greater than your Fixed Bill Rate, the Pre-payment will result in a positive Early Repayment Adjustment and this amount less the Administration Fee will be paid to your Nominated Account or applied to the Bills being pre-paid.

If you make a Pre-payment on a day which is not a rollover date, we calculate the Early Repayment Adjustment as at the next scheduled roll date in accordance with the above calculations and, in addition, discount the face value of Bills being pre-paid from the next roll date to the Pre-payment date at the prevailing variable Bill Rate.

Our calculation may not be a true reflection of the actual transactions we may enter into as a result of the Pre-payment, or which we may have entered into when you fixed the Interest rate.

There may not be specific transactions referable to the Loan because we manage our funding of Loans and Interest rates on a portfolio basis.

### **B.2.13 Your obligations for early repayments after Default**

If you Default we can cancel any Fixed Rate Bill Facility, in which case you must pay an Early Repayment Adjustment if we suffer a loss. We will calculate the Early Repayment Adjustment as if you had repaid the Facility. We charge the Early Repayment Adjustment to your Nominated Account or to a bills-matured account.

#### **Authority to roll over Bills on Default**

If you don't make any payment on your Bill Facility by the due date, we will be appointed your attorney.

This means we can draw, accept, discount, or arrange the discounting of any Bills equal to the amount you owe at the time.

Alternatively we may debit the amount you owe to a bills-matured account opened in your name on our behalf.

#### **Bills-matured account**

You must pay interest on all amounts debited to a bills-matured account.

The interest:

- accrues daily
- begins to accrue from the date the account is debited
- is calculated on the unpaid daily balance of the account at the monthly Index Rate for overdraft accounts plus a margin of 4.5% per annum until the outstanding amount on the account is repaid
- is debited monthly.

### **B.2.14 Fees and charges**

We may debit the Nominated Account with all unpaid fees and charges you are required to pay under the Contract when they become payable. This may include any new or increased Government charge or duties. We may charge a new fee or vary existing fees at any time subject to clause A.9.7.

### **B.2.15 Your undertakings, acknowledgments and authorities**

Before we make a Bill Facility available you must open a Nominated Account in your name or advise us of a Nominated Account of an Acceptable Third Party and arrange for them to give us an authority to debit their account with fees and charges and other amounts you owe us until the loan Facility been fully paid out.

You must ensure this account has enough credit to pay:

- any Shortfall on the replacement on a maturing Bill
- all fees and charges that are made payable under the Contract.

The Nominated Account or another Nominated Account and an authority by the account holder to debit it must be maintained for the Term of the Contract. If there is not enough money in the account we may charge a dishonour fee on the Nominated Account under the terms and conditions applying to that account. If an authority to debit a Nominated Account is cancelled, you must nominate another Nominated Account and arrange an authority for us to debit that account.

If you don't make a payment, but credit money to the Nominated Account, or in another banking account with us which you have authorised us to debit, we may debit those accounts with all or part of the unpaid payment.

### **B.2.16 Withdrawing our approval**

We may withdraw our approval if we don't receive a signed Acceptance Document within one month of you having received it.

Also, we may withdraw approval if your agent does not accept, within one month of receiving the Letter of Offer, the:

- date of funding
- frequency of rollovers
- maturity date.

## Specific terms & conditions (cont.)

We may not withdraw our approval if you give us the documents and you agree to pay in advance a monthly commitment fee until all conditions can be agreed upon by you and your agent.

### B.2.17 Indemnity you give us for Bills

You indemnify us at all times against liabilities incurred under a Bill Facility. Your indemnity is not ended by us being the holder of a Bill on or after its maturity date.

You agree to pay us the face value of a Bill accepted by us on the day the Bill is due for payment.

If demand is made on us as endorser by the holder of a Bill you must immediately on our demand pay us the face value of the Bill.

## B.3 Line of Credit Facilities

*A line of credit facility is an interest-only Loan Facility with no fixed term. At any time you can debit and credit funds. We also refer to it as a 'revolving line of credit facility'.*

### B.3.1 About our line of credit facilities

We offer the following types of line of credit facilities, as detailed in the Offer Document:

- Overdraft Facility
- Business Line of Credit Facility
- AgriBusiness Line of Credit Facility
- Capital Equity Facility.

New Capital Equity Facilities are not available.

### B.3.2 Facility Limit

Please refer to our Offer Document.

#### Annual review

We review your Limit each year to determine whether we will continue, cancel, or reduce the Facility. We will give 30 days' written notice advising you of any decision to cancel or reduce the Limit.

### B.3.3 Drawing on your funds

You can write to us asking to draw on the Loan. If you complete our standard account authority form, you can also authorise another person to draw a cheque on the Loan Account or, if the method of operation allows one person to operate, make withdrawals using an electronic terminal.

You also have access to your account through CommBiz by enrolling to use CommBiz and linking your account to your CommBiz service.

Provided you are a single individual or the method of operation on your account allows one person to operate, you also have access to your account through NetBank by enrolling to use NetBank and linking your account to your NetBank service.

### How much you can draw down

You can draw the full amount of the Limit, or, if we agree, any additional amount. If we provide credit over the Limit it is debited to your Loan Account but is not a waiver of our right to refuse in the future drawings in excess of the Limit. The terms of the Contract will still apply if you draw additional funds.

### When we won't provide funds

If you Default or fail to meet any of our conditions, including those in clause A.1, we don't have to provide further credit.

### B.3.4 Interest rates

We outline Interest rates for the Overdraft or line of credit Facilities in the Offer Document. The Interest rate is calculated by adding or subtracting a margin to an Index Rate. We may charge a higher interest rate on any debit balance which exceeds the Limit equal to our monthly Overdraft Index Rate plus a margin of 4.5% per annum.

We debit interest on Overdrafts and line of credit Facilities (including AgriBusiness Line of Credit) monthly to the Loan Account or the Nominated Account unless we agree on a different interest charging frequency. If we agree to charge interest other than monthly an additional interest margin will apply to the Interest rate and will be set out in your Account Confirmation Document which will be available once the facility has been funded. If we agree to debit interest to a Nominated Account, you or an Acceptable Third Party must give us an authority to debit interest and fees and charges to the Nominated Account. If an authority to debit a Nominated Account is cancelled, you must nominate another Nominated Account and arrange an authority for us to debit that account.

### B.3.5 Cancelling or reducing your Limit

At any time either we or you can reduce or cancel a Limit, although you are still liable for your obligations under the Contract. We will not provide any more credit once you or we cancel your Limit and, unless you are in default, we will notify you 30 days in advance if we decide to cancel or reduce your Limit. You may not make further drawings on the Facility during the 30 day notice period. If we allow you further credit by allowing you to overdraw your Account after the Limit has been cancelled, the terms of The Contract will still apply including that we may charge an Overdrawing Approval Fee and you must repay the credit, fees and interest on demand by us. The fact that we allow an overdraw is not a waiver of our right to refuse any future overdraw.

If we cancel the Limit, you must repay the Loan to us when we ask. If we reduce the Limit you must repay us enough of the debit balance so that the amount you owe is less than or equal to the reduced Limit.

We can require you to repay the Loan in full at any time. You also can repay all or part of the Loan at any time.

### **B.3.6 Statement of account**

We will send you a statement of account every three months or any other period agreed by us.

### **B.3.7 Withdrawing approval**

If we don't receive a signed copy of the Offer Document within one month of the date shown on the document, then we may withdraw our approval of the Facility.

We are not permitted to withdraw the Facility if you have signed and returned the Acceptance Document and you paid in advance a monthly commitment fee.

### **B.3.8 Business Line of Credit and AgriBusiness Line of Credit**

Within 30 days of the end of each month, you must deposit to your Loan Account amounts equal to or greater than the total of any interest, fees and charges debited to your Loan Account during that month, or otherwise when we demand it.

In the case of the AgriBusiness Line of Credit, we may allow the interest to be unpaid for two years as long as the account balance does not exceed the Limit. At the end of the two years, or if the Limit is reached, we may ask you to start paying interest and reduce the account balance to below the Limit.

### **B.3.9 Capital equity**

You must pay to the Loan Account of your capital equity Facility the monthly payments set out in the Offer Document, within seven Business Days of the end of each calendar month.

You must make the first monthly payment on or before one month of the date shown on the document.

### **B.3.10 Transacting on your account**

Our Business Transaction and Savings Account Terms and Conditions, including fees and charges, also apply but, if and to the extent they are inconsistent with the Offer Document or these terms and conditions, the Offer Document or these terms and conditions prevail.

## **B.4 Multi-Option Facility**

*A Multi-Option Facility (MOF) provides multiple types of commercial lending and trade finance options in the one package, with one overall Limit.*

*With a MOF you can apply for any combination of the following types of Facilities:*

- Overdraft
- Bill Facility
- Contingent liability
- Trade Advance
- Import Documentary Credit
- Foreign Bills Negotiated
- Business Line of Credit Facility
- AgriBusiness Line of Credit Facility
- Market Rate Loans.

The relevant sections of this document set out the terms and conditions that apply to these Facilities.

The aggregate Australian dollar equivalent of all amounts outstanding (contingent or otherwise) in respect of Facilities under the Multi-Option Facility must not exceed the Multi-Option Facility Limit set out in the Offer Document.

### **Reducing or cancelling the Limit**

We may reduce or cancel the Limit (if any) of your Multi-Option Facility on sending you 30 days' written notice of the reduction or cancellation. Unless you are in Default, we will only do this if we reasonably consider that due to a change in your financial circumstances you will not be able to meet your obligations under the Contract. You may not make further drawings on the Multi-Option Facility during the 30 day notice period.

## **B.5 Market Rate Loans**

*A Market Rate Loan is a simple 'umbrella' Facility that offers multiple Loan Accounts under one Limit. Each Loan Account gives you the option of a standard variable market interest rate or a range of Interest Rate Risk Management (IRRM) options to manage interest rate risk. The IRRM options can be applied to the Loan Account through an Interest Rate Risk Management (IRRM) Agreement.*

### **B.5.1 Understanding Market Rate Loans**

With this type of Facility you decide how many Loan Accounts you need and to which Loan Accounts your funds are distributed. If you are not in default, you can ask us to add or close Loan Accounts, or transfer funds between Loan Accounts as long as the total debit balances don't exceed the Limit, the transfer is on an established Reset Date, and if applicable, the IRRM Agreement relating to the Loan Account permits it.

### **B.5.2 Facility Limits**

The Limit is the maximum amount of credit we make available to you under the Facility. For details of the Limit please refer to the Offer Document and Account Confirmation document. We review your Limit each year and may cancel or reduce the Limit below the aggregate of the then Loan Balances by giving you 30 day's notice in writing.

Unless you are in Default, we will only do this if we reasonably consider that due to a change in your financial circumstances you will not be able to meet your obligations under the Contract. You may not make further drawings on the Facility during the 30 day notice period. If you are in Default, we may reduce or cancel the Limit by notice to you.

## Specific terms & conditions (cont.)

### B.5.3 When we will fund Loan Accounts

We will fund all or part of the Limit by debiting a Loan Account on the date of first drawdown if:

- we have received your acceptance of our Letter of Offer
- we have received a completed authority in our usual form appointing your Authorised Representative
- you have given us all relevant documents at least one Business Day before the Loan Account is due to be funded
- we have received a completed authority from you or an Acceptable Third Party for us to debit payments, interest and fees and charges to a Nominated Account linked to your Facility
- your Authorised Representative agrees to all the conditions in relation to the Loan Account, including the amount to drawdown, the next Loan Account Reset Date, whether the interest rate is BBSY or the CBA Market Rate and any IRRM Agreement.

We will then fund the drawdown to your Nominated Account in accordance with your Authorised Representative's instructions.

Subsequent drawdowns on a Loan Account can only be made on the Loan Account Reset Date. The drawdown instruction must be from your Authorised Representative, received at least one day before the Reset Date.

On request, we will forward to you an Account Confirmation document setting out the particulars of each drawdown of a Loan Account under the Facility.

#### Nominated Account

You or an Acceptable Third Party must open a Nominated Account with us. This Nominated Account must always have enough funds in it to allow us to debit it with any fees, charges, instalments of principal payments and any accrued interest. If there are insufficient funds in your Nominated Account we may debit the Nominated Account, or any other account you have with us, including a Loan Account. You must ensure a Nominated Account is maintained and that we are authorised to debit it until you cancel or repay your Facility.

### B.5.4 When we won't provide funds

If you Default or fail to meet any of our conditions, including those in clause A.1, we will not fund your Facility or the amount remaining under the Limit. Also, we may not fund if by doing so you exceed your Limit, or we decide you may not be able to make the payments due under the Facility.

### B.5.5 Variable Market Rate

We set the interest rate, on Variable Market Rate Loan Accounts using either BBSY or the CBA Market Rate on the day the Variable Market Rate Loan Account is funded and on each Reset Date, subject to any IRRM Agreement with you. We will not send you a notice of the interest rate following funding or on Reset Date but will confirm the interest rate in the statement of account. The interest rate will also be displayed if your Loan Account is linked to your NetBank or CommBiz service (if any).

### B.5.6 How we charge interest

Interest is calculated on the unpaid daily balance of your Loan Account and charged to your Nominated Account on each Reset Date and/or on a monthly charging cycle if agreed by us.

The Reset Periods will be set for three months from the date of funding unless we agree otherwise.

Reset Periods established for periods other than three months will be charged a Reset Fee as set out in the Letter of Offer and Account Confirmation document.

### B.5.7 When you must pay interest

You must pay interest on the due date. If there are insufficient funds in your Nominated Account and you don't pay interest on the due date we will charge Default Interest on the amount unpaid.

### B.5.8 Cancelling the Facility

We may cancel the Facility or a Loan Account and charge you an Early Repayment Adjustment if:

- you fail to comply with the Contract, including these conditions
- you are in Default under clause A.6.1, or
- we don't consent to an extension of the Facility's Term.

### B.5.9 Reducing or cancelling the Limit

If we reduce your Limit under clause B.5.2, you must repay us enough of the debit balance so that the amount you owe is less than or equal to the reduced Limit. Also, if we reduce or cancel your Limit, we may terminate any IRRM Agreement prior to the Scheduled Maturity Date in accordance with clause B.5.11.

### B.5.10 Repaying Market Rate Loans

To avoid paying an Early Repayment Adjustment you may only make repayments to a Loan Account on the Reset Date.

#### Pre-paying your Market Rate Loan account

If we make a loss due to your Pre-payment to a Loan Account on a non-Reset Date we will charge an Early Repayment Adjustment. We calculate the Early Repayment Adjustment as our reasonable estimate of:



the difference between the amount we could earn if we re-lent the amount pre-paid at the applicable Variable Market Rate on the date of payment until the Reset Date,

as compared with:

- the amounts we would have earned if the Pre-payment had not been made until the Reset Date.
- If an IRRM Agreement is agreed by you to apply to your Loan Account and you make a Pre-payment, we will calculate the Early Repayment Adjustment as above and in addition, you may also have to pay Break Costs for terminating the IRRM Agreement before the Scheduled Maturity Date.

#### **B.5.11 Termination of a Market Rate Loan IRRM Agreement**

The IRRM Agreement (if any) will mature on the Scheduled Maturity Date as detailed in the IRRM Agreement.

The IRRM Agreement may be terminated prior to the Scheduled Maturity Date:

- by us by notice in writing to you upon:
  - failure by you to comply with the terms of the IRRM Agreement or the Contract for the Loan Account;
  - termination or cancellation of the Loan Account;
  - the Loan Account being fully or partially repaid before the Scheduled Maturity Date;
  - the Loan Account Balance on any date being other than the Scheduled Loan Account Balance stated in the IRRM Agreement for that date; or
  - where, at the date of the IRRM Agreement, you have not entered into the Contract for the Market Rate Loan, or have failed to draw down the Loan Account for the amount referred to in the IRRM Agreement on the Nominated Date; or
- by you by not less than one day's notice in writing to us, provided:
  - it's a complete termination of the IRRM Agreement, or
  - if it's a partial termination of the IRRM Agreement, the termination amount is not less than \$25,000 and it is terminated on a Reset Date.

#### **B.5.12 Cost of terminating an IRRM Agreement**

If the IRRM Agreement is terminated before the Scheduled Maturity Date as set out above, we will calculate the mark-to-market value of the IRRM Agreement at the date of termination using a methodology commonly used by us in accordance with accepted practices in the Australian over-the-counter interest rate derivatives market and market rates (including any appropriate margin) chosen by us in good faith, and based on the same variables as

in the IRRM Agreement (including Interest Rate, Cap Rate (if applicable), Floor Rate (if applicable), Reset Dates, Loan Account Balance and Scheduled Maturity Date). If the calculation shows a loss to us, the amount so calculated is referred to as Break Costs.

If the IRRM Agreement is terminated:

- you must immediately pay to us, and we may debit your Nominated Account or any other account you hold with us:
  - a Termination Fee;
  - Break Costs;
  - any expenses (including, without limitation, any reasonable legal or out of pocket expenses) which we may suffer or incur as a result of the termination;
  - any fees unpaid up to the date of termination; and
  - the net present value of any IRRM fees as calculated by us in good faith otherwise payable from the Termination Date to the Scheduled Maturity Date; and
- if the Loan Account is also repaid, any obligations under clause B.5.10 will also apply.
- if the Loan Account is not repaid, then on and from the Termination Date the Loan Account will continue in force on its terms as if it had not been varied by the IRRM Agreement.
- where the IRRM Agreement is terminated on a Reset Date the interest rate to apply on and from that date will be that days applicable Variable Market Rate.
- where the IRRM Agreement is terminated on a date other than a Reset Date the interest rate to apply on and from the Termination Date will be the interest rate that would have applied on the immediately preceding Reset Date had there been no variation under the IRRM Agreement.

#### **B.5.13 If your Facility Term exceeds your IRRM period**

If the Term of your Facility exceeds the Scheduled Maturity Date set in your IRRM Agreement, before or on the Scheduled Maturity Date you can select one of the following options that will apply on the Scheduled Maturity Date:

- continue the Loan Account for the remainder of the Term at the Variable Market Rate – the new Variable Market Rate will then be the applicable rate at the Reset Date, or
- enter into a new IRRM Agreement which will replace the previous one. This IRRM Agreement will set out the new rate options and any fee charges payable. You can ask for a quote on the rate to assist in deciding between these two options, or
- repay the Loan Account in full.



## Specific terms & conditions (cont.)

If you don't choose any of the above options or don't agree with the terms of a new IRRM Agreement, we will continue the Loan Account for the remainder of the Term at the Variable Market Rate applicable at the Reset Date.

### B.5.14 No change to Loan Account

During the Term of an IRRM Agreement neither you nor your Authorised Representative may:

instruct us to enter into any further IRRM Agreement in respect of the same Loan Account unless the further IRRM Agreement has effect on or after the Scheduled Maturity Date of the earlier IRRM Agreement;

- repay all or part of the Loan Account which is subject to the IRRM Agreement unless permitted under the IRRM Agreement.

### B.5.15 Statement of Account

We will send you a statement of account every three months or any other period agreed by us.

### B.5.16 Fees and charges

We may debit your Nominated Account with all unpaid fees and charges you are required to pay under the Contract when they become payable. This may include any new or increased Government charge or duty. We may charge a new fee or vary existing fees at any time including while a Loan Account is subject to an IRRM Agreement and whether or not the interest rate is fixed subject to clause A.9.7.

## B.6 Commonwealth Portfolio Loan

*The Commonwealth Portfolio Loan is a convenient all-in-one lending Facility that provides an 'umbrella' line of credit with up to 12 sub-accounts. It gives you the choice of variable and fixed Interest rates and enables you to separate personal and investment or business sub-accounts.*

### B.6.1 Facility Limit

The Facility Limit (also called the Approved Limit) is the maximum amount of credit we make available to you under the Facility. Please refer to the Offer Document for details of your Limit.

These conditions apply to the Facility Limit:

- the amount you owe must not exceed the Limit of the Facility
- the total debit balances of sub-accounts in a line of credit bundle must not exceed the Limit of the Facility (we don't take into account credit balances)
- we review your Limit each year

### Annual review

Each year we will review the Loan to determine whether we will continue, cancel, or reduce the Facility Limit. We will give 30 days' written notice advising you of any decision to cancel or reduce the Facility Limit.

### B.6.2 Drawing on your funds

You can give us written instructions to draw on the Loan. You can also draw on your account by drawing cheques. We will not provide funds if you are in Default.

You must complete our standard account authority form to authorise another person to:

- draw a cheque on the Loan Account
- perform a withdrawal using an electronic terminal (if the method of operation allows).

You can also access your account through CommBiz, but you must first sign up and then link your account to your CommBiz service.

### Fixed rate sub-account

The fixed Interest rate period chosen for a sub-account is stated in the Offer Document. You must draw down the full amount when the account begins.

### Drawing limit

You can draw the full amount of the Limit, or, if we agree, any additional amount. The terms of the Contract will still apply if you draw additional funds, but you will pay a higher rate of interest on those funds. Please note that if you draw over the Limit we can refuse future drawings.

### When we won't provide funds

If you Default or fail to meet any of our conditions, including those in clause A.1, we are not obliged to provide further credit.

### B.6.3 You choose the repayment option

You decide on how you will repay the Facility. We will not recommend or give any opinion on a repayment plan.

It is up to you to decide how much you borrow, but if you can't repay the Loan from your income you may have to sell assets to repay us.

### B.6.4 Interest on Loans

We will debit all interest to a Nominated Account and you must pay all interest we debit to that account. We may change the Nominated Account if you fail to maintain it or it is not part of the Facility.

#### Variable

We set the Interest rate by adding or subtracting the margin from a reference Interest rate.

#### Fixed

The fixed Interest rate period chosen for a sub-account is stated in the Offer Document. You must draw down the full amount when the account begins.

We calculate the Interest rate by adding or subtracting a margin from our reference fixed rate. Unless you rate-lock the Loan, the reference fixed rate will be that applying at the date of funding. At the end of a Fixed Rate Period it will change to a variable rate.

You may ask for a rate lock and if we agree to your request, we will hold the fixed rate if the Loan is funded within three months from the date we process your request.

#### **Paying the Interest in Advance**

We may allow you to pay the interest in advance on a fixed rate sub-account for a maximum period of 12 months from an agreed date.

If you pay the interest in advance:

- we can still deduct any interest due on your sub-account and any Default Interest on any overdue payments in the advance period
- we will calculate the Default Interest on the regular rates minus what you have paid in advance
- we may debit your Nominated Account if the interest has not been paid at the beginning of the payment-in-advance period.

You can apply for another interest in advance period at the end of the 12 months.

#### **B.6.5 Pre-paying your fixed rate sub-account**

If we agree, you can partially or fully pre-pay your fixed rate Loan.

##### **Calculating the Early Repayment Adjustment**

If we work out that we made a loss because of the Pre-payment, we will charge the Early Repayment Adjustment.

We will make a reasonable estimate of that loss using our standard formula which takes into account the difference between:

- our wholesale market swap rate for the Fixed Rate Period on the date the Interest rate was fixed, and
- our wholesale market swap rate as at the date of the Pre-payment for the balance of the Fixed Rate Period.

We will also take into account any scheduled principal repayments and the current value of the Early Repayment Adjustment in the calculation. If the wholesale market swap rate at the Pre-payment date is lower, you must pay the Early Repayment Adjustment.

Our calculation may not be a true reflection of the actual transactions we may enter into as a result of the Pre-payment, or which we may have entered into when you fixed the Interest rate. There may not be specific transactions referable to the Loan because we manage our funding of Loans and Interest rates on a portfolio basis.

If you ask us, we will give you a statement setting out how we estimated our loss as a result of the Pre-payment or the formula we use to calculate our loss or both.

**Warning:** If the wholesale market swap rate falls, the Early Repayment Adjustment can be high and may increase the amount you owe us. You can ask us for an estimate of an Early Repayment Adjustment at any time.

#### **B.6.6 Fees and charges**

We will charge all fees equally among sub-accounts unless specifically charged to a particular account.

#### **B.6.7 Cancelling or reducing your Limit**

At any time, either we or you can reduce or cancel a Limit, although you remain liable for your obligations under the Contract. We will not give you any more credit once you or we cancel your Limit. We will notify you if we decide to cancel or reduce your Limit.

If we cancel the Limit:

- you must repay the debit balance on the Loan Account when we demand it, or
- you may have to pay monthly instalments of principal and interest.

If we decide you have to pay monthly instalments of principal and interest:

we will give you a new Loan Account number

- we will tell you what your payments are and your first instalment is due one month after our notification.

We can require you to repay the Loan in full at any time. You also can repay all or part of the Loan at any time.

Unless you are in Default under the Contract, we will not demand repayment of the whole or part of a Loan Account in respect of which the Interest rate is fixed.

#### **B.6.8 When you can request Loan portability**

We will, on a case-by-case basis, consider any request by you to substitute Security for the Loan, if all of you ask for the change and the value of and security over the substitute Security Property is to our reasonable satisfaction. You cannot make the request if you are in Default or there is a change in Grantor. We can impose reasonable conditions such as requiring payment of our usual fee and a simultaneous discharge of the existing Security and provision of the new Security.

#### **B.6.9 Obtaining insurance**

If you ask us for insurance then we will act as the insurer's agent, receive a commission and debit the premium to the Loan.

#### **B.6.10 Funding your Loan**

We fund Loans when you ask for credit, whereupon we record it by debiting your Loan Account. If you are on a fixed Interest rate you must request the whole amount at one time.

We will make credit available if the sum you request is within the Loan Limit and you meet all conditions of the Contract. If we provide credit over the Limit, we will debit it to your Loan Account and you must repay it within 30 days. The Interest rate for the excess credit will be 2% higher than the normal rate.

## Specific terms & conditions (cont.)

### B.6.11 How the Loan Accounts are conducted

If you are in Default we can write to you asking you to pay all interest, fees and charges to your Loan Account within a month. You can pay all or part of the Loan Account any time.

If you have more than one sub-account, you must set a nominal limit for each sub-account. If you exceed this nominal limit we may not give you further credit on that sub-account until the nominal limit is raised. The total of all nominal limits cannot exceed the Facility Limit.

You may conduct a Loan Account with a credit balance. Our Complete Access Terms and Conditions apply to the conduct of the Loan Account with a credit balance, except that credit interest will be paid quarterly on the first calendar day in October, January, April & July.

### B.6.12 Security review

Sometimes the Market Value of a security property may fall. We may conduct a security review if the Lending Value of the security property falls below the value of your Approved Limit.

If this occurs we will contact you first and advise you of your options. Our advice might include how to reduce your Facility Limit, provide additional security, or increase the amount of security on a mortgage. Whichever option you choose, our rights and your obligations under the Contract will not change.

### B.6.13 Line of credit bundle

If you have a line of credit bundle Facility you can have up to 12 sub-accounts. You may be able to add, remove or vary these sub-accounts if you are not in Default. We maintain a separate Loan Account for each sub-account.

### B.6.14 Statements

We will send you a statement of your account every three months.

## C. SUPERGEAR

*SuperGear is a specialised lending product designed to enable the trustee of a complying self-managed superannuation fund to borrow money to acquire a real property asset in compliance with current superannuation law.*

*As they apply to a SuperGear Loan, references in these terms and conditions to the 'security property' are to the real property asset acquired with the Loan and any replacement asset within the meaning of the applicable superannuation laws. This Part C also applies (rather than Part B.1) if your Offer Document for a BetterBusiness Loan makes reference to SuperGear.*

### C.1.1 Custody and title

You must appoint a Custodian to hold the security property on your behalf on the terms of the SuperGear custodial deed. The Custodian must be Premium Custody Services Pty Ltd or another company acceptable to us.

We will only provide the Loan if (in addition to the conditions in clauses A.1 and C.1.2 being satisfied) the Custodian accepts a transfer of the security property into its name at settlement of the purchase of the property.

If Premium Custody Services Pty Ltd is the Custodian, it will only accept a transfer of the security property into its name if:

- copies of all enquiries and all reports and responses to enquiries about the security property have been provided to it, and
- those enquiries, reports and responses are satisfactory to it, and
- an acceptable property manager has been appointed under a SuperGear property management agreement.

### C.1.2 Funding your Loan

Before we fund a Loan you must ensure that the following documents are executed in a form satisfactory to us by all the parties to them:

- SuperGear customer agreement
- mortgage acknowledgement and direction from you to the Custodian
- the Security
- certificate from you as to any matter we ask to be certified
- if we ask, a SuperGear property management agreement with a property manager acceptable to us
- if we ask, an indemnity from each member of the Fund.

Together with the Contract, the above documents constitute the 'relevant documents'. Also, we can refuse to give you Loan funds if any of the conditions in clause A.1 are not satisfied.

### Nominated Account

You must open an account with the Commonwealth Bank or nominate a Commonwealth Bank account acceptable to the Bank prior to the loan being funded.

### C.1.3 Facility Limits

The Limit is the maximum amount of credit we make available to you under the Loan. For details please refer to our Offer Document. We will only make this amount available for the purpose of:

- paying a portion of the purchase price payable for the Security Property at settlement of the purchase of the Security Property and, subject to our prior approval, repairs and maintenance of the Security Property in conjunction with its purchase, or

- refinancing a borrowing which complies with section 67A of the Superannuation Industry (Supervision) Act 1993 (Cth) used to acquire the Security Property, or
- any other purpose permitted under the Superannuation Industry (Supervision) Act 1993.

#### **C.1.4 Additional undertakings**

##### **What do you have to comply with?**

You must comply with the SuperGear customer agreement and any SuperGear property management agreement in addition to the Contract.

##### **Can you change the trustees and members?**

You must ensure that there is no change in the trustee or members of the Fund without our consent. We will not unreasonably withhold our consent provided that all documents we require in connection with the change are completed and executed. All persons on the Contract will still be bound by the contract.

If the Letter of Offer states that we require an indemnity from members, the new member must execute an indemnity to our satisfaction.

##### **Other payments**

You must pay us all amounts we pay (whether or not we are liable to do so) for the purpose of holding the Custodian harmless in respect of any actual or alleged liability or expense of the Custodian or its officers in connection with it acting as Custodian of the Security Property.

#### **C.1.5 No redraw without our consent**

Redrawing is generally unavailable due to constraints under the Superannuation Industry (Supervision) Act 1993 (Cth). However, we may make the repayment redraw facility available at our discretion if you confirm to us that it complies with the Superannuation Industry (Supervision) Act 1993 (Cth), and subject to the funds being used for acceptable purposes, as determined by us.

**Warning:** You should obtain independent legal and/or taxation advice before making special repayments or seeking to redraw funds to ensure your compliance with Superannuation Industry (Supervision) Act 1993 (Cth).

#### **C.1.6 Review**

##### **Review events**

You agree to tell us promptly if you become aware of anything that might constitute a review event as defined below, including anything that could reasonably be expected to cause us to form an opinion or make an assessment that would constitute a review event.

If a review event occurs we may review the Loan to determine whether we will continue, cancel or reduce the Facility. We will give you at least 30 days' notice of any decision to cancel or reduce the Facility.

A review event will happen if any of the following apply.

#### **Changes in the law or circumstances**

Any changes in the law or any other event or circumstance that becomes known to us that materially adversely affects:

- our assessment of the risks of financing or owning the Security Property
- the terms or legal effect of the relevant documents
- the transactions contemplated by the relevant documents, or
- the ability of or cost to us or the Custodian of being party to the relevant documents or participating in the transactions contemplated by them.

#### **Circumstances of the fund member**

- A fund member dies, becomes disabled, retires or becomes eligible to receive a benefit from the Fund
- A member's interest in the Fund becomes subject to a payment split under the Family Law Act
- There is any change in the members of the Fund.

#### **Changes in Fund**

In our reasonable opinion an adverse change occurs in the Fund investment strategy or risk profile of the Fund if:

- You take out any new Loans in your capacity as trustee of the Fund
- More than 25% of the Fund's current investments are changed by acquisition or disposal.

#### **Changes to the Security Property**

- An event occurs that may result in a material change in the value of or rent derived from of the Security Property
- Any court makes an order concerning the Security Property
- Any authority takes material action against the Security Property
- You decide to sell the Security Property.

#### **Valuation ratio**

You agree to tell us if, at any time, the Loan Balance as a proportion of the then Market Value of the Security Property exceeds the Loan to valuation ratio specified in the Offer Document.

#### **Annual review**

Each year we may review the Loan to determine whether we will continue, cancel, or reduce the Facility. We will give 30 days' written notice advising you of any decision to cancel or reduce the Facility. Unless you are in Default, we will only do this if we reasonably consider that due to a change in your financial circumstances you will not be able to meet your obligations under the Contract.



## Specific terms & conditions (cont.)

### Consequences of review

If we change the Facility following a review event or annual review, all of your existing obligations still apply. If we cancel the Facility you must pay all the money you owe us. If we reduce the Loan you must reduce the balance of the account to the new amount.

### C.1.7 Fees and charges

We may debit your Nominated Account with all unpaid fees and charges you are required to pay under the Contract when they become payable.

#### Where there is a debit balance after the debit

If the Nominated Account or any other account of yours has a debit balance after the debit, we can capitalise interest, fees or other charges, or debit an amount payable by you under the Contract to these accounts.

If we do this, we are not providing a new advance to satisfy the original amount payable, we are merely recording your continuing liability to us for that amount.

We are also establishing our entitlement to charge interest, fees or other amounts on the capitalised or debited amount on the terms applicable to the Loan, or the account to which it is debited (as applicable).

### C.1.8 Interest rate options

We offer a choice of Interest rates with a SuperGear Loan:

- fixed
- fixed (residentially secured)
- variable.

All interest will be debited monthly to your Loan Account or Nominated Account.

### C.1.9 Fixed rate & Fixed Rate Residentially secured

Please refer to the Offer Document or Account Confirmation Document for the Interest rates. We set Interest rates on the day of funding along with the first instalment due date, frequency of instalments and the Fixed Rate Period. We will send you a Letter of Confirmation or Account Confirmation Document setting out the fixed Interest rate terms agreed with you.

*Fixed Rate Residentially Secured Loan only* – We will set the Interest rate from our fixed interest reference rate for the relevant type of SuperGear Loan and Fixed Rate Period at the date of funding or renewal plus or minus a margin (if any) along with the first instalment due date, frequency of instalments and the Fixed Rate Period set out in the Offer Document or Account Confirmation Document.

#### Exceeding the Fixed Rate Period

If you exceed the fixed rate maturity date we set in the Offer Document or Account Confirmation Document you can change the Interest rate on the remaining amount to a variable rate. You must agree with us to all the terms of the amended Facility before the variable rate takes effect.

Alternatively, you can continue with a fixed Interest rate we offer. If you choose this option we will give you a replacement Offer Document or Account Confirmation Document that outlines all new instalments of principal, interest payable and fees we charge. You can ask for a quote on the rate to help you decide which options to choose.

If you don't make a choice or we can't reach agreement about the terms of the Loan, we will change the Interest rate on the remaining amount to a variable rate. This new rate will then be the usual variable rate at the time for SuperGear Loan. All other conditions are the same but we may vary the repayments under clause A.7.4 and an Authorised Signatory may agree on instalment dates and Interest rates.

### Paying the Interest in Advance

We may allow you to pay the interest in advance for a maximum period of 12 months from an agreed date.

If you pay the interest in advance:

- we can still deduct any interest due on your account and any Default Interest on any overdue payments in the advance period
- we will calculate the Default Interest on the regular rates minus what has been paid in advance
- we may debit your account if the interest has not been paid at the beginning of the payment in advance period.

You can apply for another interest in advance period at the end of the 12 months.

### Pre-paying your fixed rate Loan (including fixed rate residentially secured)

You can partially or fully pre-pay your Loan during any Fixed Rate Period but if you do, you must also pay us any applicable Early Repayment Adjustment and Administration Fee.

If you pre-pay the Loan, you must give us 10 days' prior notice and pay the Pre-payment within three months. If you ask, we will quote the Early Repayment Adjustment we are prepared to accept.

*Partial Pre-payments* – If you make a partial Pre-payment, the amount you pay must be at least the minimum amount outlined in the Offer Document or Account Confirmation Document, or \$25,000 if there is no minimum amount. We may vary the minimum amount at our discretion. You must also pay us the Early Repayment Adjustment (if any).

*Full Pre-payments* – If you fully pre-pay the Loan or switch to a variable rate, you can ask us to quote the early Pre-payment adjustment we are willing to accept, instead of calculating the amount (see next section).

If you accept the quote we will debit your Nominated Account with the Early Repayment Adjustment on the date you nominated. Unless you have repaid the Loan, we will thereafter charge interest at the variable Interest rate plus or minus any margin.

You must pay the Early Repayment Adjustment when we may ask you. We may also charge an Administration Fee.

### Calculating the Early Repayment Adjustment

If we work out that we made a loss because of the Pre-payment, we will charge the Early Repayment Adjustment.

We will make a reasonable estimate of that loss using our standard formula which takes into account the difference between:

- our wholesale market swap rate for the Fixed Rate Period on the date the Interest rate was fixed, and
- our wholesale market swap rate as at the date of the Pre-payment for the balance of the Fixed Rate Period.

We will also take into account any scheduled principal repayments and the current value of the Early Repayment Adjustment in the calculation. If the wholesale market swap rate at the Pre-payment date is lower, you must pay the Early Repayment Adjustment.

Our calculation may not be a true reflection of the actual transactions we may enter into as a result of the Pre-payment, or which we may have entered into when you fixed the Interest rate. There may not be specific transactions referable to the Loan because we manage our funding of Loans and Interest rates on a portfolio basis.

If you ask us, we will give you a statement setting out how we estimated our loss as a result of the Pre-payment or the formula we use to calculate our loss or both.

**Warning:** If the wholesale market swap rate falls, the Early Repayment Adjustment can be high and may increase the amount you owe us. You can ask us for an estimate of an Early Repayment Adjustment at any time.

### Pre-paying the Loan during an interest advance period

If you pre-pay all or part of your Loan during an interest advance period we will pay you a rebate of the interest paid in advance.

We calculate this by multiplying the amount pre-paid by the Interest rate applying to the Loan, then multiplying the result by the number of days left in the interest in advance period, then dividing the result by 365.

We will use this rebate to pay any fees, Early Repayment Adjustment or outstanding amounts on your Loan.

### Your obligations for early repayments after Default

If you Default we may cancel any fixed interest rate Loan in which case you must pay the Early Repayment Adjustment as our estimate of our damages. We will calculate the Early Repayment Adjustments as if you had pre-paid the Loan on the date it ceased to be conducted at a fixed Interest rate. We can exercise our general default rights outlined in A.6.

### Our rights if you Default

If you Default we can debit the Early Repayment Adjustment to the Loan Account as well as all unpaid fees and charges.

#### C.1.10 Variable Rate

We set the Interest rate by adding or subtracting a margin from an Index Rate which is stated in the Offer Document.

#### Pre-paying your variable rate Loan

Your variable rate Loan is repayable at any time. To partially or fully pre-pay your Loan you must give us two days' notice.

#### Changing to a fixed rate

You can ask to change all or part of your Loan to a fixed rate for a specified period. If you do so, we will send you a new Offer Document or Account Confirmation Document detailing the new terms and fixed rate.

You must agree to all changes before the changes will take effect. We will then send you a Letter of Confirmation or Offer Document detailing the fixed rate and other terms agreed by your Agent.

#### C.1.11 Withdrawing our approval

We may withdraw our approval if:

- you don't return a signed Acceptance Document within one month of receiving it
- your agent does not accept any of the conditions in the Acceptance Document you signed within one month of us receiving it.

In this case, we may keep any fees or retainers you paid before withdrawal. We may not withdraw our approval if you provide these documents and you agree to pay in advance a monthly commitment fee until you and your agent can agree upon all conditions.

#### C.1.12 Limit to changes we make

Despite any provision of the Contract, we may not vary a term of the Contract if the variation would result in the terms of the Loan ceasing to comply with section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth).

## Specific terms & conditions (cont.)

### C.1.13 Additional events of Default

In addition to the ways set out in Part A, you will be in Default if:

- you revoke any direction under the SuperGear property management agreement or the SuperGear Customer Agreement for paying rent or other proceeds of the Security Property towards any amount due under the Contract
- you retire, are removed or are required to retire or be removed as trustee of the Fund, or there is any other change in the persons comprising the trustees of the Fund without our prior written consent
- the whole or any part of your interest in the Security Property vests in any member of the Fund or other person or becomes held in a sub-fund of the Fund or on a trust other than the Fund.
- You will not be in Default under any of clause A.6.1 in Part A merely because:
- if Premium Custody Services Pty Ltd is the Custodian, the Custodian gives us incorrect or misleading information or an event or circumstances that affects the Custodian personally occurs (provided the event or circumstances does not affect the Security Property and you promptly do anything we ask to replace the Custodian with a new Custodian)
- you fail to repay to us any other Loan (not under the Contract) or we take any action in respect of your assets (other than the Security Property).

### C.1.14 Statements

We will send you a statement of your account every three months or every six months if you ask.

### C.1.15 Limited recourse

Despite any other provision in the Contract, we can only enforce your obligation to pay any amount payable under the Contract in respect of the Loan or any charge on the Loan (within the meaning of section 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth) ('section 67A')) by exercising our rights under the Security, or any other rights we have in relation to the Security Property (or any replacement asset within the meaning of section 67A).

If you Default, we cannot seek to recover from you any Amount Owing to us under the Contract in respect of the Loan or any charge on the Loan, other than by exercising our rights under the Security or any other rights we have in relation to the Security Property.

However, this does not limit:

- our ability to bring proceedings or to take other action to establish your liability or our rights under the Security or otherwise in relation to the Security Property
- to the extent permitted by section 67A, our taking action against you for any loss we suffer as a result of your fraud or wilful or negligent breach of or misrepresentation any relevant document
- us exercising our rights against any other person or their property, or
- prior to a Default, our exercise of any standing authority to debit an amount to an account of yours.

## D. TRADE FINANCE AND CONTINGENT LIABILITIES

### D.1.1 About these products

*This section contains terms and conditions for the following Facilities:*

- Contingent Liability Facility (including bank guarantee).

#### Collections

- Import Documentary Collections
- Export Documentary Collections

#### Imports

- Import Documentary Credits
- Back-to-Back Credits
- Bill Avalisation/Banker's Acceptance/Countersigning

#### Exports

- Export Documentary Credits
- Foreign Bills Negotiated Facility
- Export Credit Negotiated Facility

#### Guarantees and Standbys

- Shipping Guarantee/Release of Air Waybills/Missing Bill of Lading Guarantees
- Standby Letters of Credit and Bank Guarantees

#### Trade Finance Loans

- Trade advances for the financing of domestic purchases, import purchases, domestic sales and export sales.

### D.1.2 Trade Finance Facilities

*A Trade Finance Facility provides multiple types of trade finance and commercial lending options in the one package, with one overall Limit.*

Subject to our approval, you can apply for any combination of the following types of Facilities:

- Trade Advance Facility
- Foreign Bills Negotiated Facility

- Import Documentary Credit
- Export Documentary Credit
- Overdraft
- Bill Facility
- Contingent liabilities
- Business Line of Credit Facility
- AgriBusiness Line of Credit Facility
- Market Rate Loans.

### **D.1.3 Applying for financial accommodation**

#### **Trade Finance Facility or Contingent Liability Facility**

To apply for financial accommodation under your Facility you must either complete our application form or provide any documentation we require.

We will only provide financial accommodation if you accept any additional terms and conditions, including those we issue electronically at the time of your request.

If you or your Authorised Representative sign any form your or their signature must be consistent with your or their signature on your current account operating authority, otherwise you can only authorise the request in a manner acceptable to us. If you have signed our usual form of authority to receive instructions through CommBiz or NetBank we may provide financial accommodation on instructions received through CommBiz or NetBank from an Authorised Representative.

#### **Limits**

The amount of the contingent liability or draw down you request will be no greater than the Limit (if any) set out in our Offer Document.

The Aggregate Australian dollar equivalent of all amounts outstanding (contingent or otherwise) must not exceed the Limit set out in the Offer Document.

#### **Reducing or cancelling the Limit**

We may reduce or cancel the Limit (if any) of your Contingent Liability Facility, Trade Finance Facility or Multi-Option Facility on sending you 30 days written notice of the reduction or cancellation. Unless you are in Default, we will only do this if we reasonably consider that due to a change in your financial circumstances you will not be able to meet your obligations under the Contract. You may not make further drawings on the Facility during the 30 day notice period.

#### **Annual review**

Each year we will review the Facility to determine whether we will continue, cancel, or reduce the Facility. We will give 30 days' written notice advising you of any decision to cancel or reduce the Facility. Unless you are in Default, we will only do this if we reasonably consider that due to a change in your financial circumstances you will not be able to meet your obligations under the Contract. You may not make further drawings on the Facility during the 30 day notice period.

#### **Indemnity**

You indemnify us on our demand against all actions, proceedings, claims and demands which may be brought or made against us and all losses, costs, charges, damages and expenses which we may incur or sustain, or for which we may become liable because we make a Facility available to you or we exercise the right to terminate any Facility reduced to the extent of our negligence, wilful misconduct or fraud.

#### **Available currencies**

We provide Facilities in Australian dollars and foreign currencies approved by us. We may change our list of approved currencies to reflect currencies readily available through our correspondent banks.

#### **Australian dollar equivalent**

For any foreign currency payment we will calculate the Australian Dollar equivalent at our same day value selling rate of exchange as at 11:00 am the day we make the calculation or payment.

#### **Nominated Account**

You must open a Nominated Account in your name or advise us of a Nominated Account of an Acceptable Third Party and authorise us, or arrange for them to give us an authority, to debit their Nominated Account with fees and charges and other amounts you owe us. If the Nominated Account is not held with us, the name of the Nominated Account must match the name of the Borrower. This Nominated Account must always have enough funds in it to allow us to debit it for any fees, charges payments and any accrued interest due under the Contract. If an authority to debit a Nominated Account is cancelled, you must nominate another Nominated Account and arrange an authority for us to debit that account.

#### **The payment account**

If the Nominated Account is closed for any reason (or there are insufficient funds in the Nominated Account or an Authorised Third Party Cancels their authority to debit their Nominated Account), you authorise us to open an account in your name to which we may debit any amount we pay under or by reason of the Facility ('the payment account'). You must pay interest on all amounts debited to the payment account.

Interest accrues daily from the date we first debit an amount to the payment account. Interest is calculated on the unpaid daily balance of the account at an interest rate equal to our monthly index rate for overdraft accounts, plus a margin of 4.5% per annum. This rate applies, unless varied, until the outstanding amount of the account is repaid.

You must pay us the amount outstanding on the payment account (including interest) within 62 days of the debiting of the amount to the account unless we require repayment earlier. We will debit all fees and charges to the Nominated Account.



## Specific terms & conditions (cont.)

### Electronic issuance

If you ask us to electronically issue guarantees or other contingent liability documents you must first agree to our additional terms and conditions relating to electronic issuance.

### D.1.4 Contingent Liability – special conditions

#### Inability to establish contingent liabilities or financial accommodation

If we are unable, for any reason, to establish a contingent liability Facility or make the requested financial accommodation available to you we will tell you in writing. Once we give you written notice you are deemed to have withdrawn your application.

#### Termination

We may terminate our liability under any contingent liability at any time by paying to the beneficiary of the contingent liability the face amount of the contingent liability less any amounts we have previously paid under the contingent liability.

#### Obligations not affected

If we have exercised due care, your obligations will not be affected by:

- any inaccuracy, insufficiency or forgery of or in any notice or demand made on us in respect of any contingent liability, or
- our failure to enquire whether any notice or demand has been transmitted or received accurately or has been given or sent by an unauthorised person, or
- the passing of the expiry date of the contingent liability if we receive a notice of demand before its expiry date.

#### Benefit of contingent liability cannot be assigned unless we agree

You acknowledge that, unless otherwise agreed by us in writing, the benefit of any contingent liability cannot be assigned, but that claims by a named beneficiary under a contingent liability may be paid at the beneficiary's direction to another party.

#### Authorisation and direction

You authorise and direct us to pay immediately any sums demanded by or on behalf of a beneficiary of a contingent liability up to the amount of the contingent liability, without reference to you.

You acknowledge that as between you and us a demand is conclusive evidence that the sum demanded is properly due and payable.

You also authorise and direct us to debit the contingent liability payment account we opened in your name with any amount we are called on to pay, or which we may in our discretion pay under or by reason of our establishment of a contingent liability.

This clause does not limit our rights in the event that you in Default under the Contract.

### Release of Security

We are not obliged to release any Security for a reasonable time after the later of termination of the Facility, the expiry of the Term or the expiry date of all contingent liabilities issued under the Facility, to enable us to determine if a claim has been made on any contingent liability and to determine the validity of any such claim.

### D.1.5 Overdraft and Bill Facilities – special conditions

In addition to this section, sections B.2 and B.3 apply respectively to Bill Facilities and Overdrafts provided as part of your trade finance Facilities.

If you choose this option we may require you to sign a further Acceptance Document which may include additional terms and conditions.

### D.1.6 Construction and interpretation

Terms not defined in these Terms and Conditions have the meaning given to them in the relevant Offer Document or applicable rules published by the International Chamber of Commerce (ICC).

Each Collection (either documentary or clean) will be subject to the ICC Uniform Rules for Collections in force from time to time.

Each Documentary Credit will be subject to the Uniform Customs and Practice for Documentary Credits (UCP) of the ICC and the ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits in force from time to time.

Each Standby will be subject to the ICC International Standby Practices (ISP) or UCP as specified in the relevant instrument in force from time to time.

Each demand guarantee, bond or payment undertaking issued by us in favour of an overseas party will be subject to ISP or the ICC Uniform Rules for Demand Guarantees in force from time to time or where a governing law is specified in the relevant Payment Instrument then that governing law.

If these Terms and Conditions and the terms in any ICC rules are inconsistent or conflict, these Terms and Conditions will prevail.

### D.1.7 Collections

#### General

The terms applicable to any Collection will be outlined in the correspondence we send to you and which is attached to that Collection. If you ask us to process a Collection, we are authorised to treat the service as subject to and conditional upon us receiving full payment of the relevant Bill or against delivery of the Documents (as nominated by us in our absolute discretion). You must reimburse us on demand, for any amount due in respect of such service and hereby indemnify us for any damages, losses, costs and expenses whatsoever in connection with that Collection.

### **Import Documentary Collections – Additional Terms**

If we act as a collecting bank in respect of an import Collections and Bills for acceptance or payment, or Documents on a cash against Documents basis, we may hold the Documents until acceptance or reimbursement of the relevant Bills, or payment, by you.

### **Export Documentary Collections – Additional Terms**

If you ask us, we may negotiate or discount a Bill or provide advances against the Documents to be sent on Collection. In the event that we agree to do this, the provisions of clauses D.1.11 to D.1.13 will apply.

We are not obliged to check the Documents before sending them to the collecting bank. We will only pay you the proceeds of a Collection which have actually been received by us from the collecting bank and will not be liable if we receive late advice of payment. We are not responsible for any act, omission, delay or default on the part of any collecting/settlement bank.

### **D.1.8 Import Documentary Credit – special conditions**

#### **General**

If you wish to use this option or the Import Documentary Credit Facility your request is subject to clauses A.1 and D.1.3.

#### **General**

We will determine the form of each Import Documentary Credit from time to time. Each Import Documentary Credit will be irrevocable, for a tenor and in a currency acceptable to us and in a form that otherwise complies with any terms set out in the Contract.

We may restrict negotiations under any Import Documentary Credit to our own offices or to any Correspondent Bank of our choice and in such case we are authorised to accept and pay all Documents drawn or purported to be drawn on any such office or Correspondent Bank.

If you make a written request to us, then we may agree to make alterations to the wording or other information in an Import Documentary Credit. We may make alterations to the Import Documentary Credit if in our opinion such alteration will clarify or otherwise improve the information contained in the Import Documentary Credit.

#### **Payments**

We are authorised and entitled to honour a complying presentation under an Import Documentary Credit in accordance with its terms that we believe in good faith to have been properly demanded under the Import Documentary Credit. The presentation of Documents under a Documentary Credit will be deemed to be in compliance with their terms if the Documents purport to be in order and taken as a whole contain a description of the Goods.

We are not obliged to notify you prior to making a payment or accepting drafts, claims or drawings under the Import Documentary Credit.

We are not obliged to take into consideration any notice from you of any claim or defence you may have against a Beneficiary.

You will pay to us in Cleared Funds (in the currency that we pay or are required to pay) all amounts paid or payable by us under the Import Documentary Credit on the day on which we make or are required to make that payment.

You indemnify us for any payment made by us under that Import Documentary Credit. You indemnify us against, and will pay us on demand the amount of, all and any demands, claims, actions, proceedings, liabilities, payments, interest, costs, charges and expenses (including legal expenses on a full indemnity basis and taxes) which we may suffer, incur or make reduced to the extent of our negligence, wilful misconduct or fraud in connection with the Import Documentary Credit issued under these Terms, including:

- in relation to any claim that is made or attempted to be made under the Import Documentary Credit by the Beneficiary;
- in relation to any payment to our Correspondent Bank under a counter-indemnity,
- in relation to any amount which we may pay or be required to pay on termination of the Import Documentary Credit to the Beneficiary;
- our acting on any representations made by you to us relating to the Import Documentary Credit; or
- any failure, inability or refusal on our part to honour the Import Documentary Credit because of a court order or other similar restriction or obligation, or because we are of the view that a transaction to which the Import Documentary Credit relates in any way is tainted by fraud or alleged fraud.

We will not be bound at any time to release any Documents or authorise release of any Goods to you unless you have fully discharged your obligations and liabilities to us in respect of any Import Documentary Credit.

#### **Release of Goods/Documents**

If you take delivery of Documents or Goods before advice of negotiation or presentation of Bills under the Import Documentary Credit and/or before you have reimbursed us for all payments made by us under the Import Documentary Credit, you must:

- hold the Goods exclusively for the purpose of their sale or other disposition approved by us on normal trade terms at market value;
- hold the Documents and the Goods when received (and the proceeds from the sale of them) in safe custody and on trust for us and promptly pay or irrevocably direct the payment of all the proceeds of sale of Goods (without deduction of any expenses) forthwith upon sale, to us;

## Specific terms & conditions (cont.)

- until sale or delivery (if applicable) warehouse the Goods in our name at your cost, immediately deliver to us the warrants or receipts for the Goods and otherwise authorise us (or any of our employees) to enter any warehouse or other premises where the Goods may be located at any time for the purpose of viewing, inspecting, identifying or taking possession of the Goods;
- insure the Goods against fire and any other risks that we may reasonably require to their full insurable value, hold the policies on behalf of us and in case of loss pay the insurance moneys to us in full and make good any deficiency;
- not mortgage, charge, pledge or otherwise encumber or allow to be encumbered the Goods (otherwise than in our favour or as agreed to by us in writing) until we have been paid in full; and
- comply with any other conditions as we may in our discretion require.

You acknowledge and agree that:

- you have no claim, lien or set-off of any kind in respect of anything that you hold on trust for us under this clause;
- the Goods will remain our property until sold or otherwise disposed of and risk in the Goods remains with you at all times; and
- any proceeds of sale or other disposal paid to us in accordance with this clause may be appropriated and applied by us as we think fit.

### Discrepant Documents

We may but are not obliged to, notify you or seek your waiver of any discrepancies before refusing the Documents on a discrepancy. If we notify you of a discrepancy in the Documents and you request us and/or our agents or Correspondent Banks to:

- comply with our payment obligations under the Import Documentary Credit, notwithstanding the discrepancy; or
- countersign or issue any guarantee or indemnity covering those discrepancies; then

you must comply with your payment obligations in respect of the Import Documentary Credit, notwithstanding the discrepancy.

If the Import Documentary Credit terms require certain specific Documents to be forwarded by the Beneficiary direct to you at or prior to the time the Beneficiary makes any claim under such Import Documentary Credit, all remaining Documents (which must include at least one negotiable copy of title documents) relating to such Import Documentary Credit must be produced to us in respect of any claim under such Import Documentary Credit. If you use the Documents forwarded directly to you to obtain possession of the Goods then you must accept all Documents presented and pay or accept

upon presentation and pay at maturity all Bills drawn in respect of the Goods, despite any discrepancy or any other matter or thing that might otherwise have relieved or affected your obligations and this clause D.1.8 (Release of Goods/Documents) will apply.

### Insurance

Where the Import Documentary Credit is issued on the basis that you insure the relevant Goods, you will insure the Goods from loss or capture during transit in a manner satisfactory to us and provide a copy of that insurance policy and all receipts for current premiums to us.

If the insurance policy provided to us is not acceptable to us, we may effect further or other insurance (including war risk) in respect of the Goods, and you will reimburse to us the cost of any such insurance.

### Possessory Remedies

If you breach these Terms and Conditions or the Offer Document or otherwise fail to observe any of your obligations to us in respect of the Import Documentary Credit, we may, without notice to you (and without prejudice to any of our other rights and remedies) cause the Goods (or any part thereof), to be landed, docked, stored, transported, insured, and/or sold (or sold without landing) or otherwise disposed of or the Documents to be dealt with in any way on such terms and for such consideration, as we consider appropriate.

If we exercise any such remedy:

- we are not liable for any loss suffered by you as a consequence of such action,
- you will pay to us, on demand the costs and expenses incurred by us in respect of any actual or attempted landing, docking, storage, insurance, transportation, sale or other disposal of the Goods or dealing with the Documents,
- you will remain liable for and will pay any deficiency that may remain owing to us after the sale or disposal of the Goods or dealing with the Documents, and
- you will do all such acts and sign and deliver all such documents which we require in order to perfect our title to the Goods or to otherwise give effect to any proposed landing, docking, storage, insurance, sale or other disposal or dealing in respect of the Goods.
- you will, upon request by us, forthwith appear and defend at your own cost and expense any action which may be brought in connection with the Import Documentary Credit. You agree to make any claim or take any action or institute any proceedings which we may consider necessary or desirable to recover any proceeds, compromise or settle any dispute in connection with any pledged or mortgaged Documents, or Goods, any Documentary Credit,

relevant documents, charged property, sales proceeds or insurance proceeds on such terms as we may in our absolute discretion consider appropriate, failing which we may do it in our name or your name at your cost.

#### **D.1.9 Back-to-Back Credit**

If you request, we may agree to issue a Back-to-Back Credit where you are Beneficiary of a Master Credit which is acceptable to us.

You agree in relation to the Master Credit:

- to notify us immediately if you become aware of any proposed amendment, whether or not we advised the Master Credit;
- to obtain our consent in writing before agreeing or rejecting any amendment; and
- not to assign or encumber your rights under the Master Credit or to the proceeds of any Master Credit to any other person without our prior consent in writing.

You:

- irrevocably appoint us to be your presenting bank regarding the Master Credit with the right for us to negotiate or discount the Master Credit in accordance with these Terms;
- authorise us at our absolute discretion to utilise Documents presented under the Back-to-Back Credit for the drawing of the Master Credit; and

if the Documents have duly been accepted by the Issuing Bank or Confirming Bank or other Nominated Bank of any Master Credit as in compliance with its terms, authorise us, but we are not obliged, to:

- accept and effect payment against the Documents presented under the corresponding Back-to-Back Credit as if they are in full compliance with the terms thereof (even if discrepancies exist or have been raised), without prior reference or notice to you;
- upon receiving the proceeds under the Master Credit, directly apply all or any part to settle the corresponding drawing(s) under and/or to discharge your obligations and liabilities (actual or contingent) in respect of any liability, advance or loan provided by us in connection with the Back-to-Back Credit as we may think fit;
- execute, sign and/or complete any document, instrument or instruction; and
- do any acts and things whatsoever which may, in our sole and absolute opinion, be necessary for the presentation and negotiation or discounting of the Documents under the Master Credit including the preparation, dating, signing of any relevant Documents in order to give effect to the appointment and authorities given to us under this clause D.1.9 (Back-to-Back Credit).

We have no duty to ensure that the Back-to-Back Credit contains terms and requirements matching or compatible with the Master Credit. You acknowledge that in making any payment under any Back-to-Back

Credit, we do not make any warranty or representation that the Documents (or any other documents supplied by you) received by us under the Back-to-Back Credit are sufficient or fully compliant for the purpose of obtaining payment under the Master Credit.

You agree to repay us all amounts paid or payable by us under the Back-to-Back Credit in accordance with clause D.1.8 and that the indemnity in clause D.1.8 applies to Back-to-Back Credits agreed by us at your request. You acknowledge that your liability to pay and indemnify us does not depend on whether we can or cannot obtain payment under the Master Credit.

#### **D.1.10 Bill Avalisation/Banker's Acceptance/ Countersigning**

If we agree with you (in our absolute discretion), we will avalise, countersign or endorse Bills that have first been signed by you as acceptor.

You:

- must pay to us the face value of any Bill so avalised, countersigned or endorsed on its maturity date in such manner as we may specify or otherwise on demand; and
- hereby indemnify us against all payments, costs and expenses in connection with a Bill so avalised, countersigned or endorsed reduced to the extent of our negligence, wilful misconduct or fraud.

As between us and you, you are primarily liable for all Bills so avalised, countersigned or endorsed by us under these Terms and Conditions, and your obligations and liabilities in relation to each such Bill must continue notwithstanding that we may become the holder of the Bill in our own right before, on or after its maturity date.

#### **Our authority to pay**

You absolutely, irrevocably and unconditionally authorise us to pay immediately on demand by the exporter (and without any prior notice to you) any money demanded by the exporter under or pursuant to any Bill avalised, countersigned or endorsed by us under these Terms on its maturity date.

We will not be under any obligation to enquire whether any claim, demand or drawing by the exporter is properly made or whether you dispute the validity of any such claim by the exporter.

Any action taken by us in good faith pursuant to this clause will bind you in respect of such action.

#### **D.1.11 Export Documentary Credits – special conditions**

##### **General**

If you wish to use this option or the Export Documentary Credit Facility your request is subject to clauses A.1 and D.1.3.



## Specific terms & conditions (cont.)

You may request us to deal in a number of ways with Export Documentary Credits. You may ask us to:

- discount or negotiate an Export Documentary Credit and credit proceeds immediately before payment is received by the Issuing Bank or upon acceptance of the Documents by the Issuing Bank;
- confirm an Export Documentary Credit on an open or silent basis;
- transfer or assign the proceeds of an Export Documentary Credit,
- amend or advise an Export Documentary Credit; or
- present Documents to the Issuing Bank for payment without honour or negotiation, and credit proceeds
- to account(s) specified by you when payment is received from the Issuing Bank.

Any request lodged by you for us to deal with an Export Documentary Credit must be accompanied by any documentation requested by us including all Documents called for under the Export Documentary Credit and the original Export Documentary Credit and any amendments to it.

### Export Documentary Credit Rights

In the event that we agree to any request in respect of an Export Documentary Credit, you hereby assign and transfer to us all of your Export Documentary Credit Rights in respect of that Export Documentary Credit as security for payment on demand to us of the Amount Owing.

You will not do any act if to do so may waive, vary or diminish or adversely affect in any way your Export Documentary Credit Rights. You represent and warrant to us that you have not, and undertake to us that you will not, assign or encumber or otherwise deal with any of the Export Documentary Credit Rights to any person other than us.

If requested by us, you will take all action and execute any documents (including the endorsement of any drafts or other instruments and the giving of notice of the assignment) reasonably required by us, at your cost, to evidence and perfect the assignment of the Export Documentary Credit Rights under any applicable law or regulation.

If requested by us, you will take all action and steps and provide all assistance as we may reasonably require at our cost (those costs to be reasonable and agreed with us) including:

- making a demand;
- directing any relevant person to make payment under the Export Documentary Credit or the related Documents or any contract or agreement in respect of the relevant Goods, services or insurances to us; and
- initiating and continuing legal action in any court or jurisdiction and conducting such legal proceedings in your name (or allowing us to use your name, failing which we may use our name) and in accordance with our instruction,

- in connection with any claim by us against any party in respect of the assigned Export Documentary Credit related Documents or any contract or agreement in respect of the relevant Goods, Services or insurances.

If any of the Export Documentary Credit Rights are not effectively assigned and transferred to us, you agree and declare that until such date as the remaining interest is effectively assigned and transferred to us, you will hold the remaining interest on trust for our sole benefit.

### Export Documentary Credit Negotiation

You warrant and represent to us that:

- all Documents delivered or to be delivered to us in connection with an Export Documentary Credit relate to sale of the Goods or the provision of services as described in those Documents; and
- at the time of presentation of the Documents you will have shipped or delivered the Goods to, or fully performed the services for, the buyer.

An Export Documentary Credit Negotiation may be concluded on a “with” or “without recourse” basis as specified in the Offer Document.

Where we agree to negotiate an Export Documentary Credit and credit proceeds to you before payment is received under the Export Documentary Credit, you must pay us interest on those proceeds advanced by us in accordance with clause D.1.18.

Unless the Offer Document provides that the negotiation is on a “without recourse” basis, and if the Export Documentary Credit has not been duly honoured on presentation for any reason or if payment is not duly made to us on the maturity date for any reason you will pay the Payment Amount to us forthwith on demand by us.

We are authorised, at our discretion and on such conditions as we think fit, in relation to any Documents discounted or negotiated under an Export Documentary Credit to:

- take conditional acceptances or acceptances for honour and to extend the due date for payment by you or any other person;
- accept payment from any person before or after maturity in whole or under rebate or discount;
- accept part payment before maturity and deliver a proportionate part of the Goods to the drawee or acceptor of the Bill or the consignee of the Goods;
- at the request of the acceptor, delay presentation of the Bill for payment or acceptance without affecting your liability to us in respect of such Bill or these Terms; and
- protest or note the Bill, institute proceedings and take steps for recovery from any drawee, acceptor or endorser of the Bill or any amount due in respect of such Bill, even if we have debited your account with the amount of such Bill.

Where we are requested to negotiate or discount the Documents or provide advances against the Documents, we or our Correspondent Bank may (but are not obliged to) notify you of any discrepancy in or relating to the Documents presented under an Export Documentary Credit.

If you provide instructions to us or our Correspondent Bank to proceed with a claim under the Export Documentary Credit notwithstanding the discrepancies and we agree in our absolute discretion to do so and the Bill is then dishonoured or any of the other Documents are not accepted and the claim is not honoured, then, you will repay us on demand:

- the amount of the Bill or the amount of the claim in each case; and
- interest on that amount at our current lending rate and margin from time to time for that currency, calculated from the date the draft or claim was negotiated or discounted until the date of repayment; and
- all costs, fees and charges incurred by us.

#### **Confirmation – Open or Silent basis**

##### **Confirmation**

You may request us to confirm an Export Documentary Credit and you will provide to us any documents required by us in order for us to assess the request.

We will only add a confirmation to an Export Documentary Credit in our absolute discretion and will advise you the further conditions required to be fulfilled by you (if any).

We will not be bound by the confirmation if the Export Documentary Credit is amended without our written consent.

You will pay us on demand any losses, liability, cost or expenses whatsoever incurred or suffered by us as a result of confirming an Export Documentary Credit while in possession of an incomplete original Export Documentary Credit and/or an Export Documentary Credit without a complete set of amendments.

If we confirm an Export Documentary Credit at your request, you will only disclose the existence of the confirmation arrangement or any of its provisions to any other party if:

- you have obtained our prior written consent; or
- you are compelled by law to do so.

You cannot assign, encumber or otherwise deal with your rights under the confirmation without our prior written consent.

##### **Presentation of Documents**

You will present to us the original Export Documentary Credit and all amendments to the Export Documentary Credit in existence at that time, together with all of the Documents called for in the Export Documentary Credit which fully comply with the terms of the Export Documentary Credit, as soon as they are available and not later than a date (as determined by us) which will allow the Documents to be processed prior to the nominated expiry date of the Export Documentary Credit.

If the Export Documentary Credit expires without presentation of Documents, our liability under the confirmation ends on the date the Export Documentary Credit expires.

#### **Our confirmation obligations**

If we have added our confirmation to the Export Documentary Credit and the Documents fully comply with the terms of the Export Documentary Credit, then we will dispatch the Documents to the Issuing Bank for acceptance and payment in accordance with the terms of the Export Documentary Credit and either:

- on an open confirmation, we will, on the maturity date of the Export Documentary Credit, pay you the amount of the Export Documentary Credit; or
- on a silent confirmation for term Export Documentary Credits if the Issuing Bank fails to pay all or any part of the amount claimed within 5 Business Days of the maturity date of the Export Documentary Credit, we will pay you the amount of the Export Documentary Credit not paid; or
- on a silent confirmation for sight Export Documentary Credits if the Issuing Bank fails to pay all or any part of the amount claimed within 12 Business Days of the maturity date of the Export Documentary Credit, we will pay you the amount of the Export Documentary Credit not paid.

At the time fully compliant Documents are presented by you, you may request us to honour and negotiate or discount the Documents under the Export Documentary Credit and to credit proceeds to your account immediately or on acceptance of the Documents by the Issuing Bank. If we agree to your request (which we are not obliged to do) our liability under the confirmation of the Export Documentary Credit will end upon your account being credited with those proceeds and we will be under no obligation to make any other payment to you and the paragraph titled Export Documentary Credit Negotiation of these Terms will otherwise apply to such negotiation or discount.

You:

- must assist us on request in any way possible and take all steps required by us to achieve payment under the confirmed Export Documentary Credit, including without limitation instituting proceeds to enforce recovery of all moneys payable under the Export Documentary Credit; and
- effective on confirmation of the relevant Export Documentary Credit assign absolutely and irrevocably all of your right, title and interests in the relevant Export Documentary Credit (including without limitation all right, title and interest in the Documents and the Goods and the proceeds of sale of such Goods) to us.

## Specific terms & conditions (cont.)

### Discrepant Documents

If the Documents do not fully comply with the terms of the Export Documentary Credit or the original Export Documentary Credit is different from the copy of the Export Documentary Credit upon which we based our confirmation, our liability under the confirmation ends and we have no obligation to make any payment to you under the confirmation.

### D.1.12 Transfer of Export Documentary Credits

On application from you, we may agree to transfer a transferable Export Documentary Credit where you are the Beneficiary to another Beneficiary (Transferee).

Unless you instruct us to the contrary in your application, we will substitute your Bills and invoices for those presented by the Transferee. You must deliver to us any original of the Export Documentary Credit and any Documents required under Export Documentary Credit to effect payment together with such application.

You undertake to deliver to us, on demand, any Documents which are required to be substituted for any of the Transferee's Documents to ensure compliance with the requirements of the original Export Documentary Credit.

When we have received payment under the Export Documentary Credit, we will deliver to you the Bills and invoices of the Transferee together with our payment advice for the amount by which the amount received by us exceeds the amount of the Transferee's Bills, less any expense or charges due to us.

If you fail to deliver your Bills and invoices to us in conformity with the terms of the Export Documentary Credit, we are authorised to forward the Documents of the Transferee, and in that case we will have no responsibility to pay you the difference between the amount of the Transferee's Bills and the amount of your Bills.

At the time of transfer of the Export Documentary Credit by us, you waive and renounce those of your rights and interests as the Beneficiary of the Export Documentary Credit as have been transferred, in favour of the Transferee.

In consideration of us transferring the Export Documentary Credit on the application of you, you:

- accept full responsibility for the transfer;
- agree that neither we nor our Correspondent Banks or agents will be responsible for the description, quantity, quality or value of the Goods shipped and/or the services performed under the transferred Export Documentary Credit;
- agree that neither we nor our Correspondent Banks or agents will be responsible for the correctness, genuineness or validity of the Documents; and

- will hold us harmless and indemnified against all losses, liabilities, costs and expenses (including legal expenses on a full indemnity basis and taxes) that may arise from or in connection with the transfer.

### Payment of Assigned Export Documentary Credit Proceeds reduced to the extent of our negligence, wilful misconduct or fraud.

All payment instructions given by you to us to pay the Export Documentary Credit proceeds to a third party are irrevocable unless otherwise agreed between us, you and the third party.

We are authorised to rely on the information contained in all payment instructions delivered to us without us being obliged to make any further or independent enquiries into the accuracy of the information provided.

We will advise the third party, in such form and manner and in the timeframe when we determine, that we will pay the Export Documentary Credit proceeds to the third party on your instructions.

We will not be under any obligation to pay the Export Documentary Credit proceeds to the third party until:

- Documents are presented under the Export Documentary Credit and the claim is honoured by the Issuing Bank; and
- we have actually received the Export Documentary Credit proceeds.

We do not add our commitment, either actual or implied, to the arrangements entered into between the third party and you which have resulted in the assignment.

### D.1.13 Foreign Bills Negotiated Facility

You may request us to discount or negotiate a Foreign Bill. Any request lodged by you for us to negotiate a Foreign Bill will be accompanied by any Documents required for payment under the Foreign Bill and other documentation required by us, including without limitation the completion by you of a 'Lodgement Authority for Overseas Documentary Bill' in a form determined by us from time to time.

You warrant and represent to us that:

- the Foreign Bill and all Documents delivered or to be delivered to us in connection with a Foreign Bill relate to sale of the Goods or the provision of services as described in those Documents; and
- at the time of presentation of the Documents you will have shipped or delivered the Goods to, or fully performed the services for, the buyer.

A Foreign Bill Negotiated Facility may be concluded on a "with" or "without recourse" basis as specified in the Offer Document

Where we agree to discount or negotiate a Foreign Bill and credit proceeds to you before payment is received under the Foreign Bill, you must pay us interest on those proceeds advanced by us from the date of negotiation to the date full payment is received by us as specified in these Terms and Conditions and in the Offer Document.

Unless the Offer Document provides that the negotiation and/or discounting is on a “without recourse” basis, if the Foreign Bill has not been duly honoured on presentation for any reason or if payment is not duly made to us on the maturity date for any reason you will pay the Payment Amount to us forthwith on demand by us.

We are authorised, at our discretion and on such conditions as we think fit, in relation to any Foreign Bills discounted or negotiated to:

- take conditional acceptances or acceptances for honour and to extend the due date for payment by you or any other person;
- accept payment from any person before or after maturity in whole or under rebate or discount,
- accept part payment before maturity and deliver a proportionate part of the Goods to the drawee or acceptor of the Bill,
- at the request of the acceptor, delay presentation of the Bill for payment or acceptance without affecting your liability to us in respect of such Bill or these Terms, and
- protest or note the Bill, institute proceedings and take steps for recovery from any drawee, acceptor or endorser of the Bill or any amount due in respect of such Bill, even if we have debited your account with the amount of such Bill.

#### **D.1.14 Shipping Guarantee/Release of Air Way Bills/Missing Bill of Lading Guarantee**

##### **General**

We may from time to time be requested to issue, countersign or endorse letters of guarantee or indemnity to shipping companies (or their agents), carriers or consignors of Goods to enable you to obtain replacement bills of lading and/or delivery of Goods.

We may agree to such requests by you, subject to any conditions we may stipulate including without limitation the granting of security by you.

##### **Dealing with Documents**

You will:

- make all reasonable endeavours to obtain the relevant original bills of lading, transport or title documents and, upon receipt, will deliver them to us or as we may direct; and
- procure that our liability under the letter of guarantee or indemnity is released and the original letter of guarantee or indemnity is returned to us for cancellation.

If you request us to authorise the release or delivery of a shipment of Goods drawn under an Import Documentary Credit, and if we agree to that request, this will be treated as if it was payment made by us, and in that event, you:

- waive all discrepancies that may appear in the Documents and accept all such Documents presented under the relevant Import Documentary Credit;
- will reimburse any payment made by us under the relevant Import Documentary Credit irrespective of discrepancies that may appear on the Documents; and
- authorise us to honour any relevant drawings without examining the presented Documents.

##### **Your liability**

You will pay to us all amounts we may be called upon to pay as a result of:

- endorsing, countersigning or issuing letters of guarantee or indemnity;
- authorising the release of Goods covered by air waybills or customs assessment notices or consignments; or
- delivering air waybills or customs assessment notices or control of consignments to you,

on the day on which we make or are required to make that payment.

Before we issue, endorse or countersign a letter of guarantee or indemnity, if requested by us, you will arrange for an issuer acceptable to us to deliver to us a backing letter of guarantee or indemnity in favour of and in terms acceptable to us.

#### **D.1.15 Payment Instrument**

##### **General**

We may from time to time issue Payment Instruments to third parties as requested by you. Each Payment Instrument will be:

- in the form acceptable to us from time to time;
- irrevocable;
- for a tenor acceptable to us; and
- in a currency acceptable to us.

You:

- will examine a draft of the proposed Payment Instrument to be issued by us; and
- must, within 5 Business Days of receipt of the proposed Payment Instrument from us, notify us of any objection to the terms of the proposed Payment Instrument otherwise you will be deemed to have agreed to the terms and waived any rights to raise objections or pursue any remedies against us in respect thereof.

##### **Payments by us under a Payment Instrument**

We are entitled to pay to the Beneficiary an amount not exceeding, in aggregate, the maximum amount specified in the Payment Instrument that we believe to have been properly demanded under the Payment Instrument.



## Specific terms & conditions (cont.)

We are not obliged to notify you when we receive a demand or make any enquiry of or to take account of or make reference to statements from you or any other person (including without limitation any instruction not to make any payment) prior to making a payment or accepting drafts, claims or drawings under the Payment Instrument.

If we determine that a demand, draft or other document presented under the Payment Instrument does not comply with the terms of the Payment Instrument, we may refuse the demand by notice to the party from which it received the demand. We are not obliged to:

- notify you of any such determination or refusal or to seek your waiver of any discrepancies before refusing the demand; or
- seek a waiver at any time on the basis of a decision by us to seek a waiver at any other time in respect of any other discrepancies.

We may, at any time, discharge all our obligations under an unexpired Payment Instrument by paying, whether or not we have received a demand, the undrawn amount of the unexpired Payment Instrument (or such lesser amount that the Beneficiary requires) to the Beneficiary. On discharge of the unexpired Payment Instrument by us you will be liable for (and will pay us on demand) all amounts which we have paid to the Beneficiary.

We and our Correspondent Banks will rely entirely on the face alone of any demand, notice, instruction, draft or other document presented to us under the Payment Instrument in order to determine whether or not to act or there has been a complying presentation under the Payment Instrument.

### Your liability in respect of Payment Instruments

You will pay to us an amount equal to all amounts paid or discharged by us under a Payment Instrument on the day on which we make or are required to make that payment or discharges our liability.

You indemnify us against, and will pay us on demand the amount of, all and any demands, claims, actions, proceedings, liabilities, payments, interest, costs, charges and expenses (including legal expenses on a full indemnity basis and taxes) which we may suffer, incur or make in connection with the Payment Instrument issued under these Terms, including:

- in relation to any claim that is made or attempted to be made under the Payment Instrument by the Beneficiary;
- in relation to any payment to our Correspondent Bank under a counter-indemnity;
- in relation to any amount which we may pay or be required to pay to the Beneficiary on termination of the Payment Instrument;
- our acting on any representations made by you to

us relating to the Payment Instrument; or

- any failure, inability or refusal on our part to honour the Payment Instrument because of a court order or other similar obligation, or because we are of the view that a transaction to which the Payment Instrument relates in any way is tainted by fraud or alleged fraud.

If one of our branches is the Beneficiary of a Payment Instrument issued by another of our branches, for the purposes of this clause, the branches will be treated as separate legal entities.

### D.1.16 Trade Finance Loan requirements

The terms of any Trade Finance Loan will be contained in the Offer Document and these Terms.

We provide Trade Advances in Australian and freely available foreign currencies for a period between 30 days and 185 days. You request funds in accordance with clause D.1.3.

At the end of each period, you must make repayments in the currency of the advance or the Australian dollar equivalent calculated using prevailing exchange rates.

Trade Advances may be used only for the following permitted purposes as specified in the Offer Document:

- to finance your obligation to reimburse us under an Import Documentary Credit issued by us; or
- to finance Bills drawn on you when due, where we provide documentary collection services to you in relation to a Bill; or
- to finance your obligation to pay for the Goods under an open account transaction for amounts not less than AUD\$20,000 or equivalent; or
- to finance other trade related transactions approved by us.

Export Trade Advances may be used for the following permitted purposes as specified in the Offer Document:

- to enable you to prepare, manufacture, assemble or otherwise produce Goods for export or sale and any other costs or expenses in connection with the shipment or production of Goods;
- open account transactions of not less than AUD\$20,000 or equivalent; and/or
- post shipment requirements of not less than AUD\$20,000 or equivalent,

and may be approved by us on an insured or uninsured basis.

### Insured Export Finance requirements

Where we agree to provide Insured Export Finance, you must in addition to your other obligations under these Terms and Conditions and the Offer Document:

- ensure that the credit insurance policy that covers non-payment with respect to the invoices for export of Goods (Policy) is current and acceptable to us at

- all times for the term of the Trade Finance Loan;
- assign to us your interest in the proceeds of the Policy and provide proof of the insurer's consent to the assignment;
- provide to us a copy of the Policy and all related schedules;
- provide to us a list of buyer credit limits and any changes to it as they occur;
- maintain the Policy, pay all premiums, make any claims, take any actions required to ensure continued compliance with the Policy and provide to us evidence of doing so;
- promptly notify us of any changes to or breaches of the Policy; and
- promptly provide to us copies of any correspondence between you and the insurer regarding the Policy.

In addition to any other default event specified in clause A.6.1 and the Offer Document, it will be a default for the purposes of any Insured Export Finance if the insurer denies coverage for any transaction.

#### **Additional Warranties**

You warrant and represent to us that the Documents relating to the Trade Finance Loan:

- have not been previously financed, and will not be financed, by any person other than us;
- are not and will not be encumbered in any way to any person other than us; and
- have been originated in the ordinary and usual course of your business, in good faith and without fraud, illegality or unauthorised act committed by any person.

You provide the warranties and representations in this clause (Additional Warranties) from Drawdown and on each day there remains an Amount Owing under the Trade Finance Loan.

#### **Trust Receipt**

If, prior to the payment in full of the Amount Owing under an Import Trade Advance, we release to you the Documents or any of them to enable you to obtain delivery of the Goods, you will:

- hold the Goods exclusively for the purpose of their sale or other disposition approved by us on normal trade terms at market value;
- hold the Documents and the Goods when received (and the proceeds from the sale of them) in safe custody and on trust for us and promptly pay or irrevocably direct the payment of all the proceeds of sale of Goods (without deduction of any expenses) forthwith upon sale to us;
- until sale or delivery (if applicable) warehouse the Goods in our name at your cost, immediately deliver to us the warrants or receipts for the Goods

and otherwise authorise us (or any of our officers) to enter any warehouse or other premises where the Goods may be located at any time for the purpose of viewing, inspecting, identifying or taking possession of the Goods;

- insure the Goods against fire and any other risks that we may reasonably require to their full insurable value, hold the policies on behalf of us and in case of loss pay the insurance moneys to us in full and make good any deficiency;
- not mortgage, charge, pledge or otherwise encumber or allow to be encumbered the Goods (otherwise than in favour of us or as agreed to by us in writing) until we have been paid in full, and, you acknowledge and agree that:
  - (i) you have no claim, lien or set-off of any kind in respect of anything that you hold on trust for us under this clause;
  - (ii) the Goods will remain our property until sold or otherwise disposed of and risk in the Goods remains with you at all times; and
  - (iii) any proceeds of sale or other disposal paid to us in accordance with this clause may be appropriated and applied by us as we think fit; and
- comply with any other conditions as we may in our discretion require.

#### **D.1.17 Trade Finance Loan Provisions**

##### **Interest**

Interest will accrue and be payable by you in respect of each Trade Finance Loan in accordance with clause A.7 (Interest) and the relevant Offer Document.

##### **Drawdown Notice**

Whenever you wish to Drawdown a Trade Finance Loan you must give to us an irrevocable drawdown notice (Drawdown Notice) that:

- specifies the proposed date of Drawdown which must be a Business Day; and
- is in a form acceptable to us.

We must receive a Drawdown Notice by 11.00am 1 Business Days before the proposed date of Drawdown (or such other date acceptable to us in our absolute discretion).

If you give a Drawdown Notice to us later than 11:00am 1 Business Days before the proposed date of Drawdown, we may (but are not obliged to) use reasonable endeavours to comply with such instructions in accordance with our usual practices from time to time.

The requirement of a Drawdown Notice is for our benefit and we may waive the requirement at any time and in any manner.

A Drawdown Notice is irrevocable from the time of its actual receipt by us in legible form.

## Specific terms & conditions (cont.)

### Prepayments

Any prepayment will be on such terms as we may agree (in our absolute discretion), including payment by you of all accrued interest and any Break Costs associated with the prepayment of the Trade Finance Loan. You may not reborrow the amount so prepaid unless the Offer Document specifically provides that you may reborrow the amounts so repaid.

In this clause Break Costs means the amount (if any) by which:

the interest which we should have received for the period from the date of receipt of all or any part of a utilisation in respect of a Facility or an Amount Owing under the Contract to the last day of the period for which interest is calculated in respect of that utilisation or Amount Owing had the principal amount or Amount Owing received been paid on the last day of that period,

exceeds:

the amount which we would be able to obtain by placing an amount equal to the principal amount or Amount Owing received by us on deposit with a leading bank in Australia (for AUD) and the London interbank market (for all currencies other than AUD) for a period starting on the Business Day following receipt or recovery and ending on the last day of that period.

### Repayment

On the date specified in the Offer Document as the repayment date, you must pay to us:

- the Trade Finance Loan together with all accrued interest and fees on that amount then due and owing; and
- any other Amount Owing.

#### D.1.18 Interest on Trade Finance Facilities

If we make any loan in connection with any Trade Product or Service including Trade Finance Loans, or advances by way of discounting a drawing under an Export Documentary Credit or against any Bills or Document(s) (including the purchase, discounting, negotiation or financing of any Bills), you will pay interest and a margin, and for interest periods, as agreed with us in a Contract or if not specified in an Offer Document then interest on that amount will be payable at our current lending rate and margin from time to time for similar Facilities in that currency for a period determined by us.

Interest will be payable either in advance, by deducting interest and margin from the proceeds before the net proceeds are provided to you or in arrears when the amount is received by us from the party responsible for making the payment (as determined by us).

Interest will be calculated on the amount of the advance or loan, at the interest rate and margin applicable to such advances, on the basis of either a 360 or 365 day year depending on the currency as determined by us.

If interest is paid in advance, interest will be calculated from and including the day on which the amount is credited up to but excluding the day upon which we anticipate receiving payment from the party responsible for making the payment (and interest may be adjusted by us, and is payable by you on demand by us, if the actual payment date is different from the anticipated payment date).

If interest is paid in arrears, interest will be calculated from and including the day on which the amount is credited to but excluding the day on which that amount is received by us from the party responsible for making the payment.

## E. COMMONWEALTH BANK CORPORATE CARD & BUSINESS CREDIT CARD\*

*Commonwealth Bank Corporate Card is for large organisations with significant business, travel and procurement expenses. It can help to minimise costs by setting customised controls for different Cardholders, including transaction limits and daily and monthly spending limits.*

*The Corporate Card has two options – Corporate Charge Card option where the outstanding balance is paid in full each month from a Nominated Account, and Corporate Credit Card option where the company can pay all the outstanding balance or only the minimum payment, subject to certain terms.*

*The Commonwealth Bank Business Credit Card lets you manage everyday business expenses without cheques or petty cash. It also assists in cost control by directing spending through one account, and keeps personal and business expenses separate*

*Note: your Commonwealth Bank Corporate Card or Business Credit Card Facility is governed by these terms and conditions, together with the general terms and conditions in Part A.*

*The ePayments Code does not apply to these facilities.*

### E.1.1 Who may receive a Card

#### Corporate Cards

The Accountholder may nominate any person 18 years or older to receive a Corporate Card. There is no limit to the number of Cardholders.

## Business Credit Cards

A Cardholder must be at least 18 years of age. Cards may only be issued as follows:

Type of Accountholder	Who can receive a Card?	Maximum no. of Cards issued
Individual	The Accountholder and any other individual they nominate in writing may receive a Card.	We will issue a maximum of two Cards, each with a Code.
Firm of more than one proprietor or partnership	The firm may nominate in writing any two individuals to receive a Card.  Where any one or more of the partners is an individual, at least one of the Cardholders must be a partner.	
Company	The company may nominate in writing any two individuals to receive a Card.	

### E.1.2 Activating a Card

If the letter accompanying the Card indicates it is inactive, the Cardholder can call **13 1576** to activate the Card. Cards must be activated within 90 days of our posting them to you.

Once activated, the Card is valid only for the period indicated on it. The Card cannot be used before the commencement month or after the expiry month on the Card. A Cardholder must sign their Card as soon as they receive it.

### E.1.3 Using your Card

You can use a Card with any merchant or financial institution that displays the Card Scheme's signs in Australia and most countries overseas. However, some goods and services may not be available by use of your Card.

Only you can use your Card, and Cards must be used wholly or predominantly for business purposes. Cards cannot be placed into credit for a sustained period of time. If this is the case, we will return the funds to you.

## Blocking strategies for Corporate Cards

You can ask us to implement controls on the use of a Card (e.g. only certain types of expenses allowed).

You acknowledge that such controls may fail, e.g. if:

- we do not have to authorise a Card transaction
- a merchant's financial institution has not categorised that merchant in accordance with the usual category under the Card Scheme for merchants of that kind.

We are not liable if a blocking strategy fails.

### E.1.4 Transacting on a Card using Electronic Equipment

When a Cardholder makes a transaction using Electronic Equipment, you authorise us to act on the instructions for making that transaction.

#### Maximum amount for electronic banking

A daily electronic banking maximum amount applies to each Card. In some circumstances it may be less. This maximum amount does not apply to telephone banking, internet banking and credit Card purchases through Electronic Equipment and over-the-counter withdrawals at Commonwealth Bank branches.

We may vary the maximum or minimum amounts which a Cardholder may withdraw through Electronic Equipment within any period of time.

#### When we process electronic transactions

We may process transactions made through Electronic Equipment after 3pm on a Business Day or transactions made on a day which is not a Business Day, under the date of the next Business Day.

#### Deposits lodged at our ATMs

We accept responsibility for the security of deposits lodged at our ATMs. We will verify the amount of the funds deposited. Our count is regarded as conclusive evidence of the actual amount. If we differ on the amount of the deposit, we will tell you of the discrepancy as soon as possible.

#### Cancelling use of a Card in Electronic Equipment

If we believe the Card is being used in a way that may cause losses to you or us, then we may withhold a Card or cancel its use in Electronic Equipment. We may do this at any time without giving you notice.

#### Our right to authorise a transaction

If we need to authorise a transaction we reduce the available credit on the Card Account by that amount for up to five Business Days. We do this if the transaction is not completed straightaway or is completed but the actual amount is different from the authorisation.

For example, when you check into a hotel and use your Card to pay for one night's accommodation, we will authorise the transaction. However, the amount of the bill later processed to your Card Account might be different to that authorisation.



## Specific terms & conditions (cont.)

If a Cardholder uses a Card overseas, you agree that we may disclose at any time to the Card Scheme details of the Card Account so they can authorise the transaction.

We reserve the right not to authorise a transaction (e.g. if we suspect a fraudulent transaction or are experiencing problems with our computer systems).

### E.1.5 Disputes with a merchant

We are not responsible for the goods or services supplied to a Cardholder unless required by law. A Cardholder must take up any complaints direct with the merchant.

A Cardholder should make sure that the correct amount is entered in Electronic Equipment before the Cardholder authorises a transaction. A Cardholder must take up direct with the merchant disputes over what they believe to be incorrect charging.

In some circumstances we may be able to lodge a claim under the Card Scheme's rules for disputed transactions to request a refund for you. For more information on this procedure (known as a 'chargeback'), and other procedures for disputing transactions, see E.1.11 below.

If a merchant makes a refund to a Cardholder, they must issue a valid credit voucher. We can only credit the Card Account with the refund when we receive the voucher from the merchant's bank.

### E.1.6 Limits

#### Corporate Cards

For Corporate Cards, there is a Facility Limit and a separate credit limit for each Card Account.

The Facility Limit is set out in your Offer Document. You must ensure that the aggregate of the balances of the Card Accounts and the Consolidated Account does not exceed the Facility Limit.

The credit limit for each Card is the amount you and the Bank agree. If you want to change the limit then you must ask us in writing.

#### Business Credit Cards

The credit limit for the Card Account is set out in your Offer Document and is shared between the Cards.

We may reduce or cancel the credit limit on the Card Account at any time but we must give you notice in writing as soon as possible after the reduction or cancellation. Once we have cancelled your credit limit we will not provide any further credit on the Card Account.

### All Cards

Your Card Account balance must not exceed the agreed credit limit (and for Corporate Cards, your aggregate balances must also not exceed your Facility Limit). If it does, then we can require that you pay us the excess amount immediately. If you selected the Corporate Charge Card Option we may debit the excess to your Nominated Account.

### Asking for a cash advance

You may ask for a cash advance. In Australia this must be a minimum of AUD20. When you are overseas you can ask for whatever the local bank allows but not less than the equivalent of AUD20.

### E.1.7 Foreign currency transactions

If the Cardholder makes an overseas purchase, cash advance or Permitted Transaction, you are liable for the Australian dollar equivalent of this amount.

#### Foreign Currency Conversion by MasterCard

The Card Scheme (MasterCard) converts foreign currency transaction amounts into Australian dollars.

Purchases, Permitted Transactions and cash advances in United States dollars are converted into Australian dollars at the rates set by the Card Scheme on the day they are processed. For currencies other than United States dollars, the amounts are converted into United States dollars and then further converted into Australian dollars.

#### Foreign Currency Conversion at Point of Sale

A merchant may offer a Cardholder the option of converting an overseas purchase, Permitted Transaction or cash advance from foreign amounts into Australian dollars at the time of the transaction. If the Cardholder chooses to do this, the Bank debits the Card Account with the Australian dollar amount of the transaction.

\* Business Credit Card will no longer be available for sale from March 2014.

## E.1.8 Making payments

### Business Credit Cards and Corporate Cards – Credit Option

<p><b>Your payment obligation</b></p>	<p>Each Card Account statement (or Consolidated Account statement for Corporate Cards – Credit Option) sets out:</p> <ul style="list-style-type: none"> <li>■ a closing balance which states how much you owe us</li> <li>■ the minimum payment (if any) you need to make</li> <li>■ the date on which the minimum payment is due for payment. The due date for payment is 25 days after the statement date (or if that day is not a Business Day, the next Business Day)</li> </ul> <p>You must pay at least the minimum payment (if any) by the due date. You can pay more than the amount due at any time.</p>
<p><b>How we calculate the minimum payment</b></p>	<p>If a statement of the Card Account (or consolidated statement for Corporate Cards – Credit Option) shows a closing balance of less than \$75, the minimum payment is the closing balance.</p> <p>Otherwise, the minimum payment you must make is the greatest of:</p> <ul style="list-style-type: none"> <li>■ the excess of the closing balance over the credit limit on the Card Account (or for Corporate Cards – Credit Option, the excess of the closing balance over the Card Facility Limit)</li> <li>■ 2.5% of the closing balance (rounded down to the nearest dollar), or</li> <li>■ \$75.</li> </ul>

<p><b>Repayment amounts</b></p>	<p>You can decide what payments you wish to make on the Card Account (or Consolidated Account for Corporate Cards – Credit Option) at any time provided that you make the minimum payment (if any) by the due date. However, you must pay the outstanding balance of the Card Account (or Consolidated Account for Corporate Cards – Credit Option) when we ask you to.</p> <p>A payment is made only when we credit the payment to your account. We will do this as soon as practicable.</p>
<p><b>Methods of payment</b></p>	<p>You can pay your account in Australian currency in Australia at any of our branches, or send your payment direct to the address shown on the statement. We do not accept payment through a financial institution overseas.</p>
<p><b>Paying by cheque</b></p>	<p>The proceeds of cheques credited to your account are subject to clearance. If you make a payment by cheque and the cheque is dishonoured, we will treat the dishonoured payment as a cash advance. We will charge interest on such cash advance, from the date of dishonour.</p>

### Corporate Cards (Charge Option)

On each statement date, the total of the outstanding balances of all Card Accounts is payable in full and will be debited to the Nominated Account. You must ensure the Nominated Account has sufficient funds or is sufficiently within the overdraft limit on the Nominated Account to cover each debit.

If you do not maintain the Nominated Account, or that account cannot be debited for any reason, then you must immediately pay the unpaid amount.

We may also debit the Nominated Account for any other amounts that are due and payable in relation to the Corporate Card Facility.

## Specific terms & conditions (cont.)

### E.1.9 How we apply payments

#### Order of payment and what we pay

1. Interest and government charges shown on any statement of account.
2. Any of the Bank's fees and charges (including enforcement expenses) shown on any statement of account.
3. Cash advances shown on any statement of account.
4. Purchases and Permitted Transactions shown on any statement of account and before the last statement of account.
5. Purchases and Permitted Transactions shown on the last statement of account.
6. Cash advances not shown on any statement of account.
7. Purchases and Permitted Transactions not shown on any statement of account.
8. Interest, any Bank fees and charges, enforcement expenses and government charges not shown on any statement of account.

### E.1.10 Account statements – Business Credit Cards

#### When we send you a monthly statement

We will send you a monthly statement on the date we decide. We will send you a statement of the Card Account, if, at the statement date in any month:

- there are any amounts owing by or to you on the Card Account, or
- there have been any amounts charged or credited to the Card Account since the previous statement date.

#### When we won't send you a statement

We will not send you a monthly statement, if at the date we would have prepared a statement:

- the amount outstanding on the Card Account is less than \$2 and no entries have been made since the previous statement date, or
- we have written off the amount you owe us on the Card Account and no other entries have been made since the previous statement date, or
- either you or the Cardholder is in breach of these terms and conditions over three consecutive Statement Periods, including the last Statement Period, and we have not given credit on the Card Account during the last Statement Period.

### Account statements – Corporate Cards

We send the Cardholder, or if you choose, you, a monthly statement for a Card Account on the date we decide, if there has been any activity on the account since the previous statement date or there are amounts you owe us or we owe you.

We also will send you a statement of Consolidated Account.

### E.1.11 How to tell us if you think there is a mistake or you want to claim a chargeback

***You should tell us as soon as possible if you think your statement has a mistake in it or records a transaction which is possibly unauthorised, so that we may ask for a chargeback. More information is contained in this section.***

#### Keeping vouchers and transaction records

You should keep all vouchers and transaction records that merchants, financial institutions and Electronic Equipment give you. You should also check the details and entries on each statement of account for accuracy as soon as you receive it.

The date appearing on a transaction record may not be the transaction date shown on the statement because transactions completed on non-Business Days or after 3pm on Business Days may be processed on the next Business Day.

#### Tell us if you think your statement is in error or wish to claim a chargeback

The Card Scheme that applies to your Card allows us to dispute a transaction for you in certain circumstances, but we must do this within strict time limits. If rules of the Card Scheme allow us to do so, we will request a refund of a transaction ('chargeback') for you.

Usually, for Authorised Transactions, we can only do this if you tried to get a refund from the merchant first and were unsuccessful.

#### Tell us promptly

If you don't tell us promptly that you think your statement is in error or wish to claim a chargeback, any delay may limit our ability to resolve the situation. You should tell us within 30 days of the statement date so that we do not lose our chargeback rights. If you tell us after this time and we cannot chargeback the transaction, you may not be able to obtain a refund of the transaction. For more information on liability for Unauthorised Transactions, see E.1.16 and E.1.17.

## **How to make a complaint**

You can challenge a transaction on the Card Account or any transaction involving use of a Card and PIN. If you do, then you can visit any branch and ask for the matter to be investigated. We give you a formal acknowledgment and instruct our Card Services department to go ahead with the investigation.

If the complaint relates to a transaction involving use of a Card and PIN or Card and Password and we can't resolve it immediately, we will advise you in writing about our internal complaints resolution procedure.

### **We will investigate your complaint**

Within 21 days of receiving your complaint details we will either complete the investigation or write and inform you that we need more time.

Usually we will complete our investigation of a transaction involving use of a Card and PIN or Card and Password within 45 days of receiving the notice of complaint (unless there are exceptional circumstances, in which case we will write to you advising you of the delay).

When we have completed our investigation we will advise you in writing of the outcome, the reason for our decision, and the relevance of any of the terms and conditions of use of the Card that may apply.

### **Action we may take to remedy the fault**

If we conclude that your account has been incorrectly debited or credited, we will adjust the Card Account (including any interest and charges) and advise you of the amount with which the account has been debited or credited.

If we find that your account has not been incorrectly debited or credited, or in the case of Unauthorised Transactions, that you are liable for the loss, or part of the loss, we will give you copies of any documents and other evidence on which we based our finding.

If you are not satisfied with our decision, you should refer to our brochure, 'How we can help you', which is available at all branches and states.

### **E.1.12 Fees and charges**

We debit the Card Account with the applicable fees and charges (other than the annual fee and non-Commonwealth Bank ATM fees) at the end of the Statement Period in which they are chargeable.

We will debit non-Commonwealth Bank ATM fees to the Card Account as soon as practicable after a Cardholder obtains the cash advance or makes the balance enquiry.

The Bank debits the annual fee (if applicable) to the Card Account in the statement period of the first statement issued following activation and on or about each anniversary of the date the first annual fee is charged.

Fees and charges are set out in the 'Commonwealth Bank Business Credit Card Standard Fees and Charges' brochure (or 'Commonwealth Bank Corporate Card Standard Fees and Charges' brochure for Corporate Cards) we give the Accountholder.

Additional fees and charges (if any) may be specified in the Offer Document.

### **E.1.13 Interest rates**

#### **When we charge your account interest**

For Business Credit Cards and Corporate Cards – Credit Option, we charge interest on all repayable amounts from the date the transaction was made until the amount is repaid in full (except to the extent an interest free period applies – see below). Repayable amounts include any purchase, Permitted Transaction, cash advance and any other amount we are permitted to debit to your Card Account.

For Corporate Cards – Charge Option, we charge interest only on cash advances.

We debit the Card Account on the last day of each Statement Period with the interest calculated up to and including that day.

Your Card Account or Consolidated Account statement shows the Interest rate that applies to the Card Account as an annual percentage rate. It also shows the details of the interest charges debited to the Card Account in the Statement Period.

#### **How we calculate interest**

We set the Interest rate on a Card Account or the Facility by adding or subtracting a margin from an index Interest rate. The index Interest rate and margin that apply are set out in your Offer Document.

We may vary the rate or the method of calculating interest at any time.

We calculate the interest we charge by using the daily percentage rate applying to the Card Account or Facility. The daily percentage rate is the Interest rate applying to the Facility divided by 365.



## Specific terms & conditions (cont.)

### Corporate Credit Card and Business Credit Cards with up to 55 days interest-free on purchases

Feature	Terms and conditions of use
Maximum interest-free period on purchases	55 days
Actual interest-free period	May be less than 55 days due to the date on which the purchase is made and the date on which a Statement Period ends.
To qualify for the interest-free period	Pay at least the closing balance for a Statement Period before the payment due date. You then avoid being charged interest in the next Statement Period on purchases made either in that Statement Period or in the Statement Period immediately before. Otherwise, we charge interest in the next Statement Period on the outstanding amount of purchases made in that Statement Period and purchases made in the Statement Period immediately before.
Interest always payable on outstanding amounts from earlier Statement Periods	In any event, we charge interest in a Statement Period on the outstanding amount during the Statement Period of any purchases made before the immediately prior Statement Period.

#### How we calculate interest on repayable amounts

For any Statement Period, we calculate interest separately on purchases (excluding purchases eligible for an interest-free period or purchases under Corporate Card – Charge Option) and cash advances.

For each category, we calculate interest for a Statement Period in three steps:

Step 1: We average the outstanding daily amount of repayable amounts over the Statement Period.

Step 2: We multiply the average by the daily percentage rate.

Step 3: We multiply the result from Step 2 by the number of days in the Statement Period.

For purposes of calculating interest, Permitted Transactions and credit fees and charges are treated as purchases.

### E.1.14 Protecting your Card, PIN and Password

Each Card remains our property. If we ask, you must return a Card to us. You must also destroy any Card that is no longer valid.

A Cardholder must sign a Card as soon as they receive it and keep it in a secure place. We prefer Cardholders to carry their Card with them whenever possible and make regular checks to ensure they still have it in their possession.

#### Keeping your Access Methods secure

The Access Methods we provide you (e.g. your Card and PIN) are the keys to your account. We expect a Cardholder to take all reasonable care to ensure that Access Methods and any record of Access Methods are not misused, lost or stolen.

#### Protecting your Code

We send the Cardholder a letter containing their PIN and advise that they memorise it then destroy the letter. This is the safest policy. However, if a Cardholder has difficulty remembering their Code and needs to keep a written record they should disguise the Code, i.e. scramble the details so that others will not be able to decode it.

They must never record their Code or the disguised record on another part of an Access Method, eg the Card. They must never tell anyone their Code or let anyone find out their Code – not even family or friends.

To avoid a thief getting hold of both the Card and the disguised Code, the Cardholder must ensure Cards and Codes are never kept together. For example they must never keep them:

- in a briefcase, bag, wallet or purse (even if in different compartments)
- a car (even if in different areas of the car, in fact no part of an Access Method should be left in a car at all)
- at home in the one item of furniture, e.g. different drawers of the same bedroom dresser, or

in any other situation where the Card is not separate and well apart from a record of a Code.

#### Making a transaction using a Code

When the Cardholder is about to use Electronic Equipment (e.g. an ATM or NetBank) they must not let anyone watch them enter their Code.

They should check the location of mirrors, security cameras or any other means of observing their Code entry, and then shield it from anyone. They should never leave anything (such as their Card, their transaction record or cash) behind when a transaction is completed.

## **Reporting unauthorised use, loss or theft of a Card, PIN or Password**

If a Card is lost or stolen, or the Cardholder suspects that someone knows their PIN or Password, they must tell us immediately. We will then take all necessary steps to detect fraud and avoid extended misuse of the account.

Even if they are confident that their PIN or Password is secure, the Cardholder must tell us when they become aware of the loss or theft of their Card or of any unauthorised access to the accounts linked to the Card.

### **If a Card is found**

If the Cardholder recovers their Card after reporting it lost or stolen they must tell us and destroy the Card. We will provide a replacement Card. If the Cardholder is overseas at the time, they should tell a financial institution displaying the Card Scheme sign.

### **How to tell us about lost or stolen Cards or revealed PINs or Passwords**

In Australia, the Cardholder should call us on **13 1576** anytime or visit any branch during bank hours.

If the Cardholder is in the USA, they must phone 1-800-MasterCard (**1 800 627 8372**) (free call). For any other country they should ask the local telephone operator to place a reverse charge/collect call to the USA and quote **+1 636 722 7111**.

If the Cardholder is overseas, they can also report the incident or report their suspicions to any financial institution that displays the Card Scheme sign.

Where they contact us, as proof of the date and time of the report we give them a number, which they should keep in a safe place for future reference.

If the Cardholder is unable to report the loss, or register their suspicion of misuse because our hotline facilities are unavailable, they must visit or telephone one of the Bank's branches when it is open.

### **E.1.15 Your liability**

The Accountholder is liable for, and we may debit the Card Account (or for Corporate Cards, the Consolidated Account) for, all the credit we extend as a result of you or any Cardholder using an Access Method.

You must pay us:

- the price of goods and services bought direct from a merchant or through mail, online and telephone orders (including regular payment arrangement transactions)
- the amounts shown on all cash advance vouchers
- the amounts of all cash advances and any other transactions charged, or intended to be charged, to your Card Account as a result of the use of Electronic Equipment or by use of a Password

- the amounts of any Permitted Transactions
- any other amounts we may debit to your Card Account (or for Corporate Cards Consolidated Account) under these terms and conditions.

You are liable for all the credit we extend on a Card issued to the Cardholder, before or after their Card is cancelled or after this Contract is terminated.

If the Accountholder is more than one party, the obligations under this Contract bind each party individually and together.

### **E.1.16 When we are liable for unauthorised use, loss or theft of your Card, PIN or Password**

#### **When we must refund transactions**

We are liable (must reimburse you) for Unauthorised Transactions that you bring to our attention under any of the following circumstances:

#### **If we fail to follow the correct complaint investigation and resolution procedures**

For Card and PIN-based transactions, we are liable for the full amount of the transaction that is the subject of the complaint, if:

- we fail to keep to our complaint investigation and resolution procedures or fail to communicate the reasons for our decision, and
- our failure to act harms the outcome of the complaint or results in unreasonable delay in its resolution.

#### **If there is unauthorised use because the Cardholder is unable to inform us over a hotline**

We are liable if the Cardholder is unable to report a lost Card or PIN or register their suspicion of misuse because our hotline facilities are unavailable, and, as a consequence, Unauthorised Transactions were made that resulted in a loss.

#### **If losses continue after you report to us that a Card is lost or stolen or Codes compromised**

We are liable for all losses that occur after you notify us that any Card forming part of the Access Method has been misused, lost or stolen, or that the security of Codes forming part of the Access Method has been breached.

#### **If loss is due to fraudulent or negligent conduct of any of our employees or agents**

We are liable for loss caused by the fraudulent or negligent conduct of any of our employees or agents, or the employees or agents of any person (including merchants) involved in the Electronic Funds Transfer network.

## Specific terms & conditions (cont.)

### Other circumstances where we are liable

We are also liable for Unauthorised Transactions that you bring to our attention under any of the following circumstances:

- you or any other User did not contribute to the loss
- your loss arose from any component of an Access Method being forged, faulty, expired or cancelled
- your loss arose from transactions requiring the use of any Card or Code forming part of the Access Method which occurred before you or any Cardholder received the Card or Code
- your loss is caused by the same transaction being incorrectly debited more than once to the Loan Account
- you and the Cardholder were not aware of and could not have known about the transaction.

If your claim for an Unauthorised Transaction arises because of a lost or stolen Card, we may be able to chargeback the transaction for you. You must tell us within 30 days of the statement date so that we do not lose our chargeback rights.

### E.1.17 When you are liable for unauthorised use, loss or theft of your Card, PIN or Password

#### If you contributed to loss due to Unauthorised Transactions

You are liable for any loss from Unauthorised Transactions if we can prove on the balance of probability that a Cardholder contributed to the loss.

This applies if the loss results from any of the following:

- fraud on the part of a Cardholder
- any Cardholder voluntarily disclosing their Code to anyone, including a family member or friend
- the User indicating one or more of the Codes on the outside of a Card used for access
- the User keeping a record of one or more of the Codes (without making any reasonable attempt to protect the security of the Codes) on the one article, or on several articles, carried with the Card, or liable to loss or theft simultaneously with the Card
- where the Access Method comprises a Code or Codes without a Card, the User keeping a record of all the Codes (without making any reasonable attempt to protect the security of the Codes) on the one article, or on several articles so that they are liable to loss or theft simultaneously
- the User selecting a Code which represents their date of birth or a recognisable part of their name
- the Cardholder acting with extreme carelessness in failing to protect the security of all their Codes

- a Cardholder not telling us when they reasonably should have that a Card was lost or stolen
- a Cardholder unreasonably delaying in notifying us after becoming aware of the misuse, loss or theft of a Card forming part of the Access Method, or that the security of all the Codes forming part of the Access Method had been breached.

### Extent of your liability

Where any of these circumstances apply, you are liable for all losses that occur before we are notified.

You are not liable for the portion of the losses incurred in the following circumstances:

- on any one day which exceeds the applicable daily transaction limits
- on any account which exceeds the available limit of that account immediately before the transaction which resulted in the loss
- on any account which we had not agreed with you a Cardholder could access using the Access Method.

Where none of the above circumstances apply, and a Code was required to perform the transaction, you will be liable for the least of:

- \$150
- the available limit of the relevant account
- the actual loss at the time we were notified (where relevant) that the Card had been misused, lost or stolen or that the security of the Codes had been breached (excluding that portion of the losses incurred on any day which exceed any applicable daily transaction limit).

### E.1.18 We may cancel or suspend a Card

We may cancel or suspend the use of a Card at any time without giving you notice (e.g. if we consider it necessary to prevent fraud or other losses to you or us, or we terminate your Contract).

If we cancel a Card:

- you must return the Card to us immediately
- you must continue paying all required amounts due as shown on each statement of the Card Account received after cancellation
- you must cancel any periodical payment authority linked to the Card Account.

We will write to you when we have cancelled credit on the Card. If we cancel your Card you can only obtain credit if we issue you with a new Card.

### E.1.19 Terminating the Contract

You or the Bank may terminate the Contract in writing at any time.

## How to terminate your Contract

To terminate your Contract, you must do three things:

- write to us that you wish to terminate the Contract
- return the Cards we issued on the Card Account
- pay the outstanding balance of the Card Account.

## What happens if the Contract is terminated?

If either you or us terminate the Contract:

- you continue to be responsible for any liabilities incurred on the Card Account before the date of termination
- you must cancel any periodical payment authority linked to the Card Account
- we will continue to charge the Card Account interest, fees and charges, any enforcement expenses we incur and government charges until the outstanding balance is paid in full.

### E.1.20 Special conditions

Your Contract is also subject to the conditions (if any) stated in the Offer Document.

The conditions stated in the Offer Document prevail over these Conditions of Use to the extent of any inconsistency between them.

### E.1.21 Customer Information and Privacy

For assistance with your Cards, please call **13 1576**, 24 hours a day, 7 days a week.

Please note that outside office hours of 8am – 8pm, Monday to Friday, this service is primarily aimed at activations and reporting lost and stolen Cards.

## F. MEANINGS OF WORDS

A reference in this document to:

- the singular includes the plural and vice versa
- a document includes any variation or replacement of it
- law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them)
- any thing includes the whole and each part of it.

### Acceptable Third Party

A third party acceptable to us (in our reasonable opinion) who is not Guarantor (unless they have given an unlimited guarantee) and who is not a trustee.

### Acceptance Document

Prepared by us and sets out the particulars or indicative particulars of a Facility, or variation of a Facility. It includes an Offer Document and other documents attached to the Acceptance Document.

## Access Method

A method we make available to the User in order for the User to give us instructions. We rely on the use of the Access Method as our mandate to act on such instructions.

A reference to an Access Method includes a reference to each of the individual components that are part of the Access Method (including Devices, Identifiers and Codes or a combination of these). It does not include a method where the comparison of the appearance of a Cardholder's manual signature is the principal means of authenticating the authority to give the instruction.

Transactions on a Card Account can still be effected using a Cardholder's Card and manual signature.

## Account Confirmation Document

The document we prepare supplementing the Letter of Offer or Acceptance document, setting out the date of first and subsequent drawdown or funding, details of Repayments, interest charging frequency, fixed rate details (usually not available in the Letter of Offer) which is issued after funding of the facility.

## Accounts

You and your related parties' profit and loss accounts and balance sheets on an individual and consolidated basis for a particular period, together with any statements, reports and notes attached to or intended to be read with the profit and loss accounts or the balance sheets or both (including, without limitation any directors' statements and reports and any auditor's reports).

## Accountholder

The person, company, firm or partnership identified as the 'Accountholder' in the Offer Document.

## Administration Fee

The fee you must pay us to cover our administrative costs relating to the Pre-payment of a BetterBusiness Loan – Fixed Rate, SuperGear Loan – Fixed Rate, Commonwealth Portfolio Loan – Fixed Rate or a Fixed Rate Bill Facility. The amount of the fee is set out in our Fees and Charges Schedule.

## Aggregate Facility Limit (AFL)

The limit on the Borrower's Credit Exposure as set out in the Offer Document.

## AgriBusiness Line of Credit

The AgriBusiness Line of Credit Facility made available under the Contract. An interest-only loan Facility with no fixed term issued for business purposes.



### **Amount Owing**

In respect of Export Documentary Credit and Trade Finance Loans, at any time all monies and liabilities, in any currency, whether alone or with another person, which now or at anytime may become due or owing, or may be accruing to or for our account by you.

### **Approved Limit**

The total amount of credit specified in the Offer Document which we are prepared to advance to the borrowers.

### **ASIC**

Australian Securities and Investments Commission.

### **Authorised Officer**

This includes:

- in our case, each of our officers within the meaning given in the Corporations Act 2001 (Cth), for example each of our officers whose position title is or includes the word 'manager' or the word 'executive'
- in your case, if you are a body corporate, firm or other person (other than an individual), an individual nominated by you under the Contract or any individual who is your officer within the meaning given in the Corporations Act 2001 (Cth).

### **Authorised Representatives**

The representatives of the borrower or a Third Party Drawer (as the context requires) identified in an authority to us, including a person referred to as an "authorised signatory" in one of our standard forms of authority for business accounts or referred to as an "Authoriser" in one of our standard forms of authority for operation on Facilities using CommBiz.

### **Authorised Signatory**

Any of our employees.

### **Authorised Transaction**

Any transaction carried out by a Cardholder or with your or a Cardholder's consent unless, before the transaction, either you or the Cardholder told us to cancel that Cardholder's Access Method and the Card is destroyed.

### **Average Debtor Collections**

The number of days calculated by: closing debtors, multiplied by the number of days in a Reporting Period, divided by total sales in the Reporting Period.

### **Average Stock Turnover**

The number of days calculated by: closing stock, multiplied by the number of days in a Reporting Period, divided by the total stock purchases in the Reporting Period.

### **Back-to-Back Credit**

A Documentary Credit issued by us in connection with a Master Credit.

### **BBSY**

BBSY means BBSY (Bid) Rate

### **BBSY (Bid) Rate:**

- (a) the bank bill swap rate (expressed as a percentage per annum to four decimal places) which is the bid rate shown at approximately 10.10 am (Sydney time) on the page "BBSY" of the Reuters Monitor System on the first day of that Interest Period for that Interest Period or, if such rate is not available for any reason
- (b) the arithmetic mean, (rounded upwards, if necessary, to four decimal places) of the rates quoted to us by the Reference Banks at or about 10.30 am (Sydney time) on the first day of that Interest Period (disregarding the highest and lowest rates quoted) for the purchase of a Bill accepted by us or Reference Banks having a face amount equal to the amount of the Advance and a tenor equal or approximately equal to that Interest Period (or, if that Interest Period is subject to adjustment, for a Term equal or approximately equal to the duration of that Interest Period prior to such adjustment), or, if fewer than 2 Reference Banks are willing to provide quotes
- (c) the rate reasonably determined by us to be our cost of funds having regard to prevailing market conditions.

For this definition 'Reference Banks' means National Australia Bank Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited or such other banks or financial institutions as the Borrower and we may from time to time agree.

### **Beneficiary**

In respect of a Back-to-Back Credit, an Export Documentary Credit or an Import Documentary Credit, a beneficiary under a Documentary Credit or a Payment Instrument.

### **BetterBusiness Loan**

The loan under that name made available under the Contract or the balance of that loan at any time remaining unpaid.

### **BetterBusiness Loan – Fixed Rate**

The BetterBusiness Loan made available under the Contract while it is being conducted at a fixed Interest rate.

### **BetterBusiness Loan – Fixed Rate Residentially Secured**

The BetterBusiness Loan made available in that name under the Contract while it is being conducted at the residentially secured fixed Interest rate.

### **BetterBusiness Loan – Variable Rate**

The BetterBusiness Loan made available under the Contract while it is being conducted at a variable Interest rate.

### **Bill**

A bill of exchange (other than a cheque) for the purposes of the in Bills of Exchange Act 1909 including, in relation to Part D (Trade Finance and Contingent Liabilities), a draft or a Foreign Bill.

### **Bill Avalisation/Banker's Acceptance/ Countersigning**

Endorsement, acceptance or countersigning of an accepted Bill by us which guarantees payment of that Bill at maturity.

### **Bill Facility**

The Facility made available under the Contract and by which the borrower may raise money by having Bills discounted.

### **Bill Rate**

The rate of discount, expressed as a percentage yield to maturity per annum, at which on the day we are prepared to purchase Bills under similar facilities which apply the Bill Rate, for similar amounts and terms as those nominated by the Borrower, with reference to the bank bill swap rate and prevailing market conditions.

### **Borrower**

The Person named as the borrower in the Offer Document. If there is more than one, 'borrower' means any combination of one or more of them and for each combination, means each of them separately and every two or more of them jointly.

### **Break Costs**

In relation to a Contract, means any costs or losses associated with:

- liquidating or redeploying deposits or other amounts from third parties arranged or acquired for the purpose of funding the Contract
- pre-paying or terminating any facilities entered into to fund the Contract. This may include the difference between the return we would have received under the Contract if it had not been terminated early, and the return we receive by re-investing the principal amount we recover on early termination.

In relation to a Market Rate Loan, means the mark-to-market value of an IRRM Agreement at a Termination Date calculated by us in accordance with clause B.5.12.

### **Business Asset Ratio**

The ratio of:

- the sum of each Group member's Qualifying Current Assets, cash and short term deposits/ investments to
- the sum of each Group member's Creditors.

### **Business Day**

A day that is not a Saturday or Sunday, or a public holiday, special holiday or bank holiday in the place in which any relevant act is to be done or may be done or, in relation to any date for payment or purchase of a currency other than AUD, in the principal financial centre of the country of that currency.

### **Business Line of Credit**

The Business Line of Credit Facility made available under the Contract. An interest-only loan Facility with no fixed term issued for business purposes.

### **Capital Equity Facility**

The Capital Equity Facility made available under the Contract. An interest-only loan Facility with no fixed term issued for business purposes. New Capital Equity facilities are not available.

### **Card**

The MasterCard Card we issue on the Card Account to a Cardholder.

### **Card Account**

For Business Credit Card Accounts, the account in your name which we set up to record transactions Cardholders make.

For Corporate Card Accounts, the account in a Cardholder's name which we set up to record transactions the Cardholder makes.

### **Card Scheme**

The MasterCard International Incorporated Card Scheme.

### **Cardholder**

A person to whom a Card is issued at your request and includes anyone authorised by a Cardholder to use a Card or Code.

### **CBA Bill Rate**

The rate of discount, expressed as a percentage yield to maturity per annum, at which on the day we are prepared to purchase Bills under similar facilities which apply the CBA Bill Rate, for similar amounts and terms as those nominated by the Borrower, with reference to the bank bill swap rate and prevailing market conditions.

### **CBA Fixed Bill Rate**

The rate of discount, expressed as a percentage yield to maturity per annum, agreed between your Agent and us which is fixed to apply for the Fixed Rate Period.

### **CBA Market Rate**

The interest rate reasonably determined by us, with reference to the bank bill swap rate and prevailing market conditions, on a Reset Date for all similar Loan Accounts of similar amounts and terms as those nominated by the Borrower.

### **Change of Law**

The introduction of, or a change in, any law or regulation or any prudential standard, order, directive, requirement or guideline of the Australian Prudential Regulation Authority, the Reserve Bank of Australia or any other governmental, prudential, supervisory or other authority or a change in its interpretation or its compliance or method of compliance by us.

If it does not have the force of law, it must be one with which responsible banks would comply. Without limitation, it includes any of those circumstances with respect to:

- capital adequacy
- equity
- liabilities
- liquidity
- any form of reserve or deposit requirement
- tax (including GST) on the supply of financial accommodation to you or by anyone to us to fund or maintain the Facility.

### **Cleared Funds**

Immediately available funds.

### **Code**

Information (for example, a PIN or Password) which:

- is known to a User and is intended to be known only to the User or only to the User and us
- we require the User to keep secret, and which
- the User must provide (in any manner which we approve) to or through a Card or Electronic Equipment in order to access a Card Account.

### **Collection**

The handling by us, in accordance with instructions received, of Documents in order to obtain payment against acceptance, to deliver Documents against payment and/or against acceptance, or to deliver Documents on other Terms and Conditions.

### **Common Maturity Pool Date**

A date we set when the pool constituted by aggregating Fixed Rate Facilities or Bill Facilities is due for repayment in full. This is a date within one calendar month on either side of the maturity date set out in the Offer Document.

### **Common Rollover Date**

The date we set for the rollover of Bills when the pool constituted by the aggregating Bills matures. It is a date within the Common Rollover Date Range.

### **Common Rollover Date Range**

The range of dates we determine by reference to the Bill term selected with which a Bill may be set to mature.

### **Compliance Certificate**

The certificate, in the form attached to the Acceptance Document and referred to as the 'Compliance Certificate' that you may be required to give us.

### **Conditions After Funding**

Any conditions, covenants or undertakings that the borrower must observe after funding of the Facility that are set out in the section of the Offer Document 'Conditions After Funding'.

### **Consolidated Account**

The account we set up in your name to which we debit or credit amounts payable by or to you in respect of Card Accounts.

### **Contingent Liability Facility**

The Facility made available under the Contract under which we, at your request from time to time, issue or make available bank guarantees or other contingent liabilities up to a limit.

### **Contract**

The Contract between the parties which consists of the Offer Document the borrower signs and any Account Confirmation Document or other documents referred to in the Letter of Offer and these Terms and Conditions.

### **Control**

The power to directly or indirectly govern the financial and operating policies of an Entity to obtain benefits from its activities, as defined in Accounting Standard AASB 1024: Consolidated Accounts (or, if applicable, Australian Accounting Standard AAS 24: Consolidated Financial Reports).

### **Correspondent Bank**

Any bank (including any branch of ours) which provides any banking or other services in connection with a Trade Product or Service at our request.

### **Costs**

Includes charges and expenses, and costs, charges and expenses payable to or in connection with legal and other advisers on a full indemnity basis.

## **Credit Exposure (CE)**

The amount of all Facilities we are willing to make available to you at a particular time during the Term of the Facilities. The Acceptance Document sets out the CE at the date we prepared the Acceptance Document.

## **Credit Funds**

Any money owing, payable, to become owing, to become payable by us to you or any Grantor, except in the case of SuperGear Loans where it means any moneys owing, payable, to become owing, to become payable by us to the Custodian.

## **Creditors**

The aggregate value of Trade Creditors and Sundry Creditors/Accruals.

## **Cross Guarantee**

A guarantee or other instrument in connection with the granting by the Australian Securities and Investments Commission of an order under the Corporations Act giving relief to a corporation's directors from the law's requirements as to accounts and reports.

## **Current Assets**

The sum of each Group Member's total Current Assets less the amount of any loans, which are due and payable within twelve months, by any Group Member to beneficiaries or to its shareholders, directors or Related Parties.

## **Current Liabilities**

The sum of each Group Member's total Current Liabilities less the sum of the amount of any loans, which are due and payable within twelve months, to any Group Member from beneficiaries or from its shareholders, directors or Related Parties.

## **Current Ratio**

Ratio of Current Assets to Current Liabilities.

## **Custodian**

Premium Custody Services Pty Ltd, or such other company acceptable to us, which holds legal title to the security property for the Term of the Loan in accordance with the SuperGear custodial deed.

## **Debt Service Coverage Ratio**

The ratio of:

- Earning Before Interest, Tax, Depreciation and Amortisation (EBITDA)
- plus Non Recurring Expenses
- minus Non Recurring Income.

to

- principal and Interest Expense

## **Default**

You are 'in default' if you fail to meet any of the terms and conditions of the Contract.

## **Default Interest**

The interest you must pay us on any amounts due and remaining unpaid under a Contract.

## **Default Rate**

The rate at which we charge Default Interest.

## **Device**

A physical Device (for example, a Card) used with Electronic Equipment to access a Card Account.

## **Disclosure Date**

The date we use to calculate the particulars of the Loan stated in the Offer Document, or the date we send a Letter of Variation.

## **Documentary Credit**

An arrangement, however named or described, that is irrevocable and constitutes a definite undertaking by a person to honour a complying presentation by a beneficiary of such an arrangement in accordance with the terms and conditions of such an arrangement.

## **Documents**

All documents relating to the Goods including without limitation all drafts, bills of exchange, documentary credits, documents of title, transport documents, insurance policies, invoices, certificates, reports, receipts or warrants.

## **Donations and Grants**

The sum of all gifts or other contributions to charity, community or sporting bodies or purposes.

## **Drawing or Drawdown**

A utilisation of a Facility.

## **Early Repayment Adjustment**

The adjustment we may make when you pre-pay the Loan Account in full or make a permitted partial Pre-payment of a fixed Interest rate Loan or of a Market Rate Loan Account.

## **Earnings Before Interest**

The sum for the Reporting Period of each Group Member's Net Profit plus Interest Expenses.

## **Earnings Before Interest And Tax (EBIT)**

The sum for the Reporting Period of each Group Member's Net Profit Before Tax plus Interest Expenses.



### **Earnings Before Interest, Tax, Depreciation And Amortisation (EBITDA)**

The sum of each Group Member's Net Profit Before Tax for a Reporting Period from each Group Member's business operations plus the sum of each Group Member's

- Interest Expense and
- depreciation expense and amortisation

for the Reporting Period.

### **Electronic Equipment**

Includes an electronic terminal (for example, an EFTPOS terminal or ATM), computer, television and telephone.

### **Enforcement Proceedings**

- proceedings in a court to recover a payment due under the Contract or a Security
- taking possession of the Secured Property or taking any other action to enforce the Security, or
- both.

### **Entity**

Any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person).

### **Environmental Law**

A law regulating or otherwise relating to the environment, including but not limited to:

- any law relating to land use or planning, pollution of air or water, soil or ground water contamination, chemicals, waste, use of dangerous goods, or to any other aspect of protection of the environment or persons or properties, and
- any statute now or in the future in force relating to heritage places, clearing land within the boundaries of catchment areas and water reserves and the protection and management of natural vegetation.

### **Export Documentary Credit**

A Documentary Credit in favour of you issued by either a domestic person or an overseas person which we amend, advise, negotiate, discount, confirm, assign or transfer under these Terms for or at the request of you.

**Export Documentary Credit Rights** means all of your right title and interest in:

- any Export Documentary Credit;
- the proceeds of an Export Documentary Credit;
- any agreement between you and a third party relating to the Goods;
- the Goods; and
- any Documents relating to any of (a)-(d) above.

### **Export Trade Advance**

A loan made by us under these Terms and an Offer Document in respect of domestic or export sales.

### **Facility**

The financial accommodation which we make available to you under the Contract and the particulars of which are in the Offer Document and (if applicable) a Letter of Confirmation.

### **Facility Amount Or Facility Limit**

The limit or amount set out in the Offer Document to which (as the case may be) the Overdraft, Facility, Business Line of Credit, AgriBusiness Line of Credit or Bill Facility can be drawn.

### **Fees and Charges Schedule**

The Fees and Charges Schedule accompanying the Letter of Offer or Acceptance Document and any variations or additions.

### **Financial Products**

- a share or unit in the capital of a corporation
- an instalment receipt
- a unit in any trust
- any debenture, debenture stock, bonds, notes, convertible notes, units, warrants or other Financial Products created, issued or granted by any corporation, government, unincorporated body or other person
- options to purchase, subscribe for or acquire any of the Financial Products mentioned above
- such other kind of security as we may from time to time agree to accept.

### **Fixed Bill Rate**

The Bill Rate which is fixed to apply for a Fixed Rate Period.

### **Fixed Rate Bill Facility**

The Bill Facility made available under the Contract while it is being conducted at a Bill Rate or CBA Bill Rate that is fixed.

### **Fixed Rate Facility**

A Facility conducted at a fixed Interest rate or Fixed Bill Rate, including a BetterBusiness Loan – Fixed Rate, or a Fixed Rate Bill Facility.

### **Fixed Rate Period**

Any period, ending on a fixed rate maturity date set out in the Letter of Offer, Letter of Confirmation or Sub-Account Confirmation Letter in which the Interest rate on a BetterBusiness Loan – Fixed Rate or SuperGear Loan or the Bill Rate or CBA Bill Rate on a Fixed Rate Bill Facility is fixed.

## Foreign Bill

The Bill delivered to us (as one of the Documents) in connection with the export of Goods by you, where the importer is named on the Bill as the drawee.

## Foreign Bills Negotiated

A Facility that provides you as the exporter with post-shipment finance by providing proceeds of an Export Documentary Collection before receipt of the buyer's payments for the goods shipped.

## Fund

The regulated superannuation fund of which you, as borrower of a SuperGear Loan, are the trustee and in that capacity enter into the Contract.

## Funding Date

The date (or if the Loan is funded by progressive loan drawings, the first date) on which we debit any amount to a Loan Account other than for the payment of a credit fee or charge.

## Gaming Machine Commissions

In Victoria, the portion of profits from gaming machines distributed by the Victorian Casino and Gaming Authority to approved operators.

## Goods

The goods, product or service or any combination of them to which the Documents and the Trade Product or Services relate.

## Grantor

A person who enters into the security.

## Gross Margin for Bar & Bottle Trade

The ratio of:

- Total Revenue bar and bottle less cost of sales (bar and bottle)

to

- Total Revenue (bar and bottle),

where:

- cost of sales (bar and bottle) is to exclude such items as wages, poker machine tax or liquor licence fees where shown in the accounts under bar and bottle trade.

## Group

You and each party set out in the Offer Document or Acceptance Document collectively.

## Group Member

You and each party set out in the Offer Document or Acceptance Document individually.

## GST

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

## Guarantee

A guarantee given to secure your obligations under a Contract.

## Guarantee Limit

The total amount we may recover from time to time under a Guarantee in respect of all Guaranteed Contracts secured by that Guarantee.

## Guaranteed Contract

Each Contract for which a Guarantor provides a Guarantee.

## Guarantor

The person or persons named as Guarantor in an Offer Document. It includes the Guarantor's executors, administrators and assigns.

## Identifier

Information:

- the content of which is known to the User but not only to the User and which the User is not required to keep secret, and
- which the User must provide (in any manner) to or through a Card or Electronic Equipment in order to access a Card Account.

## Import Documentary Credit

A Documentary Credit issued by us for you or at your request, in favour of either a domestic person or an overseas person.

## Import Trade Advance

A loan made by us under these Terms and Conditions and an Offer Document in respect of domestic or import purchases.

## Including, or for example

When introducing an example, does not limit the meaning of the words in the example or exclude other examples of a similar kind.

## Index Rate

The applicable Index Rate, reference rate or other Interest rate published by us.

## Insured Export Finance

A short term Export Trade Advance against invoices for export of Goods where you have obtained credit insurance cover for any non-payment;

## Insolvent and insolvency

A person is insolvent if:

- in the case of a natural person, the person is an insolvent under administration within the meaning of the Corporations Act 2001 (Cth)
- in the case of a corporation, the corporation is an externally-administered corporation within the meaning of the Corporations Act 2001 (Cth).

### **Interest Coverage Ratio**

The ratio of the sum of Net Profit Before Tax and Interest Expense for a Reporting Period to Interest Expense for the Reporting Period.

### **Interest Expense**

The aggregate amount of all interest paid or accrued for the sum of all money borrowed or raised by or for any financial accommodation granted to any Group Member.

This includes, but is not limited to:

- any fees and charges with respect to any guarantee, indemnity or letter of credit or under any bill of exchange, promissory note or any other acceptance or discounting arrangement and
- any finance charges paid or payable under any hire purchase agreement or Lease agreement for which a Group Member is actually or contingently liable.

### **Interest in Advance Commencement Date**

The first day of the period in which interest is payable in advance, which also may be the Funding Date.

### **Interest Off-Set Account**

The account in your name identified in the Offer Document as the Interest Off-Set Account and any replacement or additional account agreed to by you and us.

### **Interest Rate**

A per annum rate of interest, charged under the Contract. We will tell you the rate on request.

### **Interest Rate Risk Management**

A hedge product such as interest rate swap, interest rate option which includes cap, floor and collar transactions, or any other similar products which limits exposure to a change in liability due to movements in interest rate.

### **IRRM Agreement**

Market Rate Loan Interest Rate Risk Management Agreement between you and us under which the interest rate of a Loan Account is varied.

### **Issuing Bank**

The bank which issues the relevant Documentary Credit.

### **Item**

An item of the Offer Document.

### **Lending Ratio**

The percentage of the Market Value of a particular Financial Product that we are prepared to lend against.

### **Lending Value**

The amount we are prepared to lend against a particular Financial Product calculated by multiplying its Market Value by its Lending Ratio.

### **Letter of Guarantee**

Any guarantee, indemnity, performance bond, bid/tender bond, advance payment guarantee or bond, counter, financial, direct pay or commercial guarantee (whether standby or demand), or any legally binding letter of comfort or suretyship issued in connection with a Trade Product or Service.

### **Letter of Confirmation**

The document, including an Offer Document, we prepare supplementing the Letter of Offer or Acceptance Document. It sets out the date of first and any subsequent drawdown or funding, first instalment due date, frequency of instalments, fixed rate maturity date and/or Fixed Rate Period or term, and Interest rate not completed in the Letter.

### **Letter of Offer**

The Offer Document we prepare setting out the particulars or indicative particulars of a Facility, or variation of a Facility (and any Offer Document replacing an earlier Acceptance Document). It includes any other documents attached to the Offer Document.

### **Letter of Variation**

Any Letter of Variation varying the Contract.

### **Limit**

The limit or amount set out in the Letter of Offer to which the Facility can be drawn.

### **Liquidity Ratio**

The ratio of:

- the sum of Current Assets and the amount of the financial accommodation we have made available to you, less the amount outstanding actually or contingently under that accommodation

to

- Current Liabilities

### **Loan**

Any one of the Overdraft, Capital Equity Facility, Business Line of Credit, AgriBusiness Line of Credit, BetterBusiness Loan – Variable Rate, BetterBusiness Loan – Fixed Rate, SuperGear Loan, Commonwealth Portfolio Loan, Trade Advance Facility or Insured Export Finance Facility we make available under the Contract.

### **Loan Account**

An account we establish in your name for recording all transactions in connection with a Contract and from which we debit a Loan, or any part of a Loan.

### **Loan Amount**

The Loan Amount as set out in the Offer Document.

### **Loan Balance**

At any time, the balance of the Loan Account.

### **Loan portability**

A product feature that allows you to vary the security property without repaying the Loan.

### **Long Term Fixed Loan Sub-Account**

A sub-account where the fixed Interest rate period is greater than five years.

### **Management Accounts**

All or some (at our option) of the following:

- balance sheet and profit and loss statement for a Reporting Period
- any of the records we notify you in writing that we require for any calendar month

### **Market Rate Loan**

The Market Rate Loan which we make available under the Contract which can consist of multiple Loan Accounts under one Limit.

### **Market Value**

For Financial Products which are listed on the stock market, the last sale price.

For unlisted Financial Products, the redemption price for the Financial Products and, in the absence of a redemption price, whatever value we decide.

For Mortgaged Real Property, the lesser of the Market Value that we ascribe (in our absolute discretion) or the amount which you (or the mortgagor if you are not the mortgagor) have agreed will be secured by the Real Property Mortgage.

### **Master Credit**

In connection with a Back-to-Back Credit, a Documentary Credit issued in your favour in support of an Import Documentary Credit to be issued by us.

### **Material Adverse Effect**

In our reasonable opinion, a material adverse effect on:

- your ability to perform your obligations under the Contract or the Security Interest; or
- the value of, or the amount that may be recovered on the sale of, the Security Property; or
- our rights and remedies in relation to the Security Property.

### **Maximum Amount**

For a Guaranteed Contract:

- all amounts owing or which may become owing by the borrower (including any amount which we determine to be the future or contingent liability of the borrower) from time to time, and

- compounding interest on any amount we demand of the Guarantor under the guarantee, and
- our reasonable enforcement costs.

### **Maximum Borrowings**

The maximum amount during the previous 12 months of any form of indebtedness, whether actual or contingent, for money borrowed or raised under the Contract or otherwise. This includes indebtedness under or for a guarantee of such indebtedness or a guarantee given to a financier.

Any fully-drawn Loan, a swap, option, hedge, forward, futures or similar transaction.

An acceptance, endorsement or discounting arrangement; a redeemable share or redeemable stock.

The deferred purchase price (for more than 90 days) of an asset or service or an obligation to deliver assets or services paid for in advance by a financier or otherwise relating to a financing transaction.

### **Mistaken Internet Payment or MIP**

A payment made to an account on or after 20 March 2013 because the payer, using a 'Pay Anyone' internet banking facility, has entered or selected an incorrect Branch/State/Branch (BSB) number, account number or other identifier that does not belong to the intended recipient.

### **Mortgaged Real Property**

Any real property or Leasehold property for which a Real Property Mortgage has been executed.

### **National Credit Code**

The National Credit Code in the National Consumer Credit Protection Act 2009, the regulations made under that Act, and that Code and the regulations as amended from time to time.

### **Net Profit Before Tax**

Net Sales/Revenue less the sum of all expenditure (brought to account on an accrual basis) in the normal operating activities of each Group Member's business.

### **Net Sales/Revenue**

The sum of each Group Member's gross sales/revenue, less discounts allowed in the normal operating activities of a Group Member's business.

### **Net Trading Surplus**

The profit available before allowances are made for taxation, interest, depreciation, Leases and hire purchase plus wages/drawings of the borrower's proprietors/directors.

### **Net worth**

The sum of each Group Member's Total Tangible Assets less the sum of each Group Member's Total External Liabilities.



### **Nominated Account**

The transaction bank account which is held with us or otherwise reasonably acceptable to us which is in your name or the name of an Acceptable Third Party from which we are authorised at all times to draw amounts you must pay us under the Contract.

### **Non-Tangible Assets**

Includes but is not limited to goodwill, copyright, patents and licences.

### **Offer Document**

The Letter of Offer, Acceptance Document, Offer Document, Terms Schedule or Letter of Variation, prepared by us setting out the particulars, or indicative particulars, of a Facility, or variation of which (including any similar replacing an earlier document signed by us) records the particulars of the Contract or of the Contract as varied.

### **Overdraft**

The Overdraft Facility made available under the Contract. An interest-only loan Facility with no fixed term issued for business purposes.

### **Parties**

You and us.

### **Password**

The password nominated by a Cardholder, in accordance with our requirements for the nomination of passwords, for use with the Cardholder's Card when the Cardholder makes certain transactions with a password and to obtain information about the Card Account or other services, by telephone.

### **Pay Anyone Internet Banking Facility**

A facility that enables users of internet banking to transfer funds to others and which requires the inputting the Bank/State/Branch(BSB) and account numbers or other identifier of the account of the intended recipient.

### **Payment Amount**

The amount, if any, paid or payable by us under these Terms and Conditions or an Offer Document plus any interest, fees or charges and any cost or expense we suffer or incur in connection with the Contract.

### **Payment Instrument**

Any Standby, Letter of Guarantee and any counter-indemnity in favour of our Correspondent Bank issued by us.

### **Permitted Transactions**

A Card transaction a Cardholder authorises a merchant to make on the Card Account, if certain events occur (for example, when a Cardholder authorises a car rental agency to complete a transaction record to recover damages, parking fines and other fines for motor traffic violations or when a Cardholder authorises a hotel to complete a transaction record when the Cardholder books a room, but the Cardholder does not arrive to occupy the room).

### **Person**

Includes an individual, a firm, a body corporate, an unincorporated association or an authority.

### **PIN**

A personal identification number which we may issue to Cardholders (or which a Cardholder selects) for use with a Card at Electronic Equipment.

### **PPS Law**

The Personal Property Securities Act 2009 (Cth) and any regulations made under that Act (both as amended from time to time).

### **Pre-payment**

A payment that you make before it is due to be made. Includes retirement of bills outstanding under a Bill Facility before the end of the Term of the Bill Facility other than as required under the Contract.

### **Property Development Budget**

A document that details the total development costs, sales income and the cash flow timing of the development costs and sales income to determine the feasibility of and funding requirement for the project.

Total development costs are on a GST-exclusive basis and include acquisition costs, design/council costs, building/construction costs, holding costs, fixed selling costs, interest capitalisation and construction/project contingency. Sales income includes the gross realisations of the project less allowance for GST and sales commission.

### **Proscribed Person**

A person who appears to us either to be:

- a proscribed person or Entity under the Charter of the United Nations Act 1945 (Cth)
- in breach of the laws of any jurisdiction relating to money-laundering or counter-terrorism
- a person with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction
- acting on behalf of, or for the benefit of, a person above.

## **Qualifying Current Assets (QCA)**

The aggregate of:

- accounts receivable which are of less than 91 days standing
- finished goods, work in progress and raw materials, excluding goods declared by us, in writing, or by the Group Member who owns the goods to be obsolete, and goods which are subject to any claim by a supplier on the Group Member, and

## **Quick Asset Ratio**

The ratio of Current Assets less Total Inventory to Current Liabilities.

## **Real Property Mortgage**

Any mortgage or charge over land (including Leasehold land) which secures the payment of money or performance of obligations due to us under this Contract.

## **Related Party**

Any Entity that, at any time during a Reporting Period:

- has Control or significant influence over you
- is subject to Control or significant influence by you
- is subject to the Control of the Entity which has Control over you
- is subject to the Control of the same Entity which has a significant influence on you
- is subject to significant influence by the same Entity that has Control over you.

For the purposes of this definition:

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

## **Repayment redraw Facility**

The Facility under which we may again make available to your special repayments made to the BetterBusiness Loan – Variable Rate Loan Account or SuperGear – Variable Rate Loan Account.

## **Replacement Bill**

The Bill which replaces another Bill when that Bill matures.

## **Reporting period**

Any period of time that we notify you in writing to be your reporting period.

## **Requisite period**

The period between the 16th day of the calendar month immediately before the end of a Fixed Rate Period and the end of that calendar month.

## **Reset confirmation letter**

Our letter confirming the next Reset Date or other variation to a sub-account.

## **Reset Date**

The date specified in a Sub-Account Confirmation Letter, Account Confirmation document or Reset Confirmation Letter (being the last day of the Reset Period) unless otherwise specified in an IRRM Agreement. If it falls on a weekend or public holiday, the Reset Date will be deemed to be the next Business Day after the stated date unless that day falls in the next calendar month, in which case the Reset Date will be deemed to be the preceding Business Day.

## **Reset Period**

The period between Reset Dates.

## **Rollover date**

The date on which a Bill matures.

## **Security**

A Real Property Mortgage or any other Security Interest for your obligations under a Contract, or for a Guarantor's obligations under a guarantee.

## **Security Interest**

A mortgage, charge or other encumbrance in relation to real property or an interest in relation to goods or other personal property that, in substance, secures payment or performance of an obligation under a contract or a guarantee and includes a charge, consignment, pledge, transfer of title or assignment.

## **Security Property**

The property mortgaged to us by the Security, or which is otherwise subject to a Security Interest, for the purpose of securing the repayment of all moneys owing or to become payable to us under the Contract.

## **Security Provider**

A Person who provides a Security at any time in connection with a Contract or a Guarantee.

## **Shortfall**

The difference between the face value amount of a Bill maturing on the Rollover Date and the proceeds of discount of the Replacement Bill for the maturing bill.

## **Specific Conditions of Use**

The section of the product-specific information for a Facility headed 'Specific Conditions of Use', within the Letter of Offer or Schedule, setting out some conditions of the Facility (in addition to those set out in these Terms and Conditions).

## **Standby**

A standby letter of credit including any performance, financial and direct pay standby letters of credit.

### **Statement Period**

Each period for which we draw up a statement of the Card Account or would have drawn up a statement if:

- there had not been a breach of these terms and conditions, or
- there had been a transaction (other than us writing off an amount owed to us) on the Card Account since the date we last drew up a statement.

### **Sundry Creditor/Accrual**

Amounts which are due and payable within the next 12 months by a Group Member to any third party, other than trade creditors or amounts in respect of loans to its shareholders, directors or related parties or any two or more of them.

### **SuperGear Loan**

The Loan under that name or under the name BetterBusiness Loan (SuperGear) made available under the Contract or the balance of the Loan at any time remaining unpaid.

### **Term**

The term of the Facility or Loan set out in the Offer Document for that Contract during which payments are to be made.

### **Term of Facility (BetterBusiness Loan or Bill Facility)**

The period of time which commences on the date the Loan is funded or the Bill Facility is implemented and expires or matures on the date set out in the Letter of Offer or Acceptance Document.

### **Term or Term of Facility (Overdraft, Business Line of Credit, AgriBusiness Line of Credit, or Capital Equity)**

The period of time which starts on the date the Limit is implemented and expires when the Facility is cancelled and repaid.

### **Terms and conditions**

The terms and conditions set out in this document.

### **Terms Schedule**

The latest Schedule (if any) prepared by us setting out the particulars or indicative particulars of a Facility and includes any Terms Schedule replacing an earlier Terms Schedule.

### **Third Party Drawer**

The person (if any), other than you, on whom bills are drawn under the Bill Facility.

### **Total amount of interest**

Under a Contract means the total amount of interest shown in the Offer Document.

### **Total Assets**

A Group Member's total current and non-Current Assets.

### **Total External Liabilities**

Total Liabilities (current and non-Current Liabilities) less any loans to a Group Member from beneficiaries or from its shareholders, directors or Related Parties.

This does not include those loans to a Group Member from beneficiaries or from its shareholders, directors or Related Parties that are subordinated under a deed of subordination in favour of us in respect of the Facility.

### **Total Interest Bearing Debt**

The aggregate amount of money borrowed or raised by each of the Group Members or financial accommodation made available to any Group Member which incurs Interest Expense.

This excludes any loans to a Group Member from beneficiaries or from shareholders, directors or related parties.

### **Total Inventory**

The sum of each Group Member's finished goods, work in progress, and raw materials.

### **Total Liabilities**

The sum of each Group Member's total current and non-Current Liabilities.

### **Total Revenue**

The total of Gaming Machine Commissions or gaming machine net takings plus all other revenue (e.g. bar takings and catering, commissions, interest and rent received and sundry income) but excluding abnormal and extraordinary items.

### **Total Revenue (Bar and Bottle)**

The total of bar sales and revenue from bottle shop sales (if any).

### **Total Tangible Assets**

Total Assets less:

- the sum of each Group Member's Non-Tangible Assets, and
- any loans by a Group Member to beneficiaries or to its shareholders, directors or Related Parties.

### **Total Wages to Total Revenue**

Total wages as a percentage of Total Revenue.

### **Trade Advance**

A trade advance provides short term finance for both domestic and overseas import and export transactions. It is an advance of money for a fixed term at a fixed Interest rate that is set at commencement of the Loan.

### **Trade Finance Loan**

Either an Import Trade Advance or an Export Trade Advance.

**Trade Product or Service**

Any trade related product, service, loan or Facility, including without limitation a product, service, loan or Facility described in section D (Trade Finance and Contingent Liabilities), provided by us to you.

**Transaction**

The transactions contemplated by the Contract.

**User**

You and any Cardholder.

**Value of Qualifying Current Assets (VQCA)**

The sum of each Group Member's Qualifying Current Assets from time to time.

**Variable Market Rate**

BBSY Rate or CBA Market Rate, as applicable.

**We or Us**

Commonwealth Bank of Australia (ABN 48 123 123 124 Australian Credit Licence 234945) and its respective successors and assigns.

**You and your**

Any person who agrees to be bound by the Contract. If there are more than one of you, You means each of them separately and every two or more of them jointly. You includes your executors, administrators and assigns.

**Your Agent**

Your Authorised Representative for the Facilities.



## 2. OTHER INFORMATION

### G. Privacy

In this section:

- 'you' includes individual Borrowers and any person who holds office in an entity which is a Borrower and 'we' includes our agents.
- 'your information' means information about you or your entity (such as name and contact details), your interactions with us (such as transactions) and your credit history (such as amount borrowed, whether you fail to make any repayments on time and information obtained from credit reporting bureaus). It may also include information about you that is publicly available, for example from public registers or made available through social media.

The authorisations given under this section apply to any current or future application for credit by you/your entity, and the ongoing management of any resulting facility.

#### G.1.1. Why we collect your information and what we use it for

We collect your information to identify you in accordance with the Anti-Money Laundering and Counter-Terrorism Financing Act, and if you are giving a mortgage, certain State property laws, e.g. the Real Property Act in NSW, and to assess your application for credit.

We also collect it to administer our customer relationships, for internal processes including risk management and pricing, to meet our obligations in relation to external payment and credit reporting systems, for our own funding arrangements, and (unless you tell us not to) to identify and tell you about products and services that may interest you. If you don't want to receive marketing information you can tell us by calling 13 2221.

If you give us your electronic and telephone details, you agree we may use this to communicate with you electronically, by phone or SMS, including providing updates, reminders and (unless you tell us not to) marketing information.

In some cases, we collect sensitive information for specific purposes. For example, in assessing an application you make for hardship relief, we may collect information about your health.

#### G.1.2. Exchanging information with CRBs and others involved in credit

We exchange your information with credit reporting bodies (CRBs); other credit providers; persons who are involved in arrangements that provide funding to us; and third parties providing fraud detection services in order for us or them to:

- decide whether to accept you/your entity as a borrower or advise as to risks of acceptance,
- manage credit borrowed by you/your entity and collect overdue payments; and
- facilitate or manage funding arrangements.

You authorise us to:

- obtain a consumer credit report from a CRB to assess an application for, or collect overdue payments of, commercial credit for which you or your entity has applied; and
- disclose to CRBs whether you have made repayments on time.

You also authorise CRBs to disclose your information to a trade insurer in order for that insurer to assess the risks relating to providing insurance to us.

The CRBs we use are Equifax - [www.equifax.com.au](http://www.equifax.com.au), Experian - [www.experian.com.au/credit-services](http://www.experian.com.au/credit-services) and Dun & Bradstreet - [www.checkyourcredit.com.au](http://www.checkyourcredit.com.au). See our Privacy Policy for how to access CRB credit information handling policies and information about your rights if you suspect you may be a victim of identity fraud and regarding use by CRBs of your information for marketing purposes.

You have rights to access any credit-related information from us, to request us to correct the information, and to make a complaint to us in relation to the information.

#### G.1.3. Exchanging information with guarantors

You authorise us to give any current or prospective guarantor or security provider any information concerning your/your entity so that they can decide whether to act as guarantor/security provider. This includes information about any facility to be guaranteed (and any facility to be refinanced by it).

#### G.1.4. Other people we may exchange your information with

You authorise us to exchange your information with members of the Group who may use your information for any of the purposes we can.

We may also exchange your information with others outside the Group, for example, your employer (to verify your identity), representatives, franchisor or builder, mortgage insurers, brokers and agents who refer your business to us, our service providers, other financial institutions, debt collectors and debt purchasers and relevant public registers.

Sometimes, it may be necessary to send your information overseas – for example, where we outsource functions overseas (eg. if you use SmartSign we use a US provider), send information to Group members overseas, where we need to complete a particular transaction on your behalf or where this is required by laws and regulations in Australia or in another country. See our Privacy Policy for more information.

### **G.1. 5. Privacy Policy and how to contact us**

Please visit [commbank.com.au](http://commbank.com.au) (follow the Privacy Policy link) to view the most recent copy of our Group privacy policy, You can also obtain a copy from any branch of the Bank. Please read the policy in conjunction with this form. It tells you about:

- other ways and reasons that we and the Group may collect, use or exchange your information;
- how you may access and seek correction of your information; and
- how to complain about a breach of your privacy rights (including credit reporting rights) and our complaint handling procedures.

You can also contact us about privacy issues:

- Email – [customerrelations@cba.com.au](mailto:customerrelations@cba.com.au);
- Phone – 1800 805 605; or
- Mail – Write to the address in our Privacy Policy.

## **H. ADDITIONAL OBLIGATIONS**

The Bank may be subject to laws or regulations in Australia or another country that affect your relationship with the Bank (eg. laws that address taxation). So that we may comply with our obligations under these laws or regulations, we may:

- require you to provide information about you or your product;
- withhold an amount from a payment to you if required to do so, and if we do, we will not reimburse you for the amount withheld;
- take such other action as is reasonably required, including, for example, closing your account; and/or
- be required to report your account details to the relevant tax authority.

## I. WHERE TO GET HELP

I want to...	Who to contact...
Ask general questions relating to Business Accounts	Call <b>13 1998</b> (24 hours a day, 365 days a year)
Activate my KeyCard or credit Card	Call <b>13 2221</b> (24 hours, 7 days a week), or visit your local Commonwealth Bank branch. At any other time call Freecall <b>1800 011 217</b> . If calling from overseas call <b>+61 13 2221</b> .
Request a higher daily electronic banking withdrawal limit	
Obtain the balance on my account	
Report a lost or stolen passbook	
Report a credit Card or KeyCard lost or stolen in Australia	
Request a statement to be sent more frequently	
Request a copy of the Bank's privacy policy	
Advise of a change in personal details	
Report a credit Card or KeyCard lost or stolen when overseas	Call <b>+61 2 9999 3283</b> (24 hour service), or <b>+61 13 2828</b> (8am to 8pm – Sydney time), or notify any financial institution displaying the sign for that brand of Card (e.g. MasterCard sign), or phone the relevant hotline number listed in our <i>Credit Cards Conditions of Use</i> brochure. Calls to both these numbers are at your expense.
Report Unauthorised Transactions on my account	Call <b>13 2221</b> (24 hours, 7 days a week), or visit your local Commonwealth Bank branch, or visit our website: <b>www.commbank.com.au</b>
Obtain current Interest rates and special Interest Rate offers	
Register to use NetBank	Call <b>13 2828</b> (8am to 8pm – Sydney time), or visit NetBank on our website: <b>www.commbank.com.au/netbank</b>
Register to use BPAY View	Call <b>13 2828</b> (8am to 8pm – Sydney time), or register on our website: <b>www.commbank.com.au/netbank</b>
Find out more about BPAY	Call <b>1800 022 966</b> (24 hour service).
Get help with EFTPOS terminals	
Make a complaint to Customer Relations, or contact them to access personal information	Send or fax your letter to: Customer Relations Department, Commonwealth Bank Group, Reply Paid 41, Sydney NSW 2001 (fax: <b>1800 028 542</b> ), or Freecall <b>1800 805 605</b> (unless made from a mobile). You can also email your complaint by completing the e-form on our website: <b>www.commbank.com.au/contactus/comment.asp</b>
Take a complaint to the Ombudsman	Send or fax your letter to Banking & Financial Services Ombudsman, GPO Box 3, Melbourne Victoria 3001 (fax: <b>03 9613 7345</b> ), or call <b>03 9613 7333</b> or <b>1300 780 808</b> , or visit their website: <b>www.fos.org.au</b>
General branch opening hours	Monday to Thursday: 9.30am to 4pm. Friday: 9.30am to 5pm.

## J. CREDIT GUIDE

This credit guide applies if we enter into a credit Contract with you regulated by the National Consumer Credit Protection Act (The Act). The Act regulates credit provided in Australia to individuals for personal, domestic or household purposes and for investment in residential property. The Act does not apply to companies, Norfolk Island borrowers or to borrowers of credit provided wholly or predominantly for investment (other than in residential property) or for business purposes (or for both purposes).

The Commonwealth Bank of Australia, Australian Credit Licence 234945 is the credit provider. You can contact us by contacting your relationship manager or business banker, contacting us at our address on any Offer Document or by calling **13 1998**.

### **We will not make an unsuitable Contract with you**

We will not enter into a Contract, or increase the credit limit of your current Contract, if at the time of our assessment it would be unsuitable for you. A Contract will be unsuitable for you if you will be unable to comply with your financial obligations under the Contract without suffering substantial hardship, or if the Contract does not meet your stated requirements and objectives.

In order to ensure that we do not enter into a Contract that is unsuitable with you, we are required to make reasonable inquiries relating to your financial situation, requirements and objectives, and to take reasonable steps to verify your financial situation.

### **We will provide a copy of our assessment if you ask**

We are required to make an assessment that the credit Contract or increase in credit limit is not unsuitable before we enter into a credit Contract with you or agree to increase your current credit limit.

If you ask us we will give you a copy of the assessment before entering into the credit Contract or increasing your credit limit.

You may also request a copy of the assessment within seven years of the date the Contract is made or your credit limit is increased. If your request is made within two years, we will provide you with the assessment within seven Business Days of your request, otherwise we will provide you with the assessment within 21 Business Days. We will not charge you a fee for providing the assessment.

### **What if you have a complaint?**

In the event of a dispute, you should first discuss the matter with us to see whether we can satisfactorily resolve your concerns. Please contact your relationship manager or the manager of the department that handles the matter and explain the problem.

Our staff will review the situation and, if possible, resolve it immediately. If the matter has not been resolved to your satisfaction, please contact our Customer Relations team:

- Phone our Customer Relations team on **1800 805 605**
- If you're overseas, call **+61 2 9841 7000**
- Complete the online feedback form at **[www.commbank.com.au/contact-us/compliments-complaints](http://www.commbank.com.au/contact-us/compliments-complaints)**
- By facsimile on **1800 028 542**
- Or write to us at:  
**Customer Relations  
Commonwealth Bank Group  
GPO Box 41  
Sydney, NSW, 2001**

If we are unable to resolve the dispute to your satisfaction, you may apply to the Financial Ombudsman Service Limited ABN 67 131 124 448 (FOS). FOS is an impartial, independent and free external dispute resolution scheme to resolve disputes. Before FOS can investigate the matter, you must have first given us the opportunity to review it. The contact details for FOS are:

Financial Ombudsman Service  
GPO Box 3  
Melbourne Victoria 3001  
Tel: 1300 780 808  
Fax: 03 9613 6399  
Website: [www.fos.org.au](http://www.fos.org.au)



## K. INFORMATION STATEMENT

This statement does not apply to companies, Norfolk Island borrowers or to borrowers of credit provided wholly or predominantly for investment (other than in residential property) or business purposes (or for both purposes).

### Things you should know about your proposed credit Contract

The Commonwealth Bank of Australia, Australian Credit Licence 234945 is your credit provider, and in this statement is referred to as 'the Bank'.

References to a 'mortgage' include a mortgage, a charge or a security interest over land, goods or other forms of property.

This statement tells you about some of the rights and obligations of yourself and the Bank. It does not state the terms and conditions of your Contract.

If you have any concerns about your Contract, contact the Bank and, if you still have concerns, the Bank's external dispute resolution scheme, or get legal advice.

### The Contract

#### 1 How can I get details of my proposed credit Contract?

The Bank must give you a pre-contractual statement containing certain information about your Contract. The pre-contractual statement, and this document, must be given to you before:

- your Contract is entered into, or
- you make an offer to enter into the Contract

whichever happens first.

#### 2 How can I get a copy of the final Contract?

If the Contract document is to be signed by you and returned to the Bank, you must be given a copy to keep. Also, the Bank must give you a copy of the final Contract within 14 days after it is made. This rule does not apply if the Bank has previously given you a copy of the Contract document to keep.

If you want another copy of your Contract, write to the Bank and ask for one. The Bank may charge you a fee. The Bank has to give you a copy:

- within 14 days of your written request if the original Contract came into existence 1 year or less before your request, or
- otherwise within 30 days of your written request.

#### 3 Can I terminate the Contract?

Yes. You can terminate the Contract by writing to the Bank so long as:

- you have not obtained any credit under the Contract, or
- a Card or other means of obtaining credit given to you by the Bank has not been used to acquire goods or services for which credit is to be provided under the Contract.

You will still have to pay any fees or charges incurred before you terminated the Contract.

#### 4 Can I pay my credit Contract out early?

Yes. Pay the Bank the amount required to pay out your credit Contract on the day you wish to end your Contract.

#### 5 How can I find out the pay-out figure?

You can write to the Bank at any time and ask for a statement of the pay-out figure as at any date you specify. You can also ask for details of how the amount is made up.

The Bank must give you the statement within seven days after you give your request to the Bank. You may be charged a fee for the statement.

#### 6 Will I pay less interest if I pay out my Contract early?

Yes. The interest you can be charged depends on the actual time money is owing. You may have to pay an early termination charge (if your Contract permits the Bank to charge one) and other fees.

#### 7 Can my Contract be changed by the Bank?

Yes, but only if your Contract says so.

#### 8 Will I be told in advance if the Bank is going to make a change in the Contract?

That depends on the type of change. For example:

- you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- you get 20 days advance written notice for:
  - a change in the way in which interest is calculated, or
  - a change in credit fees and charges, or
  - any other changes by the Bank

except where the change reduces what you have to pay or the change happens automatically under the Contract.

## **9 Is there anything I can do if I think that my Contract is unjust?**

Yes. You should first talk to the Bank. Discuss the matter and see if you can come to some arrangement.

If that is not successful, you may contact the Bank's external dispute resolution scheme. External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. The Bank's external dispute resolution provider is Financial Ombudsman Service Limited which can be contacted at telephone **1300 78 08 08**, **www.fos.org.au** or GPO Box 3, Melbourne VIC 3001.

Alternatively, you can go to court. You may wish to get legal advice, for example from your community legal centre or Legal Aid.

You can also contact ASIC, the regulator, for information on **1300 300 630** or through ASIC's website at **www.asic.gov.au**

## **Insurance**

### **10 Do I have to take out insurance?**

The Bank can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not. If you take out insurance, the Bank cannot insist that you use any particular insurance company.

### **11 Will I get details of my insurance cover?**

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by the Bank. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by the Bank then, within 14 days of that happening, the Bank must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance Contract. If you ask in writing, your insurer must give you a statement containing all the provisions of the Contract.

### **12 If the insurer does not accept my proposal, will I be told?**

Yes, if the insurance was to be financed by the credit Contract. The insurer will inform you if the proposal is rejected.

### **13 In that case, what happens to the premiums?**

The Bank must give you a refund or credit unless the insurance is to be arranged with another insurer.

## **14 What happens if my credit Contract ends before any insurance Contract over mortgaged property?**

You can end the insurance Contract and get a proportionate rebate of any premium from the insurer.

## **Mortgages**

### **15 If my Contract says I have to give a mortgage, what does this mean?**

A mortgage means that you give the Bank certain rights over any property you mortgage. If you default under your Contract, you can lose that property and you might still owe money to the Bank.

### **16 Should I get a copy of my mortgage?**

Yes. It can be part of your credit Contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the Bank has previously given you a copy of the mortgage document to keep.

### **17 Is there anything that I am not allowed to do with the property I have mortgaged?**

The law says you cannot assign or dispose of the property unless you have the Bank's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

### **18 What can I do if I find that I cannot afford my repayments and there is a mortgage over property?**

See the answers to questions 22 and 23.

Otherwise you may:

- if the mortgaged property is goods – give the property back to the Bank, together with a letter saying you want the Bank to sell the property for you
- sell the property, but only if the Bank gives permission first, or
- give the property to someone who may then take over the repayments, but only if the Bank gives permission first.

If the Bank won't give permission, you can contact their external dispute resolution scheme for help.

If you have a Guarantor, talk to the Guarantor who may be able to help you.

You should understand that you may owe money to the Bank even after mortgaged property is sold.

### 19 Can the Bank take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your Contract.

### 20 If the Bank writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have seven days after receiving the Bank's request to tell the Bank. If you do not have the goods you must give the Bank all the information you have so they can be traced.

### 21 When can the Bank or its agent come into a residence to take possession of mortgaged goods?

The Bank can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the National Credit Code.

## General

### 22 What do I do if I cannot make a repayment?

Get in touch with the Bank immediately. Discuss the matter and see if you can come to some arrangement. You can ask the Bank to change your Contract in a number of ways:

- to extend the term of your Contract and reduce payments, or
- to extend the term of your Contract and delay payments for a set time, or
- to delay payments for a set time.

### 23 What if the Bank and I cannot agree on a suitable arrangement?

If the Bank refuses your request to change the repayments, you can ask the Bank to review this decision if you think it is wrong.

If the Bank still refuses your request you can complain to the external dispute resolution scheme that the Bank belongs to. Further details about this scheme are set out below in question 25.

### 24 Can the Bank take action against me?

Yes, if you are in default under your Contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact the Bank's external dispute resolution scheme or ASIC, or get legal advice.

### 25 Do I have any other rights and obligations?

Yes. The law will give you other rights and obligations. You should also READ YOUR CONTRACT carefully.

If you have any complaints about your credit Contract, or want more information, contact the Bank. You must attempt to resolve your complaint with the Bank before contacting the Bank's external dispute resolution scheme. If you have a complaint which remains unresolved after speaking to the Bank you can contact the Bank's external dispute resolution scheme or get legal advice.

External dispute resolution is a free service established to provide you with an independent mechanism to resolve specific complaints. The Bank's external dispute resolution provider is Financial Ombudsman Service Limited and can be contacted on 1300 78 08 08, [www.fos.org.au](http://www.fos.org.au) or GPO BOX 3 Melbourne VIC 3001.

Please keep this information statement. You may want some information from it at a later date.

## 3. MEMORANDUM OF PROVISIONS FOR LAND MORTGAGES

This section contains the provisions that apply if you sign a Land Mortgage to secure your obligations to us.

Please read all of these provisions to make sure you understand all of your obligations and the actions we can take if a Default under the Mortgage occurs.

When you sign the Mortgage, you accept these provisions.

### LAND MORTGAGE

#### THIS DOCUMENT CONTAINS THE PROVISIONS FOR MORTGAGES THAT REFER TO ANY ONE OF THE FOLLOWING:

The Memorandum filed in the **New South Wales** Department of Lands, Land and Property Information Division as number **AG251077**;

The Memorandum of Common Provisions retained by the **Victorian** Registrar of Titles in number **AA1754**;

The Document filed in the **Queensland** Department of Environment Resource Management as number **713905230**;

The Memorandum filed in the **Australian Capital Territory** Office of Regulatory Services as number **1746016**;

The Memorandum of Standard Terms and Conditions deposited at the **South Australian** Land Titles Office as number **11587161**;

The Memorandum filed and registered at the **Western Australian** Land Information Authority as number **L654804**;

The Memorandum of Common Provisions retained by the **Northern Territory** Land Titles Office as number **372138**;

The Memorandum of Provisions filed at the Office of the Recorder of Titles, **Tasmania** as number **M438**;

The Memorandum of Provisions filed at the Registrar of Titles, **Norfolk Island** as number **011**;

**AND FORMS PART OF THE MORTGAGE.**

**The part of the mortgage which you sign may contain clauses which either alter or conflict with some of the terms in this document. In such a case, the clauses in the part of the mortgage which you sign prevail.**

**NOTE:**

**This mortgage is able to be used to secure lending covered by Consumer Credit Law and also unregulated lending. Please refer to the beginning of Part A for an understanding of how this works.**



## Key words

The meaning of words printed Like This and of some other common key words is explained in clause A1.

Contents	Clause number	Contents	Clause number
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## PART A. ALL MORTGAGES

- ***This mortgage secures all Amounts Owing under any Secured Agreement.***
- ***Once you enter into a Secured Agreement with us relating to credit to which no Consumer Credit Law applies, then this mortgage also secures all other Amounts Owing as defined in Part B.***

### A1 Meaning of words

'Amount Owing' means, when Part B does not apply, all money which one or more of you owe us, or will or may owe us in the future, under a Secured Agreement and this mortgage or either of them.

When Part B applies, Amount Owing has the extended meaning set out in Part B.

'Authorised Officer' includes each of our officers within the meaning given to that word in the Corporations Act, *for example* each of our officers whose position title is or includes the word 'manager' or the word 'executive'.

'Consumer Credit Law' means the National Consumer Credit Protection Act 2009 (Commonwealth) (*including* the National Credit Code) and the regulations made under that Act (all as amended from time to time).

'Crown Land' means land of the Crown (ie the State or Territory) occupied by a Person not as freehold but under a lease, licence or other right granted by the Crown (*for example*, land described as 'State Tenure' or 'Crown Lease').

'Governing Body' means each entity which administers any Shared Scheme of which The Property is part.

'Land Law' means any law of a State or Territory relating to the giving of default notices prior to the enforcement of real property mortgages. The Land Law applicable to this mortgage is the Land Law of the State or Territory:

- (a) in which The Property is located; and
- (b) applicable to the system applying to the title to The Property.

*For example*, if The Property is located in New South Wales and is under Torrens Title, the relevant Land Law is the *Real Property Act 1900 (NSW)*. If The Property is located in Victoria and is under Torrens Title, the relevant Land Law is the *Transfer of Land Act 1958 (Vic)*.

'Licence' includes a certificate of registration, authority or permit under a law.

'Own', when it is used in relation to land, means holding an estate or interest in land that can be mortgaged to us, *for example* being the registered proprietor, the registered holder, the registered lessee or Crown lessee or the holder of an estate in fee simple, and 'Owner' has the corresponding meaning.

'Person' includes an individual, a firm, a body corporate, an unincorporated association or an authority.

'The Property' means each one or more of the following which the context allows:

- (a) the land described in this mortgage;
- (b) each fixture, structure or improvement on the land or fixed to it;
- (c) your estate and interest in the land;
- (d) all rights and Licences attaching to the land or to your estate or interest in it, *for example* rights to use water on rural land, rights under any builder's warranty, guarantee or insurance relating to The Property or any Works, rights to purchase or convert title, rights granted to you under any lease, and rights to claim or receive a payment of money by way of compensation because you Own or Owned The Property;
- (e) all rights you hold as licensee under the law for sale of liquor, operation of gaming machines or conduct of a club on The Property, *including* any right to claim or receive a payment of money because you hold or held such Licence.

'Relative' means any of the following in relation to an individual:

- (a) a spouse (*including* a former spouse, a de facto spouse and a former de facto spouse);
- (b) a child or an adult child (*including* an adopted child, a step-child or an ex-nuptial child);
- (c) a parent, grandparent, grandchild or sibling;
- (d) an aunt or uncle who is a sibling of a parent of the individual or of the individual's legally appointed guardian.

'Secured Agreement' means:

- (a) an agreement between one or more of you and us (*including* a guarantee given by one or more of you) whenever made, under which you undertake to pay or repay us money, and which you acknowledge in writing to be an agreement to which this mortgage extends; and
- (b) any such agreement as varied.

'Security' means any security for the payment of money or performance of obligations *including* a mortgage, charge, lien or pledge.

'Shared Scheme' means each scheme or plan which is regulated by a Shared Scheme Law and which affects The Property. *For example* home units, strata titles, town houses and properties in integrated developments are properties that are often part of a Shared Scheme.

'Shared Scheme Law' means any law which provides for the:

- (a) subdivision and development of land with shared property; or
- (b) subdivision of buildings; or
- (c) management of land which is subdivided and has shared property; or
- (d) management of subdivided buildings.

'we' means the Person named in this mortgage as mortgagee and its successors and assigns.

'Works' means building work, excavation or earthworks on The Property, work demolishing any part of The Property, or any building or development work required in connection with The Property by an authority.

'you' means the Person or Persons named in this mortgage as mortgagor. If there are more than one, 'you' means each of them separately and every two or more of them jointly. 'You' includes your executors, administrators and assigns.

A reference in this mortgage to:

- (a) the singular includes the plural and vice versa;
- (b) '*including*' or '*for example*' when introducing an example does not limit the meaning of the words to which the example relates, to that example or examples of a similar kind;
- (c) a document includes any variation or replacement of it;

(d) law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them);

(e) any thing includes the whole and each part of it.

## **A2 How this mortgage affects you and The Property**

A2.1 By signing this mortgage you undertake the obligations identified in it on your part. You also give us rights concerning you and The Property.

*For example*, we can take possession of The Property and sell it if you fail to do what you must do under this mortgage. If the proceeds from the sale of The Property are not enough to repay what you owe us, then, unless we have told you otherwise in writing, we can ask you to pay the difference between the sale proceeds and what you owe us, even after The Property is released from this mortgage. The same applies if The Property is forfeited or compulsorily acquired by an authority.

A2.2 You are liable for all the obligations under this mortgage both separately on your own and jointly with any one or more other Persons named in this mortgage as mortgagor, except where clause A2.3 applies.

A2.3 Where there is more than one of you and only some of you are liable for a part of the Amount Owing, then only the interest in The Property of those who are liable secures that liability. We may vary the agreement under which that liability arises by agreement with those Persons without the consent of the rest of you and this will not discharge or affect this mortgage.

A2.4 This mortgage remains in effect despite the death or bankruptcy of any one of you or (if you are a corporation) the making of an order for winding up or the appointment of an administrator.

A2.5 When there is no Amount Owing, we will release The Property from this mortgage when you ask us to do so.

*(If the Secured Agreement is a guarantee, it is a term of the guarantee that we have the right to refuse to give a discharge of this mortgage in certain circumstances.)*

### **A3 Your declarations**

A3.1 You declare that:

- (a) you Own The Property or will Own it by the time this mortgage takes effect; and
- (b) you have told us about all rights affecting The Property and those which are proposed to affect The Property of which you are aware or ought reasonably to be aware. Rights affecting The Property include easements, leases, other mortgages and the rights of a beneficiary under a trust; and
- (c) you do not breach any law or any obligation to any other Person by signing this mortgage; and
- (d) all the information you have given us in connection with this mortgage and each Secured Agreement is correct and not misleading; and
- (e) you have not withheld any information of which you are aware or ought reasonably to be aware and which might have caused us not to enter into this mortgage or a Secured Agreement; and
- (f) you have told us about any structure on adjoining land that encroaches on The Property and any structure on The Property that encroaches on adjoining land; and
- (g) The Property is free from any unlawful contamination, of which you are aware or ought reasonably to be aware, and your use and occupation of The Property does not breach any law; and
- (h) if you hold The Property under a lease:
  - (i) you have kept to all your obligations under the lease; and
  - (ii) the lease is legally binding on you and the lessor; and
  - (iii) at the time this mortgage takes effect, you have not surrendered the lease, and the lessor has no cause or right to re-enter the leased premises; and
- (i) if you sign this mortgage as trustee of a trust, this mortgage binds you both personally and as trustee of the trust; and
- (j) you exercise due care and take all necessary precautions to detect and prevent breaching any law which results in pollution of or harm to the environment or to any Person or property, *including* The Property.

You acknowledge that your declarations induced us to enter into this mortgage.

A3.2 You repeat all the declarations in clause A3.1, and we rely on them, each time:

- (a) you ask us for credit under a Secured Agreement; or
- (b) you acknowledge that another agreement is to be a Secured Agreement; or
- (c) you accept an extension of your liabilities under a Secured Agreement.

### **What you undertake in this mortgage**

#### **A4 Complying with this mortgage**

- A4.1 You must pay us every Amount Owing for which you are liable at the time agreed by you, or if no time has been agreed, when we ask (which we may do on one or more occasions).
- A4.2 You must ensure that you are not in default under this mortgage. You must also carry out on time all your obligations under every Secured Agreement.
- A4.3 When we release The Property from this mortgage, your following obligations continue:
  - (a) to pay the Amount Owing except to the extent we have told you otherwise in writing (*for example* if we told you that your liability in respect of the Secured Agreement is limited to the value of The Property);
  - (b) under clause A27.2 and clause B6(a); and
  - (c) under clauses A18.2 and A29, but only to the extent necessary to ensure our full rights under clause A27.2 or where you induced us to give the release by making an incorrect statement.

#### **A5 Rates, taxes and levies**

You must pay on time all amounts for which you are liable as Owner of The Property, including rates, taxes, rents and Shared Scheme levies.

#### **A6 Looking after The Property**

- A6.1 You must:
  - (a) keep The Property in good condition and fix any defect; and
  - (b) not do anything or allow anything to be done that might lower the value of The Property or put at risk our security interest in The Property; and
  - (c) tell us if The Property is seriously damaged or is defective; and
  - (d) remove any contaminant and clean up any unlawful contamination, if The Property is contaminated; and



- (e) comply with all laws, requirements, orders and notices of authorities in connection with The Property; and
- (f) inform us promptly of:
  - (i) the existence of any unlawful contamination of or emanating from The Property;
  - (ii) the receipt of any penalty notices or directions to 'clean-up' The Property issued by any authority or regulator;
  - (iii) the receipt of any notice or complaint from any authority or regulator that has not been answered to the satisfaction of the complainant, alleging that your activities on The Property are polluting the environment or that the carrying on of your business on The Property causes any public or private nuisance;
  - (iv) any revocation, suspension, modification or refusal or failure to renew any authorisation or approval under any law relating to The Property or the conduct of your business; and
  - (v) the commencement of any proceedings or suits, the issue of any orders or the imposition of any penalty for a contravention of a law relating to The Property.

A6.2 If The Property is part of a Shared Scheme (*for example*, a townhouse or home unit), you must also:

- (a) comply with the by-laws, rules or articles of the Shared Scheme; and
- (b) vote at any Governing Body meeting following any reasonable directions we give you to protect The Property, its value or the shared property; and
- (c) use your best endeavours to ensure that the Governing Body complies with its obligations (*for example* keeping the shared property in good condition); and
- (d) tell us if the Governing Body does not comply with its obligations (*including* its insurance obligations); and
- (e) use your best endeavours to ensure that your rights under the Shared Scheme are not varied in a way that adversely affects our security interest in The Property and tell us promptly if they are; and
- (f) tell us of any proposal which may affect the value of The Property or the shared property to vary, substitute or terminate the Shared Scheme or its by-laws, rules or articles.

A6.3 If you hold The Property under a lease and, according to the terms of a Secured Agreement there will remain some of the Amount Owing at the end of the lease term, then you must:

- (a) apply for a renewal or extension of the lease:
  - (i) at the earliest date on which any option for renewal under the lease may be exercised; or
  - (ii) in cases where there is no option or the time for its exercise has not arisen, no later than 12 months before the end of the lease term; and
- (b) do anything we reasonably ask to provide us with effective Security over the renewed or extended lease or over any new lease.

## A7 Insurance

- A7.1 (a) You must maintain insurance over The Property and any Works against fire and other usual risks for the full insurable value of The Property and any Works on a replacement and reinstatement basis; and
- (b) Each policy must note our interest as mortgagee and be on terms and for an amount which are to our reasonable satisfaction.

A7.2 Clause A7.1 does not apply if The Property is part of a Shared Scheme and the Governing Body is required by law to maintain insurance over The Property. In that case, you must use your best endeavours to ensure that the Governing Body maintains whatever insurance it is required to by law and inform us promptly if, for any reason, there is no adequate insurance cover over The Property.

A7.3 You must produce evidence to our reasonable satisfaction of current insurance cover whenever we ask for it.

A7.4 You must do all that you reasonably can to ensure that the insurance cover is not reduced or cancelled and must notify us if it is or could be.

A7.5 If we reasonably require, you must assign to us your interest under the policy of insurance referred to in clause A7.1(a).

## A8 Insurance claims

A8.1 You must ensure that the benefit of any insurance claim proceeds to which you are entitled is received by you or us. If the proceeds are for serious damage to The Property and you receive them:

- (a) you must tell us;

- (b) you hold the proceeds for us and you must pay us so much of them towards the Amount Owing as we reasonably require as soon as we ask you; and
- (c) you must use them as we reasonably direct, *including* to reinstate The Property or carry out other Works.

A8.2 When the insurance claim proceeds are paid to and held by a Governing Body, then:

- (a) you must do your best to ensure that the proceeds are used to reinstate The Property or carry out other Works; or
- (b) if the Shared Scheme is terminated and you receive your share of the proceeds following the termination, you hold your share for us. When we ask, you must pay us so much of your share as we require towards the Amount Owing.

A8.3 You must tell us if an insurance claim is refused either in part or in full.

A8.4 If we notify you, we may take over your rights to make, pursue or settle an insurance claim. We may exercise those rights in any reasonable manner we choose, having regard to your interests under the claim and our rights under the Security.

A8.5 If we receive insurance claim proceeds, we use the proceeds as set out in clause A23.

## **A9 Building and other work**

A9.1 When Works are undertaken, you must:

- (a) get all necessary approvals from authorities (and the Governing Body if The Property is part of a Shared Scheme) before you carry out the Works or enter into a contract to have them carried out; and
- (b) comply with all laws, requirements of authorities, easements and covenants which affect the Works; and
- (c) ensure that the Works are done competently and completed within a reasonable time; and
- (d) get and give us relevant certificates which we reasonably require (*for example*, certificates of satisfactory completion or compliance); and
- (e) ensure that the cost of labour and materials required for the Works is not less than the amount stated in the contract for the Works or any other amount we agree to.

A9.2 Any monitoring of the Works by us will be for our own purposes. We do not hold ourselves out as exercising care or skill in doing so. Your obligations under clause A9.1(c) are not affected by this clause A9.2.

A9.3 If we lend you money for Works, you must obtain our approval to the contract for the Works. Such approval will not be unreasonably withheld.

## **A10 The Property and adjoining land**

A10.1 If any part of a structure on The Property encroaches on adjoining land, then, if we ask, you must, as we reasonably require:

- (a) correct the encroachment; or
- (b) obtain an easement or other permission acceptable to us to allow it to continue; or
- (c) become the Owner of the encroached land.

A10.2 As further Security for payment of the Amount Owing, you must mortgage to us on the same terms as this mortgage any encroached land of which you become the Owner.

A10.3 If we reasonably require, you must have any encroachment on The Property from adjoining land removed.

## **A11 Dealings – for example selling, renting or mortgaging**

Unless you first get our written consent (see clause A16), you must not:

- (a) sell The Property; or
- (b) rent out The Property or agree to a surrender or variation of any rental agreement we consent to. Our consent to your renting out The Property will not be required if the lease is to an individual for residential purposes unless any one or more of the following apply:
  - (i) the Secured Agreement is for a loan which we advanced to you to buy or build a home to live in on The Property; or
  - (ii) the term of the lease and any option for renewal, when added together, is or exceeds 3 years; or
  - (iii) the rent payable is less than that which you told us you expect to receive; or
  - (iv) the lease contains an option to purchase; or
  - (v) the tenant is a Relative of yours or, if you are a corporation, is one of your directors or a Relative of a director.
- (c) create another Security over The Property, or allow one to arise (unless The Property is in Queensland, in which case you must tell us before you do so); or
- (d) part with possession of The Property; or
- (e) subdivide or consolidate The Property; or

- (f) create, release or vary an easement, covenant or public right of way which relates to The Property or allow one to arise; or
- (g) deal in any other way with The Property, this mortgage or any interest in them.

## **A12 Other securities**

Our consent to another Security over The Property may depend on whether we are able to negotiate an agreement reasonably acceptable to us regarding the priority between this mortgage and the other Security (see clause A16).

## **A13 Caveats**

You must do everything necessary to remove any caveat placed on The Property without our consent. (A caveat is a warning, noted in the official title register, restricting dealings with The Property, *for example* its sale.)

## **A14 Crown Land**

If The Property is held under any law relating to Crown Land, you must:

- (a) mortgage to us on the same terms as this mortgage and as further Security for payment of the Amount Owing, any estate or interest in land or other property which the rights you have from the Crown are converted into or which you become Owner of because you Own the Crown Land property; and
- (b) if it is permissible to do so and we ask you, convert or join with us in converting the Crown Land property into another form of land tenure, *for example* into freehold tenure. We will only ask you to do this if it is reasonable to do so.

## **A15 Rural land**

If any of The Property is used for grazing, farming, horticultural or agricultural purposes, you must:

- (a) do all things reasonably necessary to manage and preserve it properly and efficiently, *including* by taking suitable action (*for example*, fencing and spraying) to keep it free from pests and harmful vegetation; and
- (b) if we reasonably require, secure to us any crop produced on The Property on terms we reasonably require, as further Security for payment of the Amount Owing; and
- (c) not give Security over any crop produced on The Property without our consent (see clause A16); and

- (d) not deal with any quota or contract for producing or selling crops or produce capable of being produced on The Property or do anything which could cause a quota or contract to be forfeited or cancelled without our consent (see clause A16).

## **A16 Consents**

We will only refuse our consent if it is reasonable to refuse it. If we give our consent we may impose reasonable conditions. You must comply with all our requirements in any consent we give in connection with this mortgage.

## **A17 Payments as compensation, *for example* for compulsory acquisition of The Property**

- A17.1 You must tell us if you have a right to claim or receive a payment of money by way of compensation because you Own The Property.
- A17.2 We may take over your rights to make, pursue or settle your claim. We will tell you if we want to do so. We may then exercise those rights at our discretion (*including* signing releases for the payment in your name or ours) having regard to your rights under the claim and our rights under the Security. If we leave it to you to claim payment, you must do so as we direct. When we do anything under this clause A17.2, we must act reasonably.
- A17.3 You must do your best to ensure that any compensation payment is made to us. If the payment is made to you, you hold the money for us and you must pay so much of that money to us toward the Amount Owing as we reasonably require and as soon as we ask you. (In each case, we must then use the money as set out in clause A23.)

## **A18 Administrative matters**

- A18.1 You must deposit with us any documents of title, leases or tenancy agreements relating to The Property. But you need not deposit them with us if another Person has a Security over The Property which has priority over this mortgage and that Person is holding those documents or agreements.
- A18.2 You must do anything we reasonably ask (*for example* obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
  - (a) to provide more effective Security over The Property for the payment of the Amount Owing; or
  - (b) to enable us to register this mortgage with the agreed priority; or

- (c) to enable us to exercise our rights in connection with The Property; or
- (d) to ensure that each agreement which is intended to be covered by this mortgage becomes a Secured Agreement; or
- (e) to enable us to register the power of attorney in clause A29 or a similar power; or
- (f) to show us whether you are complying with this mortgage.

A18.3 If we ask, you must give us any information or documents we reasonably require about or affecting:

- (a) The Property or any Works; or
- (b) the Shared Scheme, if The Property is part of a Shared Scheme; or
- (c) any lease, tenancy or other arrangement in connection with The Property; or
- (d) this mortgage.

### **A19 How you must comply with this mortgage**

A19.1 Everything you must do under this mortgage must be done reasonably promptly and to our reasonable satisfaction.

A19.2 You must pay for anything which you must do under this mortgage.

### **A20 Things we may do at any time**

A20.1 We may assign or otherwise deal with our rights under this mortgage or any Secured Agreement in any way we consider appropriate. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under this mortgage or Secured Agreement.

A20.2 Upon reasonable notice and at reasonable times, we or any of our agents may enter The Property to:

- (a) inspect its condition or any Works; or
- (b) make reasonable enquiries in order to ascertain whether you are complying with this mortgage; or
- (c) where reasonably necessary, carry out our rights under this mortgage.

The requirement to provide reasonable notice may be dispensed with in cases of emergency.

A20.3 You must give us and any of our agents all reasonable help to enter, *for example* by getting any consent necessary.

A20.4 We or our agents may do anything which you should have done under this mortgage but which you have not done reasonably promptly and to our reasonable satisfaction.

## **What can happen if you are in default**

### **A21 When are you in default?**

You are in default if:

- (a) you do not pay on time any of the Amount Owing; or
- (b) you do not keep to the other terms of this mortgage or of a Secured Agreement; or
- (c) you or another Person give us incorrect or misleading information (*for example* when you make your declarations under clause A3) in connection with this mortgage or a Secured Agreement before or after you sign this mortgage; or
- (d) the power of sale arises under any other Security over The Property; or
- (e) where Part B applies, any of the events described in clause B4 occurs.

### **A22 What can happen then?**

A22.1 If you are in default, we need not make funds available under any Secured Agreement.

A22.2 If you are in default and we choose to enforce this mortgage, then, except in the cases described in clause A22.3 and A22.4(c), we give you a notice before doing so. The notice must:

- (a) tell you what the default is; and
- (b) require you to fix the default (if it can be fixed) within the period stated in the notice. (If we give you notice under the Consumer Credit Law, we will give you at least 30 days notice before we enforce this mortgage.)

A22.3 We need not give you a notice referred to in clause A22.2 or wait for the periods specified above where:

- (a) we believe on reasonable grounds that the default cannot be remedied, unless required by a Consumer Credit Law or some other law to give you notice; or
- (b) we believe on reasonable grounds that:
  - (i) we were induced by fraud to enter this mortgage or a Secured Agreement; or
  - (ii) urgent action is necessary to protect The Property; or
- (c) we have made reasonable attempts to locate you without success; or
- (d) the court so orders.

A22.4 For the purposes of any Land Law:

- (a) which requires that you must be in default for a certain period of time before we give you the notice and allows the period to be fixed in the mortgage, the period is fixed at one day; or

- (b) which allows this mortgage to limit the period of time in which you must fix a default, the period (which must be at least one day) is the period set by the notice; or
- (c) which allows the parties to a mortgage to agree that the mortgage may be enforced without giving a notice, you agree that we need not give you a notice before beginning enforcement proceedings against you.

A22.5 If we have given you a notice under clause A22.2 or A22.4 and you do not fix the default within the time allowed in the notice, or you are in default and we are not required to give you a notice, we may:

- (a) decide, without further notice to you, that the Amount Owning is due and payable immediately but if this mortgage is subject to a Consumer Credit Law, provided that in any notice we have also told you the amount required to pay out the Secured Agreement and that we can exercise our rights under this clause if you do not remedy the default;
- (b) take possession of The Property;
- (c) manage The Property;
- (d) sell, lease, subdivide or, where it is reasonable to do so, improve The Property;
- (e) acting reasonably, do anything else with or to The Property that an Owner of The Property could do;
- (f) appoint any Person or any two or more Persons jointly and separately to be a receiver to do such of the things in paragraphs (b), (c), (d) and (e) of this clause A22.5 as are set out in the receiver's terms of appointment.

We may do any or all of the above things in any order and we may do them at any time after the time stated in the notice elapses or, if we are not required to give you a notice, at any time.

A22.6 If we enter into possession of The Property:

- (a) we may carry out Works on The Property if it is necessary to do so for us to:
  - (i) manage The Property; or
  - (ii) restore The Property to good condition; or
  - (iii) prepare The Property for sale, lease or subdivision; or
  - (iv) do any combination of the above.

- (b) you must promptly remove all goods (such as furniture, or plant and equipment) which are not part of the Secured Property. If you do not do so, we may remove the goods from the Secured Property and:

- (i) store them in another place; or
- (ii) if the goods have little or no value, dispose of them without notice to you.

A22.7 In determining how to dispose of the goods, we may have them independently appraised or valued. Unless you can produce satisfactory evidence to the contrary, the independent appraisal or valuation is sufficient evidence of the condition or value (or both) of the goods.

A22.8 If we store the goods in another place, we will give you notice promptly of the location of the goods. If you do not claim the goods within 30 days of the date of our notice we may:

- (a) leave the goods in storage and the manager of the place where your goods are stored may sell those goods to meet its charges for storing those goods; or
- (b) sell those goods on your behalf and we will pay any proceeds of such sale into an account that we open with us in your name; or
- (c) dispose of the goods in any other manner we choose, if the likely costs of sale exceeds the value of the goods.

A22.9 The reasonable costs of removal, delivery, storage, sale, or disposal are part of the Amount Owning. We may use the proceeds deposited in the account referred to in clause A22.8(b) to pay our reasonable costs of removing, disposing, storing, sale or delivery of the goods. After the goods have been sold or disposed of under this clause A22 and, if applicable, we have paid any proceeds into an account in your name, we will have no more liability to you for them.

A22.10 We will act reasonably where we do anything under this clause A22.

A22.11 You must pay us any reasonable amount reasonably incurred or spent by us in exercising any powers whilst we are in possession of The Property. *For example*, you must pay us the cost of Works we carry out on The Property. These costs are part of the reasonable enforcement expenses we may charge you under this mortgage.

(clause A22.13 tells you our right to charge enforcement expenses.)



A22.12 If you are in default and we need not give you notice to fix it, then at any time we may do any of the things set out in paragraphs (a) to (f) of clause A22.5 and any of the things set out in clause A22.6.

A22.13 You must pay us our reasonable enforcement expenses reasonably incurred or spent by us in exercising our rights in relation to your default.

### **A23 What happens to money we receive**

A23.1 We use any money we receive under this mortgage (other than any money we deal with under clause A22.8(b)) towards paying:

- (a) first, anyone with a prior claim;
- (b) second, the Amount Owing to the extent that any part of the Amount Owing is due for payment. If there are amounts due on more than one account, we may apportion the payment between those accounts in any way we choose.

However, if money received represents proceeds of an insurance claim, we may use the moneys to reinstate The Property to good condition, or carry out any other work reasonably required.

We deal with the balance (if any) under clauses A23.2 and A23.3.

A23.2 The balance we refer to in clause A23.1 is paid by us into an interest bearing account in your name. Until the Amount Owing is paid in full:

- (a) we are under no obligation to pay any of the money in the account to you; and
- (b) we may apply the whole or any part of the balance of the account to pay any part of the Amount Owing which is then due for payment; and
- (c) you cannot operate on the account or assign your interest in the account.

A23.3 We must pay to you reasonably promptly or to another Person entitled to it (*for example* another Person with a Security over The Property), any money remaining after the Amount Owing is paid. If we choose, we may do this by crediting your or that other Person's account with us. We are then under no further liability to you for that money.

A23.4 Our obligations to deal with the money we receive under this mortgage only arise from the date when we actually receive it.

## **General matters**

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### **A24 Notices and other communications**

A24.1 Notices *including* certificates, consents and demands given or made under this mortgage must be in writing.

A24.2 They may be:

- (a) given personally (if they are for us, to one of our employees at the branch or office where you arrange this mortgage or any other branch or office we tell you); or
- (b) left at the address last notified; or
- (c) sent by prepaid post to the address last notified; or
- (d) sent by facsimile transmission to the fax number last notified; or
- (e) given in any other way permitted by law.

A24.3 They take effect from the time they are received unless a later time is specified in them.

A24.4 If they are sent by post, they are taken to be received on the day they would be received in the ordinary course of post.

A24.5 If they are sent by facsimile machine which produces a transmission report, they are taken to be received at the time shown in a transmission report which indicates that the whole facsimile transmission was sent.

A24.6 If you agree and if the law permits, any information which we provide in exercising our rights or fulfilling our obligations under this mortgage may be provided:

- (a) by electronic communication to your nominated electronic address (ie email address); or
- (b) by being made available at our website for retrieval following electronic communication to you, on the condition that we:
  - (i) promptly notify you by electronic communication that the information is available for retrieval at our website, and the nature of the information; and
  - (ii) provide you with the ability to readily retrieve the information by electronic communication (*for example*, by providing an electronic link to the relevant information on our website, or the Universal Resource Locator (URL) of our website).

A24.7 Your agreement to the provision of information under clause A24.6 will be by a specific positive election, after receiving an explanation of the implications of making such a decision. When providing such explanation, we will remind you of your right to:

- (a) vary your nominated electronic address (by notice to us); or
- (b) terminate your agreement to the provision of information by electronic communication.

A24.8 Unless your agreement is given in accordance with the procedures set out in clause A24.7, making information available at our website will not be effective communication to you.

A24.9 Where you have viewed information available at our website and you:

- (a) have been given the opportunity to retain that information for subsequent reference (*for example*, by printing or saving it); and
- (b) specifically agreed that you have been given the opportunity to retain that information and that you will not be otherwise provided with a copy of the information by us (without a separate request by you under clause A24.10),

we are to be treated as having provided that information to you at the time you specifically agreed.

A24.10 Where we have provided, or are treated as having provided, information to you under this clause A24, we will provide a paper copy of that information to you, if you so request, within 6 months of the receipt of the electronic communication.

A24.11 Any such mode of service will be fully effective despite that at the date of such service you may be lacking in mental capacity, dead, bankrupt, insolvent or absent from your place of domicile or usual residence or (if you are a corporation) that you are in the course of liquidation or have had an administrator or receiver appointed.

## **A25 Statements of amount payable**

A written statement made up from our books and signed by one of our Authorised Officers about an amount payable under this mortgage, is sufficient evidence of the amount and of any other matter referred to in the statement in connection with the amount, unless you provide satisfactory evidence to the contrary.

## **A26 How we may exercise our rights**

A26.1 We may exercise a right or remedy in any way we consider appropriate and reasonable, *including* by imposing conditions.

A26.2 We may enforce this mortgage before we enforce our rights under another Security.

A26.3 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later unless we have expressly agreed not to or it would be unconscionable to exercise that right or remedy later.

A26.4 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy except where the loss is caused by our negligence.

A26.5 Our rights and remedies under this mortgage may be exercised by any of our Authorised Officers or any lawyer or agent we authorise and they may give good discharge to any Person who pays money to them.

A26.6 If any provision of this mortgage is found to be illegal, void or unenforceable for unfairness or any other reason (*for example*, if a court or other tribunal or authority declares it so) the remaining provisions of this mortgage will continue to apply to the extent possible as if the void or unenforceable part had never existed.

## **A27 Your obligations and our rights are unaffected**

A27.1 The rights and remedies we have under this mortgage are independent of those we have under any other Security or what the law says we have and they can still be exercised by us even if we obtain an order or judgment against you.

A27.2 Under law, a trustee in bankruptcy or a liquidator may ask us to refund a payment we have received in relation to the Amount Owing or this mortgage. To the extent that we are obliged to, or we reasonably agree to, make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against you under this mortgage as if the payment had never been made.

A27.3 (a) If any of our officers, or any Person engaged by us, carries out any inspection or valuation of The Property, they do so for our purposes only and not on your behalf. This is the case even if you pay us a valuation fee. Any reports made as a result of the inspection or valuation are our exclusive property.

(b) When we inspect or value The Property, lend against it or do anything as a result of the inspection or valuation, we are not responsible for and make no representation to you about the condition of the land, the quality of the title, the location of the boundaries, the construction of any building or the standard or value of the land or any building on The Property or the uses to which The Property may be put. It is your responsibility to make necessary enquiries regarding all such matters.

#### **A28 Variation or waiver**

A term of this mortgage, or right created under it, may not be waived or varied except in writing made by the party or parties to be bound.

#### **A29 Power of attorney**

A29.1 You appoint us and each of our Authorised Officers separately as your attorney. The attorney's powers are limited to those stated in clause A29.2. If we ask, you must formally approve anything they do. You may not revoke these appointments.

A29.2 If you are in default, each attorney may:

- (a) do anything which you must do under this mortgage; and
- (b) delegate their powers (*including* this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

#### **A30 Receiver**

A30.1 If we appoint a receiver after a court order for your bankruptcy (or, if you are a corporation, while you are in the course of winding up), the receiver is our agent. In any other case, the receiver is your agent, not ours, unless we notify you otherwise.

A30.2 We may set a receiver's reasonable pay and expenses, remove a receiver and appoint a new or additional receiver, as the circumstances reasonably require. You are liable for the receiver's pay as part of our reasonable enforcement expenses. We may authorise a receiver to appoint a delegate with our consent.

#### **A31 Governing law and jurisdiction**

A31.1 This mortgage is governed by the law of the State or Territory in which The Property is located.

A31.2 You accept the jurisdiction of the courts of that State or Territory and all appellate courts hearing matters from that jurisdiction.

A31.3 If the court rules allow, we may serve any document in a court action (*including* documents to commence the action) on you by delivering it to The Property or leaving it there. This clause A31.3 does not prevent any other permissible method of service.

## **PART B. MORTGAGE SECURING UNREGULATED CREDIT**

*This Part applies, in addition to Part A, once you have entered into a Secured Agreement with us relating to credit where no Consumer Credit Law applies. From that time, the extended definition of Amount Owing applies and this Part operates to the extent that this mortgage secures an Amount Owing to which no Consumer Credit Law applies.*

### **B1 Extended definition of Amount Owing**

When Part B applies, Amount Owing means, at any time, all money which one or more of you owe us, or will or may owe us in the future, alone or with others.

*For example, this may include:*

- (a) the principal amount of any loan;
- (b) interest;
- (c) any fees and charges, *including* government charges and duties;
- (d) the cost of early repayment of principal;
- (e) costs and expenses referred to in a Secured Agreement;
- (f) damages for breach of a Secured Agreement;
- (g) amounts contingently owing (that is, amounts which may become owing if something happens or is discovered);
- (h) if you are a corporation, money owing (*including* contingently owing) under any guarantee;
- (i) if you are an individual, money owing (*including* contingently owing) under a guarantee which you have acknowledged in writing to be secured by this mortgage;
- (j) amounts to reimburse or indemnify us;
- (k) amounts you owe as a trustee;
- (l) amounts you owe as a member of a partnership;

- (m) amounts you owe as a member of an unincorporated association;
- (n) amounts you owe because you become a party to a negotiable instrument; and
- (o) amounts you owe under this mortgage.

## **B2 Interest on secured moneys**

If any part of the Amount Owing is owing on an account which is not covered by a Secured Agreement, then you must pay us interest on that amount whilst it remains unpaid.

Interest:

- (a) is charged at the rate agreed by you and us. If no rate is agreed, then the applicable rate is the prevalent rate which we charge from time to time to our other customers on similar accounts;
- (b) accrues daily;
- (c) is calculated on the unpaid daily balance of the account at the daily percentage rate then applying to the relevant part of the Amount Owing. We calculate the daily percentage rate by dividing the annual percentage interest rate then applying by 365 (even in a leap year);
- (d) becomes part of the Amount Owing as it accrues; and
- (e) the accrued amount is debited to the account monthly, and on the day the Amount Owing is paid in full.

## **B3 No merger upon judgment**

If any obligation to pay us an amount under this mortgage becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest rate we apply from time to time is the higher of the rate we may charge under clause B2(a) and the rate payable under the court order. We calculate and accrue the interest and debit the account with the frequency and in the manner described in clause B2.

## **B4 Additional default events**

In addition to the events set out in clause A21, you are in default if:

- (a) you are a corporation and an administrator is appointed, or such appointment is threatened or proposed; or
- (b) you are a corporation and an application is filed or an order is made or a resolution is passed for your winding up, or if any meeting is called for the purpose of considering such a resolution; or

- (c) you enter into any arrangement, reconstruction or composition with your creditors or any of them or propose to do so; or
- (d) a receiver is appointed over The Property or any of your property which includes The Property, or a holder of a Security interest over The Property takes possession of The Property or any part of it; or
- (e) you charge or assign or attempt to charge or assign any money owing by us to you (*for example* money on deposit) without our written consent (see clause A16); or
- (f) any execution or other process of any court or government agency or any distress is issued against or levied upon any such moneys; or
- (g) any execution or other process of any court or government agency or any distress is issued against or levied upon all or any part of The Property; or
- (h) any event mentioned in clause B11(d) occurs.

## **B5 Indemnity upon default**

- (a) If you or another Person give us incorrect or misleading information (*for example* when you make your declarations under clause A3) in connection with this mortgage or a Secured Agreement before or after you sign this mortgage, then you must indemnify us against any loss we incur as a result of that default.
- (b) You agree to indemnify us against all claims which may be made against us by any Person having any interest in all or any part of any goods we deal with under clause A22.6 or clause A22.8 (or both clauses), except where any such claim arises as a result of our negligence.

## **B6 Additional rights on default**

In addition to any other rights we may have under this mortgage or under law, if you are in default we may, without any demand or notice:

- (a) set off against, hold or appropriate for the purpose of applying towards payment of the Amount Owing, any liability (whether due, owing, contingent or otherwise) owing to you (*for example*, we could set off money we owe you on an unmatured term deposit against your loan debt); and
- (b) have access to and make use of your fixtures, plant and equipment on The Property for the purposes set out in clause A22.6(a); and

- (c) where it is reasonable to do so, at any time we choose, surrender to the Crown all or any part of The Property; and
- (d) where it is reasonable to do so, exchange with the Crown or with any Person all or any part of The Property for other lands of any tenure either with or without giving or receiving any cash for the purpose of equalising the exchange, and in any such event:
  - (i) any land so acquired will be held by us on your behalf as further Security for the Amount Owing; and
  - (ii) the power of sale we have under this mortgage and all other rights and remedies will apply to and be capable of being enforced in respect of such land.

### **B7 Protection of third parties**

Subject to the provisions of any Land Law, you agree that if anyone presents an instrument for registration under law (*for example*, registration of a transfer of The Property in a land title registry) or takes any action and claims that the instrument has been prepared or signed or the action has been taken under powers or rights derived from this mortgage:

- (a) it will not be necessary for any Person authorised under law or taking an interest under the instrument (*for example*, the registry or a purchaser or lessee) to enquire whether the facts and circumstances by which those powers or rights are derived, have occurred. *For example*, they need not enquire whether:
  - (i) any money is in fact owing on this mortgage; or
  - (ii) you are in default; or
  - (iii) the power of sale has arisen under this mortgage;
- (b) those Persons will not be affected by notice or by failure to enquire whether any Amount Owing has actually been paid or that you are not in default or that other facts and circumstances necessary for powers or rights to be exercised under this mortgage have not occurred.

### **B8 Application of moneys**

Any receiver appointed under this mortgage in respect of an Amount Owing which is not regulated by a Consumer Credit Law shall apply all money obtained by the receiver in the following order:

- (a) in payment of all debts, costs, charges and expenses reasonably incurred in or incidental to the exercise or performance or attempted performance of the powers conferred by this mortgage or otherwise in relation to this mortgage;
- (b) in discharge of all rents, taxes, rates and outgoings whatever affecting The Property which are owing or are required to be paid;
- (c) in keeping down all annual sums or other payments and the interest on all principal sums having priority to this mortgage;
- (d) in payment of the receiver's reasonable remuneration and the premiums and other moneys necessary for keeping current all policies of insurance included in this mortgage or effected by us or the receiver for the protection of The Property, and the cost of effecting such repairs to The Property as are reasonably necessary for the purposes of clause A22.6(a) as the receiver may be directed in writing by us to execute;
- (e) in payment of the interest accruing due in respect of any principal money due under this mortgage;
- (f) in or towards discharge of the Amount Owing.

The receiver shall pay the residue of the money obtained to the Person who, but for the possession of the receiver, would have been entitled to it or is otherwise entitled to The Property.

### **B9 Costs, charges and expenses**

By signing this mortgage, without your having to sign any other document, you authorise us from time to time to debit and charge any account of yours with all reasonable costs, charges and expenses, legal or otherwise (*including* premiums for insurance costs (solicitor and client as well as party and party), duties, taxes and other moneys paid or payable by us or any agent of ours) which we shall pay, incur, sustain or be put to in connection with:

- (a) any account of yours;
- (b) The Property or any part thereof;
- (c) the exercise of any rights of purchase or conversion of title connected with The Property;



- (d) this mortgage;
- (e) the preparation, completion or release of this mortgage, *including* the release in whole or in part of this mortgage; or
- (f) the exercise or attempted exercise of any right, power, authority, discretion or remedy conferred on us or on any attorney of ours under or by virtue of this mortgage or by law.

**B10 This mortgage not affected by changes in mortgagor**

If:

- (a) you are a partnership, firm, committee, trustee or unincorporated body; or
- (b) any of the Amount Owing is owing or payable upon a joint account,

this mortgage remains effective and continues binding on each Person named in this mortgage as mortgagor notwithstanding any change by death, retirement, accession, addition, amalgamation, incorporation or otherwise to that partnership, firm, committee, trustee or body of Persons or any change in its name or style.

**B11 Liquor licensed premises**

If a Licence is held under law for the sale of liquor or operation of gaming machines or the conduct of a club on The Property, then:

- (a) you declare that the Licence is valid and current;
- (b) you undertake to comply with all the requirements of the Licence, *including* paying any fees;
- (c) you undertake to apply for a renewal of the Licence before it expires and to apply for any other Licence or authorisation necessary to conduct the activity on The Property;
- (d) you must inform us promptly if:
  - (i) the Licence is revoked, suspended, modified or not renewed; or
  - (ii) proceedings are commenced in any tribunal which could affect the Licence or to impose any penalty for an offence in connection with the Licence or for amalgamation with another club; or
- (e) if you are in default, you must transfer the Licence to us or to any Person we nominate when we ask you to do so.

**B12 Exclusion of laws**

You agree that any law which limits our rights and remedies under this mortgage is excluded except for those laws which do not allow that exclusion.

## 4. SECURITY INTEREST PROVISIONS

### WHAT YOU NEED TO KNOW

**These Security Interest Provisions are filed in the New South Wales General Register of Deeds (Book 4709 Number 287).**

The Security Interest is comprised of these Security Interest Provisions, the Security Document that you have been asked to sign and any other document or documents which the Security Document states are part of the Security Interest.

Please read all of these documents to make sure you understand all of your obligations and the actions we can take if a Default occurs.

When you sign the Security Document, you accept these Security Interest Provisions.

If these Security Interest Provisions conflict with the Security Document or any other document (including a Secured Agreement) you sign with us, the Security Document or that other document will prevail.

Commonwealth Bank of Australia ABN 48 123 123 124  
Australian credit licence 234945

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## Your declarations

You declare that:

- you Own or have an interest in the Secured Property or will Own or have an interest in the Secured Property by the time the Security Interest takes effect;
- you have told us about all material rights affecting the Secured Property of which you are aware or ought reasonably to be aware and those which are proposed to affect the Secured Property, including easements, leases, other mortgages and the rights of a beneficiary under a trust;
- you do not breach any law or any obligation to any other Person by signing the Security Document and entering into the Security Interest;
- to the best of your knowledge, all the information you have given us in connection with the Security Interest is correct and not misleading;
- you have not withheld any information of which you are aware or ought reasonably to be aware which might have caused us not to enter into the Security Document or a Secured Agreement;
- the Secured Property is in good condition at the time you sign the Security Document or if later the time the Security Interest takes effect in relation to the Secured Property;
- a Default has not occurred (see clauses 9 and, if applicable, 24); and
- if the Secured Property includes rights as lessee under any lease of real property:
  - you have performed all of your material obligations under the lease;
  - the lease is legally binding on you and the lessor; and
  - at the time the Security Interest takes effect, you have not surrendered the lease, and the lessor has no cause or right to re-enter the leased premises.

You acknowledge that these declarations induced us to enter into the Security Interest.

You repeat all these declarations, and we rely on them, each time:

- you ask us for credit;
- you agree that another agreement (a Secured Agreement) is to be secured by the Security Interest; or
- you accept an extension of your liabilities under an agreement (including a Secured Agreement) that is secured by the Security Interest.

## PART A. General Provisions

*This Part A applies in relation to the Security Interest, irrespective of whether the Security Interest is regulated under Consumer Credit Law.*

### 1. The meaning of words used in this document

#### 1.1 Definitions

The following words have the meanings set out below in the Security Interest.

‘Amount Owning’ means, when Part B does not apply, all money which you owe us, or will or may owe us in the future, under a Secured Agreement and the Security Interest or any of them.

‘Authorised Officer’ includes any of our officers within the meaning given to that word in the Corporations Act. This also includes each of our officers whose position title includes the word ‘manager’ or ‘executive’.

‘Authority’ means any government, any governmental or semi-governmental authority, agency or body, local government authority, administrative or judicial body or tribunal or stock exchange.

‘Business’ means any business, of any nature, carried on by you unless a business is specifically identified in the Schedule to the General Security Interest, in which case “Business” means the business identified in the Schedule to the General Security Interest.

‘Circulating Assets’ means any of the following:

- any Account that arises from dealing with inventory or from granting a right, or providing services, in the ordinary course of a business of granting rights or providing services of that kind;
- any bank account (other than a term deposit);
- currency;
- inventory; or
- any Negotiable Instrument other than a Negotiable Instrument where, in accordance with clause 7.1, we require you to provide us with the certificate for that Negotiable Instrument.

‘Consumer Credit Law’ means the National Consumer Credit Protection Act 2009 (Commonwealth) (including the National Credit Code) and the regulations made under that Act (all as amended from time to time).

‘Corporations Act’ means the Corporations Act 2001 (Commonwealth).

“Default” means any of the events listed in clause 9.1.

“Default Notice” means a notice that we give you which advises you that a Default has occurred and which requests you to fix the Default, if it can be fixed. A Default Notice may contain other information.

"Deposit" means the aggregate of the balances of the money standing to the credit of any account which you hold with us from time to time, including interest accrued on any such account.

"Encumbrance" means any mortgage, charge, pledge, lien, encumbrance, title retention arrangement (other than where entered into in the ordinary course of ordinary business), contractual right of set off (other than where entered into in the ordinary course of ordinary business) or any other security agreement or security interest entered into in favour of any Person and includes an Interest.

"Enforcement Proceedings" means:

- proceedings in a court to recover a payment due; and
- taking possession of the Secured Property or taking any other action to enforce our rights under the Security Interest.

"Insurance Policy" means any insurance policy relating to the Secured Property.

"Intellectual Property" means any patent, trade mark, service mark, design, copyright, circuit layout, plant breeder's rights, business name, trade secret, know how and other intellectual property rights and interests (in each case whether or not registered under any law).

"Interest" means an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation or otherwise would be considered to be a "security interest" for the PPS Act. It includes but is not limited to an Encumbrance over personal property.

"Licence" includes a licence entered into by contract, a certificate of registration, an authority or a permit under a law or any right, entitlement, authority or other arrangement that is a "licence" for the purposes of the PPS Act.

"Marketable Securities" means debentures, stocks, shares or bonds of any government, any local government authority or any body corporate, association or society and includes any right or option in respect of shares in any body corporate and any interest in a "managed investment scheme" (as defined in the Corporations Act).

"Material Adverse Effect" means, in our reasonable opinion, a material adverse effect on:

- your ability to perform your obligations under the Security Interest or the Secured Agreement; or
- the value of, or the amount that may be recovered on the sale of, the Secured Property; or
- our rights and remedies in relation to the Secured Property.

'Negotiable Instrument' means:

- a bill of exchange;
- a cheque;
- a promissory note;
- a letter of credit that states it must be presented on claiming payment; or
- any record (whether evidenced in writing or electronically) that evidences a right to payment of currency that is, in the ordinary course of business, transferred by delivery with any necessary endorsement or assignment or where the record satisfies the requirements for negotiability under the law governing negotiable instruments,

but does not include any instrument that is excluded from the definition of "negotiable instrument" in the PPS Act.

"Other Document" means any other document (other than these Security Interest Provisions) referred to in the Security Document as being part of the Security Interest.

"Own" means holding an estate or interest in property. For example, a reference to a Person "Owning" real property means that Person is the registered proprietor, holder, lessee or Crown lessee or the holder of an estate in fee simple of that real property. "Owner" means a Person who holds an estate or interest in property.

"Person" includes an individual, a firm, a body corporate, an unincorporated association or an authority.

"PPS Act" means the Personal Property Securities Act 2009 (Commonwealth).

"Receiver" means a receiver or a receiver and manager.

"Secured Agreement" means any agreement between you and us (including a guarantee given by you) whenever made, under which you undertake to pay or repay us money and which you acknowledge in writing (including by electronic communication) to be an agreement to which the Security Interest extends.

"Secured Property" means any property over which an Encumbrance is granted under the Security Interest or which is otherwise subject to the Security Interest. This includes:

- any part of that property;
- if that property includes a Licence, all rights you hold as licensee under that Licence and any renewal of the Licence and any other Licence you obtain in connection with any other Secured Property;



- rights to claim or receive money because you Own or Owned that property, including any right to receive compensation as referred to in clause 5; and
- all proceeds from the sale or any other dealings with that property (including any proceeds within the meaning of that term in the PPS Act), whether or not the sale or other dealing is permitted by the Security Interest.

If the Secured Property includes shares in a company title unit, the company title unit is part of the Secured Property.

"Security Document" means:

- an agreement entitled "Asset Security Interest" signed by you at any time;
- an agreement entitled "General Security Interest" signed by you at any time; or
- any other agreement signed by you at any time that states that it is a "Security Document" for the purposes of these Security Interest Provisions.

'Security Interest' means:

- these Security Interest Provisions;
- the Security Document; and
- the Other Documents.

'Security Interest Provisions' means this document.

'Serial Numbered Good' means any of the following:

- any aircraft;
- any aircraft engine;
- any airframe;
- any helicopter;
- any small aircraft;
- any design which is registered or registrable under any legislation;
- any patent which is registered or registrable under any legislation;
- any plant breeder's right which is registered or registrable under any legislation;
- any trade mark which is registered or registrable under any legislation;
- any licence over a design, patent, plant breeder's right or trademark;
- any motor vehicle;
- any watercraft; or
- any other property in respect of which, in accordance with the PPS Act, an Interest can be registered by serial number.

'the Bank', 'we', 'us' or 'our' means Commonwealth Bank of Australia ABN 48 123 123 124 and its successors and assigns.

'you' means each Person (and their executors, administrators, successors and assigns) named as a 'Grantor' in the Security Document. If there is more than one Person so named, this means each Person named separately and every two or more of those Persons jointly.

## 1.2 General interpretation rules

- (a) A reference in the Security Interest to:
- the singular includes the plural and vice versa;
  - 'including' or 'for example', when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  - a document includes any variation or replacement of it;
  - law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them); and
  - any thing (including the Secured Property or the Amount Owing) includes the whole and each part of it.
- (b) If a word is defined in the Security Interest, any other form of that word has a corresponding meaning.
- (c) Each clause or provision is a separate right or obligation.

## 1.3 Conflict

If these Security Interest Provisions conflict with the Security Document or any other document (including a Secured Agreement) that you sign with us, the Security Document or that other document will prevail.

# 2. How these provisions affect you and the Secured Property

## 2.1 Effect of signing

When you sign the Security Document you:

- (a) agree that you must fulfil all of the obligations described in the Security Interest;
- (b) grant us rights concerning you and the Secured Property;
- (c) agree that the Encumbrance granted under the Security Interest is a first ranking Encumbrance unless we agree otherwise in writing or the law otherwise provides; and
- (d) agree that we have all of the rights and powers of a secured party under the PPS Act except to the extent otherwise expressly provided in the Security Interest.

## 2.2 Your obligations

- (a) You must ensure that no Default occurs. You must also carry out on time all your obligations under the Security Interest and each Secured Agreement.
- (b) You are liable for all the obligations under the Security Interest, both on your own and jointly with anyone else named as a "Grantor" in the Security Interest.
- (c) If anyone else is named as a "Grantor" in the Security Interest, and some of you are only liable for a part of the Amount Owing, then only that liability is secured by the interest those Persons hold in the Secured Property. We can change the agreement with those Persons without the consent of the rest of you and this will not discharge or affect the Security Interest or the liability of the rest of you.

## 2.3 Selling Secured Property

- (a) If a Default occurs and subject to the terms of the Security Interest, we have the right to sell the Secured Property before other creditors and without needing a court judgment against you.
- (b) For example, subject to the terms of the Security Interest, we can take possession or control of the Secured Property and dispose of it if the Amount Owing is not paid at the time it is due to be paid or another Default occurs. If the money from this disposal does not repay the Amount Owing in full, then we can ask you to pay the difference. We can make this request even if the Secured Property is released from the Security Interest.

## 2.4 Death, bankruptcy or insolvency

The Security Interest remains in effect despite the death or bankruptcy of any one of you, the appointment of a Receiver to any of your property or, if you are a corporation, the making of an order for winding up or the appointment of an administrator or Receiver to you.

## 2.5 Releasing the Secured Property

If the Amount Owing has been fully repaid and no Default has occurred, if you ask us we will release the Secured Property from the Security Interest subject to our rights under clauses 16 and 17.2 and our rights under the equivalent provisions in any Other Document. If the Security Interest secures a guarantee, we can refuse to discharge the Security Interest in certain circumstances as set out in that guarantee.

## 2.6 Trustees

If you sign the Security Document as trustee of a trust, the Security Interest binds you both personally and as trustee of the trust.

# 3. You must repay the Amount Owing

You must pay us the Amount Owing at the agreed time. If we have not agreed a time, then you must pay when we ask (which we may do on one or more occasions).

# 4. General obligations

## 4.1 Compliance with laws and other obligations

You must use reasonable endeavours to comply with:

- (a) all laws, Licences, requirements, orders and notices of Authorities that apply to the Secured Property; and
- (b) all other obligations that relate to your interests in the Secured Property. For example, this might include any licensing arrangement and any constitution of a corporation (where the Secured Property includes shares in that corporation).

## 4.2 Maintenance and repair

You must use reasonable endeavours to:

- (a) keep the Secured Property in reasonably good condition;
- (b) fix any material defect in the Secured Property;
- (c) do anything we reasonably believe is needed to keep the Secured Property in good condition;
- (d) not do anything, and you must prevent anything from happening, that might materially lower the value of the Secured Property or put the Secured Property or our interest in the Secured Property at material risk; and
- (e) ensure that no Secured Property is installed in or affixed to other property that is not Secured Property which might affect our Interest.

## 4.3 Keeping us informed

You must tell us within 30 days if:

- (a) serious damage to the Secured Property occurs or if the Secured Property becomes materially defective;
- (b) any material authorisation or approval under any law relating to the Secured Property has been revoked, suspended, modified, refused or not renewed;
- (c) you are a party to any court proceedings, you are fined or any other penalties are imposed on you under any law, in any case, relating to the Secured Property which could have a Material Adverse Effect;
- (d) you have broken any material law relating to the Secured Property; or
- (e) you breach any material provision of the Security Interest.

## 4.4 Rates, taxes and levies

As the Owner of the Secured Property you must pay all amounts for which you are liable on the due date, including rates, taxes, rents and Licence fees.

#### 4.5 Keeping the Property insured

- (a) You must keep the Secured Property insured, on an ongoing basis, for its full insurable value on the basis of replacement, reinstatement and for loss of income against fire and other usual risks.
- (b) All Insurance Policies must note our interest in the Secured Property under the Security Interest and be on terms and for an amount we consider, acting reasonably, are satisfactory.
- (c) If we ask, you must show us the current policy schedule for each Insurance Policy. If we ask, you must assign your interest in each Insurance Policy to us as security for payment of the Amount Owning.
- (d) You must not reduce or cancel any Insurance Policy. You must tell us immediately if any Insurance Policy is cancelled or you think it is likely to happen.
- (e) You must tell us promptly if you receive a material payment under any Insurance Policy (each amount paid is an "**Insurance Payment**").
- (f) If we ask you must pay us any amount of an Insurance Payment that we, acting reasonably, require. Each payment we ask for must be paid at the time we ask for it to be paid. We will use each amount received to repay part or all of the Amount Owning in accordance with clause 11.
- (g) You will comply with any direction that we give you to pay any part of any Insurance Payment that we do not receive under clause 4.5(f) either to reinstate the Secured Property or carry out other works.
- (h) You must tell us if any claim you make under any Insurance Policy is refused either in part or in full. If we take over your rights to make, pursue or settle such an insurance claim then we will tell you in writing. We will exercise those rights having regard to your interests under the claim and our rights under the Security Interest.

#### 4.6 Proceeds of insurance claims

Unless restricted by law, if we receive the proceeds of a claim under any Insurance Policy, we may use those proceeds to re-instate the Secured Property or carry out other work on it.

#### 4.7 Application of proceeds

If we provide any financial accommodation to you or for your benefit to assist you to acquire rights in any Secured Property you will apply the financial accommodation solely for that purpose.

#### 4.8 Perfection of Security Interests

You will implement policies and practices and take all steps necessary to ensure that all Interests which you hold are attached, enforceable and continuously perfected under the PPS Act until the obligations they secure are satisfied or they are released for value, where a failure to implement the relevant policies and practices or take the necessary steps could have a material adverse effect on the value of the Secured Property or your ability to perform your obligations under the Security Interest or a Secured Agreement.

#### 4.9 Circulating Assets

Prior to:

- (a) any Default occurring under clauses 9.1(e), (f) or (i) or, where Part B of these Security Interest Provisions applies, clause 24(b); or
- (b) us giving you a notice telling you not to do so,

you may sell or otherwise deal with the Circulating Assets in the ordinary course of your ordinary business on reasonable commercial terms provided that, where the Circulating Assets include livestock, you may only sell or otherwise deal with that livestock if you immediately replace the livestock with more livestock of at least equal value.

#### 4.10 Goods used in earning income

Where the Security Interest is regulated under Consumer Credit Law, the Secured Property does not include goods that are property used by the Grantor in earning income by personal exertion if the goods do not have a total value greater than the limit prescribed from time to time under the Bankruptcy Regulations 1996 for the purposes of subparagraph 116(2)(c)(i) of the *Bankruptcy Act 1966* for goods of that type.

## 5. Compensation payments

- (a) You must tell us if you are legally entitled to compensation because you Own the Secured Property. For example, this might apply in the case of a compulsory acquisition.
- (b) If this happens we can take over your rights to make, pursue or settle your claim. We will tell you if we want to do this.
- (c) If we take over your rights to make, pursue or settle your claim, we can exercise those rights in any reasonable manner we choose (including signing releases for the payment in your name or ours), having regard to your interests under the claim and our rights under the Security Interest. If we allow you to make, pursue or settle your claim, you must do so as we direct. You must do your best to ensure that any compensation payment is made to us.

- (d) If you receive any compensation payment then you must pay so much of the money received to us as we, acting reasonably, require, as soon as we ask you to. We will apply that amount, and any compensation payment received by us directly, to repay part or all of the Amount Owing in accordance with clause 11.

## 6. Restrictions on dealings in the Secured Property

Unless you get our prior written consent or this is otherwise expressly permitted by the Security Interest you will not:

- (a) sell, rent or otherwise transfer the Secured Property;
- (b) create another Encumbrance (other than an Encumbrance in favour of us) over the Secured Property or allow one to arise;
- (c) part with possession of the Secured Property; other than temporarily; or
- (d) deal in any other way with the Secured Property or any interest in the Secured Property.

## 7. Further actions and information

### 7.1 Further actions

- (a) You must do anything we, acting reasonably, ask to:
  - (i) provide a more effective Encumbrance over the Secured Property for the payment of the Amount Owing or to perfect the Encumbrance over the Secured Property (including any bank accounts) created by the Security Interest;
  - (ii) enable us to register or perfect the Encumbrance over the Secured Property created by the Security Interest with the agreed priority, including any registration required or permitted by any law;
  - (iii) enable us to exercise our rights in connection with the Secured Property; and
  - (iv) enable us to register the power of attorney described; under clause 13 or a similar power.
- (b) You must:
  - (i) provide to us all Negotiable Instruments which are part of the Secured Property and all documents of title or certificates (for example, share certificates) relating to the Secured Property;

- (ii) allow us to obtain possession or control of any Negotiable Instruments or Marketable Securities or other similar interests, in any case, which are part of the Secured Property;
- (iii) ensure that all property which is intended to be subject to the Security Interest is subject to it; and
- (iv) show us whether you are complying with the Security Interest.

- (c) Examples of actions you may be required to take under this clause 7.1 include obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed.

### 7.2 Further information

- (a) If we ask, you must give us any information or documents we, acting reasonably, require that might affect:
  - (i) the Secured Property; or
  - (ii) the Security Interest.
- (b) If we ask, you will promptly tell us the serial numbers of any Serial Numbered Goods that are part of the Secured Property.
- (c) If you change your name you must tell us in writing of your changed name at least 14 days before the change of name takes effect.

## 8. You must comply with our requests

### 8.1 General compliance

- (a) You agree that you will promptly take any action that we, acting reasonably, request to ensure you comply with your obligations under the Security Interest.
- (b) You must pay for anything which you are obliged to do under the Security Interest.

### 8.2 Consents

- (a) If you request our consent under the Security Interest we must act reasonably in considering whether to give or refuse that consent. If we give our consent we may impose reasonable requirements on that consent.
- (b) You must comply with all our requirements in any consent we give in connection with the Security Interest.



## 9. What happens if a Default occurs?

### 9.1 When a Default occurs

A Default occurs if:

- (a) you fail to pay any of the Amount Owing on time;
- (b) you do not comply with the terms of the Security Interest or any Secured Agreement;
- (c) you or another Person gives us false or misleading information in any material respect in connection with the Security Interest or any Secured Agreement before or after you sign the Security Document;
- (d) any enforcement rights may be exercised under another Encumbrance over the Secured Property;
- (e) you enter into any arrangement, reconstruction or composition with any of your creditors or propose to do so;
- (f) a Receiver is appointed over the Secured Property or a holder of an Encumbrance over the Secured Property takes possession or control of the Secured Property;
- (g) without our prior written consent, you assign or grant an Encumbrance in respect of any money we owe you, or try to (for example, in respect of the Deposit);
- (h) a court orders, or an Authority takes, action against you or the Secured Property which has a Material Adverse Effect;
- (i) any event or conduct occurs which enable a court to grant a petition or an order is made, for the bankruptcy of an individual or his or her estate under a law relating to insolvency, sequestration, liquidation or bankruptcy; or
- (j) where Part B applies, any of the events described in clause 24 occur.

### 9.2 Our rights

If a Default occurs, we do not have to give you any money or provide any other financial accommodation under any Secured Agreement and we can choose to enforce the Security Interest.

### 9.3 Giving notice of enforcement

- (a) If a Default occurs and we choose to enforce the Security Interest or to begin any other Enforcement Proceedings, unless clause 9.4 applies, we will give you a Default Notice before doing so.

(b) If we give you a Default Notice and the law requires:

- (i) that a Default must continue for a certain period before we can give a Default Notice, this period is one day (or any longer period required by law); and
- (ii) us to allow you a period of time to fix a Default, this period must be at least 30 days and will be defined in the Default Notice.

### 9.4 When we do not have to give notice

Unless otherwise required by law, we do not have to give you a Default Notice before beginning Enforcement Proceedings or wait until the period in a Default Notice elapses before beginning Enforcement Proceedings if:

- (a) we believe on reasonable grounds that you induced us by fraud to enter into the Security Interest or any Secured Agreement;
- (b) we believe on reasonable grounds that we need to take urgent action to protect the Secured Property, for example, we believe on reasonable grounds that the Secured Property may perish before the end of 14 days (excluding public holidays) after the day we take possession or control of the Secured Property;
- (c) we believe on reasonable grounds that you have removed or disposed of the Secured Property or intend to remove or dispose of the Secured Property without our permission;
- (d) we have made reasonable attempts to find you without success; or
- (e) a court authorises us to begin Enforcement Proceedings.

### 9.5 If you do not fix the Default

- (a) If:
  - (i) you do not fix the Default within the period required in the Default Notice we give you (if any); or
  - (ii) we are not required by law to give you a notice regarding the Default before beginning Enforcement Proceedings; or
  - (iii) we are required to give you a Default Notice but are not required by law to wait until a period specified in the Default Notice has elapsed before beginning Enforcement Proceedings,we can:
  - (iv) ask you to pay the Amount Owing immediately provided that, if any Secured Agreement is a credit contract regulated by Consumer Credit Law, in the Default Notice we gave you, if any, we told you the amount required to pay out that Secured Agreement and that we can ask you to pay the Amount Owing immediately if you do not fix the Default;



- (v) take possession or control of the Secured Property, by any method permitted by law, unless the Amount Owing is less than the lesser of 25 per cent of the amount of credit provided under the Secured Agreements and \$10,000 (or any other amount prescribed for the purposes of Consumer Credit Law) in which case we may only take possession or control of the Secured Property:
    - A. with the consent of a court; or
    - B. if we believe on reasonable grounds that you have removed or disposed of the Secured Property, or intend to remove or dispose of the Secured Property, without our permission; or
    - C. if we believe on reasonable grounds that urgent action is necessary to protect the Secured Property;
  - (vi) convert any part of the Amount Owing which is in another currency into Australian dollars, at our usual rate of exchange for transactions of similar amounts and currencies at the time of conversion. If we exercise this right, the amount in Australian dollars will be included in the Amount Owing;
  - (vii) to the extent permitted by law, sell or lease the Secured Property or do anything else with it that an Owner of the Secured Property could do;
  - (viii) if permitted by law, purchase or retain the Secured Property;
  - (ix) do anything else the law allows us to do as mortgagee, chargee or secured party or which you could do as the Owner of the Secured Property; and
  - (x) appoint any Person or Persons to be a Receiver to take any of the above actions (other than under clause 9.5(a)(iv)), as defined in the Receiver's terms of appointment.
- (b) We may do any or all of the things in clause 9.5(a) in any order and we may do them:
- (i) at any time after the time stated in the Default Notice (if any) elapses unless we are required by law to do something else first, in which case we can do them after that; or
  - (i) if we are not required by law to give you a Default Notice, at any time.
- (c) You must pay us any amount reasonably incurred or spent by us in exercising any powers whilst we are in possession or control of the Secured Property. Each such amount is part of the Amount Owing.

## 9.6 Our liability

Any agreement we, or any Receiver, enter into with a third party in exercising powers or rights under the Security Interest may contain provisions excluding our or the Receiver's personal liability to that third party.

## 10. If we need to repair the Secured Property

If we take possession or control of the Secured Property and it appears to us that the Secured Property has not been kept in good condition as required by the Security Interest, we may carry out such repairs or remediation as are necessary to restore the Secured Property to good condition. The costs and expenses of such repairs or remediation are part of the Amount Owing.

In exercising our rights in any of the circumstances set out in this clause 10, we will act reasonably and will require you to meet only reasonable costs and expenses which have been reasonably incurred.

## 11. Money we receive

### 11.1 Application of money

Unless otherwise required by law, we may apply any money we receive as a result of any Enforcement Proceedings, or in connection with the exercise of any of our rights under the Security Interest, to pay:

- (a) first, any amount payable to a holder of interests (other than Interests) in the Secured Property with a claim that has a higher priority than our Encumbrance under the Security Interest;
- (b) second, the reasonable expenses we incur in relation to enforcing the Security Interest which, under the Security Interest, you are obliged to pay. These expenses include the expenses listed in clauses 9.5(c), 10 and 11.2 and, if Part B applies, clause 25.7;
- (c) third, any amount payable to a holder of an Encumbrance in the Secured Property that has a higher priority than our Encumbrance under the Security Interest;
- (d) fourth, the Amount Owing whether or not it is then due for payment. If there are amounts payable on more than one account, we can apply the payment between those accounts in any way we choose;
- (e) fifth, any amount payable to a holder of an Encumbrance in the Secured Property that ranks behind our Encumbrance under the Security Interest; and
- (f) sixth, to you (but this amount does not carry interest). We will make this payment to you by paying this amount into an account with us in your name or, if you agree, in any other manner.

Our obligations to deal with the money we receive only arise from the date that we receive the money.

## 11.2 Expenses of enforcement

The expenses referred to in clause 11.1(b) may include any of the following, where incurred after a Default has occurred:

- (a) all reasonable debts, costs, charges and expenses incurred in exercising, or attempting to exercise, rights under the Security Interest (net of any rebates or allowances);
- (b) rents, taxes, rates and outgoings whatever affecting the Secured Property;
- (c) if a Receiver is appointed, the Receiver's remuneration;
- (d) any premiums and other money needed to maintain the insurance required under the Security Interest or that we or the Receiver have arranged to protect the Secured Property; and
- (e) the reasonable costs of making repairs that we instruct the Receiver in writing to make or the Receiver determines to make.

## 12. Appointing a Receiver

### 12.1 Receiver as agent

If the court orders you to be declared bankrupt or if you are a corporation in the course of being wound up, a Receiver appointed by us will be our agent. Unless we tell you otherwise, in all other cases the Receiver is your agent, not ours.

### 12.2 Pay and expenses of the Receiver

We may set the reasonable pay and expenses of the Receiver, which you must pay as part of our enforcement expenses. We can also appoint a new or additional Receiver or remove them as we see fit. We may authorise a Receiver to appoint a delegate.

## 13. Power of attorney

- (a) You appoint us, and each of our Authorised Officers separately as your attorney.
- (b) If a Default occurs, each attorney can:
  - (i) do anything you must do (including paying money) under the Security Interest or any Secured Agreement;
  - (ii) execute any document so that we may transfer legal and/or beneficial title in the Secured Property to another Person if we sell the Secured Property;
  - (iii) delegate their powers (including this power) and revoke a delegation;
  - (iv) exercise their powers, even if this involves a conflict of duty or they have a personal interest in doing so; and

- (v) complete or execute any document or form relating to any Licence or authorisation used or required to carry on the Business.

- (c) If we ask, you must approve formally anything any attorney does under clause 13(b).
- (d) You may not revoke the power of attorney.

## 14. Exclusion of PPS Act provisions

### 14.1 No right to receive notices

You agree that, if the Secured Property is not used predominantly for personal, domestic or household purposes, except as otherwise expressly provided in the Security Interest, we do not need to give you any information in relation to, or any form of notice, which we would otherwise be required to provide under the PPS Act:

- (a) of our intention to remove any property (whether or not that property is part of the Secured Property) from any part of the Secured Property;
- (b) if we, as permitted by any law, make a decision to enforce our Interest in the Secured Property in the same way as, under land law, we may enforce any interest in land that you have granted to us;
- (c) if we give a notice to any Person to pay the proceeds of, or amounts owing in respect of, any Negotiable Instrument, account or chattel paper forming part of the Secured Property to us or if we take possession or control of any of those proceeds or amounts;
- (d) of our intention to dispose of, or purchase, the Secured Property;
- (e) of any amount paid to another Person that holds an Encumbrance over the Secured Property, whether under clause 11.1 or otherwise;
- (f) if we have not disposed of the Secured Property within 6 months of taking possession or control of the Secured Property, stating that we have not disposed of the Secured Property or stating:
  - (i) the total amounts received in relation to the Secured Property after we took possession or control of that Secured Property, or commenced any other Enforcement Proceedings;
  - (ii) any expenses incurred in relation to the retention of the Secured Property before the disposal;
- (g) if we dispose of the Secured Property under a statutory right and you request a written statement of account, however only to the extent of specifying in that statement any amounts paid to other secured parties;

- (h) if, after a Default by you, we exercise a right to seize the Secured Property and propose to exercise any statutory right we may have to retain the Secured Property.

## 14.2 Exclusion of rights

You agree that, if the Secured Property is not used predominantly for personal, domestic or household purposes, except as otherwise expressly provided in the Security Interest, you do not have a right (which you would, but for this clause, have under the PPS Act):

- (a) to reinstate the Security Interest prior to us exercising a right to dispose of or to retain the Secured Property; or
- (b) to redeem the Secured Property after we have seized the Secured Property as a result of a Default by you, but prior to us exercising a right to dispose of the Secured Property.

## 14.3 Waiver of other provisions

If the Secured Property is not used predominantly for personal, domestic or household purposes, you agree to, except to the extent restricted by law, waive any right you may have to require the Secured Property to be dealt with in accordance with the PPS Act if, as a result of any Enforcement Proceedings, we obtain possession or control of the Secured Property.

## 14.4 Controllers

You agree that the provisions of the PPS Act concerning seizure and disposal or retention of the Secured Property do not apply in relation to the Secured Property while a person is in possession or has control of the Secured Property for the purposes of enforcing an Encumbrance.

## 15. Things we can do

- (a) We can register the Encumbrance over the Secured Property created by the Security Interest and take any other action to perfect that Encumbrance.
- (b) We can assign or otherwise deal with our rights under the Security Interest without your consent. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under this Security Interest.
- (c) Upon reasonable notice and at reasonable times we can enter, or access, the Secured Property to:
  - (i) inspect its condition;
  - (ii) find out whether you are complying with the Security Interest; and
  - (iii) exercise our rights.

The requirement to provide reasonable notice may be dispensed with in cases of emergency.

- (d) You must give us and any of our agents all reasonable help to enter, or access, the Secured Property by giving your consent.
- (e) We can do anything you are obliged to do under the Security Interest if you fail to act reasonably promptly and to our reasonable satisfaction in complying with that obligation.

## 16. Releasing Secured Property

When we release the Secured Property from the Security Interest your obligations listed below continue:

- (a) your obligation to pay the Amount Owing;
- (b) your obligations under clause 17.2; and
- (c) your obligations under clauses 7 and 13 but only to the extent necessary to ensure our full rights under clause 17.2 or where you induced us to give the release by making an incorrect statement.

## 17. Additional rights and obligations

### 17.1 Independent rights

- (a) Where possible any law that limits our rights and actions under the Security Interest is excluded from the Security Interest.
- (b) Our rights and actions under the Security Interest are independent of any other Encumbrance and we can exercise them even if we obtain an order or judgment against you.

### 17.2 Refunding payments

A trustee in bankruptcy or a liquidator can ask us to refund a payment of the Amount Owing that we have received from you. If we are obliged to, or we decide to, make this refund, we can treat the original payment as if it had not been made, and are entitled to our rights against you under the Security Interest as if the original payment had not been made. You will do anything that we, acting reasonably, ask to restore to us those rights under the Security Interest.

### 17.3 Exercise in any way

We can exercise our rights, or give or refuse our consent, in any way we reasonably consider appropriate, at any time, including by imposing reasonable conditions. You must comply with any conditions that we impose on the grant of our consent.

### 17.4 Completion and additional security interests

- (a) We can complete in favour of ourselves, our nominee or any purchaser, any instrument you have signed and given to us in relation to the

Secured Property.

- (b) We can enforce the Security Interest before any other Encumbrance or any guarantee given to us in relation to the Amount Owing.

### 17.5 Liability for loss

We are not liable for any loss caused by attempting to exercise, or exercising, our rights (or not exercising our rights, or if there is a delay in exercising our rights), except where our fraud, negligence or breach of statutory duty causes the loss.

### 17.6 Inspection or valuation

If any of our officers carries out an inspection or valuation of the Secured Property, they do so for our purposes only, even if you pay us a valuation fee. We will keep any reports resulting from the inspection or valuation as our exclusive property. You are not entitled to rely, in any way, on any inspection or valuation.

### 17.7 Our agents and Authorised Officers

Our rights and remedies under the Security Interest may be exercised by any of our Authorised Officers or any lawyer or agent we authorise and they may give good discharge to any Person who pays money to them.

### 17.8 Changes to laws

If laws change so that any provision of the Security Interest becomes illegal, void or unenforceable, it is to be read without that provision. Every other provision will continue.

## 18. Notices and communications

### 18.1 Notices in writing

Notices including certificates, consents and demands given or made under the Security Interest must be in writing.

### 18.2 Sending notices

- (a) You can give us notices in person, by pre-paid post or by fax.
- (b) To deliver a notice in person to us you must give it to an employee at the branch or office where you arranged the Security Document, or any other branch or office we advise you.
- (c) To fax or post a notice you must send it to the address or fax number we have provided to you.
- (d) We can give you notices:
  - (i) in person;
  - (ii) by leaving it at your last known address;
  - (iii) by pre-paid post (to your last known address);
  - (iv) by fax (to your last known number); or
  - (v) any other way permitted by law.

### 18.3 Notices sent by email or via our website

- (a) If the law permits this, we may email notices to you directly or advise you by email that you can retrieve them from our website.
- (b) If we make any notice available to you on our website, we will:
  - (i) promptly notify you by email that the notice is available for retrieval from our website and the nature of the notice provided; and
  - (ii) provide you with the ability to readily retrieve the notice by electronic communication (for example, by providing an electronic link to the relevant notice on our website or the universal resource locator (URL) of our website).
- (c) We will provide a paper copy of any notice sent in accordance with this clause 18.3 to you if you ask us to do so within seven years of the date we send the notice to you by email or advise you by email that you may retrieve the notice from our website.

### 18.4 Changing your details

You can change your nominated email address by notifying us at any time. You can also end your agreement to receive information by electronic communication by notifying us at any time.

### 18.5 When do notices take effect?

- (a) Our notices to you take effect from the time you receive them or on the date specified in clause 18.3 unless a later date is shown on the notice. Your notices to us take effect from the time we receive them.
- (b) Notices sent by post are taken to be received on the day they would be received in the ordinary course of post.
- (c) Notices sent by a fax machine are taken to be received at the time shown in a transmission report, if the machine creates a report showing that the fax was sent in full.
- (d) Notices sent by us to you are fully effective, even if at the date of the service you are:
  - (i) lacking in mental capacity;
  - (ii) dead;
  - (iii) bankrupt;
  - (iv) insolvent;
  - (v) absent from your usual residence; or
  - (vi) if you are a corporation, in the course of liquidation or have had an administrator or Receiver appointed.

## 18.6 Statements

Each statement made up from our books and signed by one of our Authorised Officers relating to the Security Interest or any Secured Agreement is sufficient evidence of the matters to which the statement relates, unless you prove to the contrary in any proceedings between you and us.

## 19. Variation or waiver

Unless otherwise permitted by law, a term of the Security Interest, or a right created under it, can only be waived or varied in writing, signed by the party or parties to be bound or benefited.

## 20. Law and jurisdiction

The law and the jurisdiction of the courts of the State or Territory where the Secured Property is kept applies to the Security Interest. If more than one, then it is the State or Territory of our address stated in the Security Document. The venue for any dispute can be any court in the capital city of that State or Territory.

## PART B. PROVISIONS

*This Part B applies, in addition to Part A, in relation to the Security Interest, only if the Security Interest is not regulated under Consumer Credit Law.*

## 21. Definition of Amount Owing

For the purposes of the Security Interest, the definition of "Amount Owing" in clause 1.1 does not apply and "Amount Owing" means all money that you (or any one or more of you) owe us, now or in the future. This may include:

- (a) the principal amount of any loan and the interest payable on that loan;
- (b) any fees and charges, including government charges and duties;
- (c) the cost if you repay the principal amount of any loan early;
- (d) costs and expenses referred to in any Secured Agreement and damages for any breaches of any Secured Agreement;
- (e) amounts which may become owing in future if any event or any other thing occurs or does not occur;
- (f) money owing (including contingently owing) under any guarantee you give us;
- (g) amounts to reimburse or indemnify us;
- (h) amounts you (or any one or more of you) owe as a trustee, a member of a partnership or a member of an unincorporated association;
- (i) amounts you (or any one or more of you) owe because you become a party to a Negotiable Instrument; and
- (j) amounts you owe under the Security Interest.

However, if you are an individual, the Amount Owing will only include money owing (including contingently owing) under a guarantee if you have acknowledged in writing that the guarantee will be secured by the Security Interest.

## 22. Additional definitions

Without limiting clause 1.1, the following words have the meanings set out below in this Part B:

"Account" means an obligation to pay money that arises from:

- any disposal of property, including by sale, transfer, assignment, lease or Licence (for example, any book debt); or



- granting a right, or providing services, in the ordinary course of a business of granting rights or providing services of that kind, but does not include any obligation to pay money that is excluded from the definition of 'account' in the PPS Act, including shares or Negotiable Instruments.

"Chattel Paper" means a record (whether evidenced in writing or electronically) of a monetary obligation and one or both of:

- an Interest in, or lease of, goods; or
- an Interest in Intellectual Property or an Intellectual Property Licence,

but does not include any records which are excluded from the definition of "chattel paper" in the PPS Act, including shares or Negotiable Instruments.

## 23. Additional undertakings and waiver

### 23.1 General undertakings

- (a) You must tell us within 30 days:
- (i) if any authorisation or approval under any law relating to how you conduct the Business has been revoked, suspended, modified, refused or not renewed which could have a Material Adverse Effect;
  - (i) if you are a party to any court proceedings or you are fined or any other penalties are imposed on you under any law, in any case, relating to the conduct of the Business which could have a Material Adverse Effect; or
  - (i) if you have broken any law relating to the conduct of the Business which could have a Material Adverse Effect.
- (b) Notwithstanding the terms of clause 6, if the Secured Property is real property and, pursuant to any law, you do not need to get our prior written consent before you create another Encumbrance over that Secured Property, then you must tell us before you create another Encumbrance and arrange for the holder of that Encumbrance (other than where the Encumbrance is in favour of us) to enter into an agreement with us to provide that the Encumbrance over the Secured Property created by the Security Interest has priority to that other Encumbrance.
- (c) You must:
- (i) if we require you to do so, provide to us all leases or tenancy agreements relating to the Secured Property;

- (ii) allow us to obtain possession or control of any Chattel Paper which is part of the Secured Property;
- (iii) if we require you to do so, give notice to any debtor under any Account or Chattel Paper of the transfer of that Account or Chattel Paper to us in accordance with the Security Interest and require any such debtor to make payment under the Account or Chattel Paper directly to us; and
- (i) give us any information or documents we reasonably require that might affect any lease, tenancy or other arrangement in connection with the Secured Property.

- (d) You must obtain all Licences and other authorisations needed to carry on the Business, keep them up to date, and renew them at the proper time.
- (e) You must carry on the Business, and any other activity on or with the Secured Property, properly and efficiently.

### 23.2 Transfer of Accounts and Chattel Paper

Without limiting any other provision of the Security Interest, if the Secured Property includes any Accounts or Chattel Paper, if we require you to do so, you must transfer to us each Account and each Chattel Paper as security for payment of the Amount Owing on the date we specify.

### 23.3 Real property related undertakings

- (a) You must tell us:
- (i) promptly if the Secured Property becomes seriously contaminated in any way or any contamination is emitted from the Secured Property;
  - (i) promptly if you receive any penalty notices or directions to 'clean-up' the Secured Property issued by any authority; or
  - (i) within 30 days if there are any unresolved complaints from any authority or regulator alleging that your activities on the Secured Property are polluting the environment, or that you are causing public or private nuisance in the way you conduct the Business.
- (b) If the Secured Property becomes contaminated you must remove the contaminant and clean up the Secured Property.
- (c) If any of the Secured Property is rights under a lease of real property, you must apply for a renewal or extension of the lease, or for a new lease, before the expiry of the lease term.

- (d) If there is a renewal or extension option under the lease referred to in clause 23.3(c), you must apply for a renewal or extension at the earliest date you are able to do so. If there is no option, or the time to exercise it has not arisen, you must apply for a renewal or extension, or for a new lease, no later than 12 months before the end of the lease term.
- (e) You must do anything we ask to give us an effective Encumbrance over the renewed or extended lease, or over any new lease in any case entered into on the terms in clause 23.3(c) or 23.3(d).
- (f) You will not, unless you get our prior written consent:
  - (i) surrender or materially change any rental agreement relating to the Secured Property that we have consented to;
  - (i) subdivide or consolidate the Secured Property;
  - (i) create, release or vary an easement, covenant or public right of way which relates to the Secured Property, or allow one to arise; or
  - (i) demolish or remove any building which is part of the Secured Property.

### 23.4 Modifying or substituting Accounts or Chattel Paper

You will not make any modification to, or substitution for, any Account or Chattel Paper that is part of the Secured Property other than minor modifications of an administrative nature which are made in the ordinary course of your ordinary business on arm's length commercial terms.

### 23.5 Keeping records

- (a) You must keep proper records and accounts strictly in accordance with the law and current Australian accounting practice.
- (b) If we ask you to, you must ask a suitably qualified Person (whom we have approved) to audit the accounts.
- (c) You must give us copies of your financial statements (including the notes) within 120 days of the end of each of your financial years.

### 23.6 Holding Licences

- (a) If you sell liquor, operate gaming machines or conduct a club you must hold all current Licences required to do so by law.
- (b) You must pay any fees and meet any other requirements of any such Licence and renew it before it expires.

### 23.7 Telling us of changes

- (a) You must tell us immediately if any Licence referred to in clause 23.6 is revoked, suspended, modified or not renewed or if proceedings start in any tribunal which could affect any such Licence including imposing a penalty for an offence in connection with the Licence or amalgamation with another club.
- (b) If we ask, you must transfer any such Licence to us or to any Person we nominate.

### 23.8 Verification statements

If you are not an individual or if the Secured Property does not include any personal property that are used for anything other than in the course or furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated, you waive any right that you have at any time to receive notice of any verification statement we are given in relation to registration of an Interest created by the Security Interest under the PPS Act, or changes to any registration relating to such an Interest under the PPS Act.

## 24. Additional Defaults

- (a) Without limiting clause 9.1, a Default occurs if:
  - (i) anything happens where we reasonably believe this is likely to mean you will be unable to meet your obligations under the Security Interest or any Secured Agreement; or
  - (ii) anything happens which we reasonably believe has resulted in a material adverse change in your financial position.
- (b) If you are a corporation, a Default also occurs if:
  - (i) an administrator or Receiver is appointed to you or such an appointment is threatened or proposed;
  - (ii) an application or order for winding up is made in respect of you, a meeting is called to consider such a resolution for winding up or a resolution is passed for such a winding up;
  - (iii) without our prior written consent, you try to reduce your share capital or change your constitution in a way that we believe might adversely affect the Security Interest;
  - (iv) any Person who, at the date of the Security Interest, is not entitled to more than 50 per cent of the voting power in you, becomes entitled to such voting power, directly or through nominees, without our prior written consent. In this clause 24(b)(iv), Person includes any two or more related bodies corporate as defined in the Corporations Act; or
  - (v) you are given a notice of proposed deregistration.

## 25. Additional rights on Default

### 25.1 Replacement clauses

If this Part B applies, clauses 9.3, 9.4 and 9.5 are deleted and replaced with clauses 25.2, 25.3 and 25.4.

### 25.2 Giving notice of enforcement

- (a) If a Default occurs and we choose to enforce the Security Interest, unless clause 25.3 applies, we will give you a Default Notice before doing so.
- (b) For some types of Secured Property, including real property, we are legally obliged to give you a Default Notice.
- (c) If we give you a Default Notice:
  - (i) and the law requires that a Default must continue for a certain period before we can give a Default Notice, this period is one day (or any longer period required by law); and
  - (ii) we will allow you a period of time to fix a Default and this period will be at least 30 days and will be defined in the Default Notice.

### 25.3 When we do not have to give a notice

- (a) We do not have to give you a Default Notice, unless otherwise required by law, if we believe on reasonable grounds that:
  - (i) you cannot fix the Default (for example, an administrator or Receiver is appointed to you; a petition is granted or order is made for your bankruptcy or winding-up; you enter an arrangement under Part X of the Bankruptcy Act 1966 (Cth) or a scheme of arrangement with your creditors);
  - (ii) you acted fraudulently before or after you signed the Security Document or any Secured Agreement;
  - (iii) we need to take urgent action to protect the Secured Property, for example, we believe on reasonable grounds that the Secured Property may perish before the end of 14 days (excluding public holidays) after the day we take possession or control of the Secured Property;
  - (iv) there will be a material decline in the value of the Secured Property if it is not disposed of immediately after we take possession or control of the Secured Property (for example, shares or other securities that need to be sold to prevent further decline in value);
  - (v) the Secured Property is foreign currency; or the Secured Property secures a foreign currency loan; or

- (vi) the Secured Property is to be disposed of in accordance with the operating rules of a clearing and settlement facility.

- (b) We also do not have to give you a Default Notice, unless otherwise required by law, if:

- (i) we have made reasonable attempts to find you without success; or
- (ii) a court authorises us to begin Enforcement Proceedings.

### 25.4 If you do not fix the Default

- (a) If you do not fix the Default within the period required in the Default Notice we give you (if any), or if we are not required by law to give you a notice regarding the Default, we can:
  - (i) ask you to pay the Amount Owing immediately;
  - (ii) take possession or control of the Secured Property;
  - (iii) convert any part of the Amount Owing which is in another currency into Australian dollars, at our usual rate of exchange for transactions of similar amounts and currencies at the time of conversion. If we exercise this right, the amount in Australian dollars will be included in the Amount Owing;
  - (iv) manage the Secured Property;
  - (v) sell or lease the Secured Property or do anything else with it that an Owner of the Secured Property could do;
  - (vi) where it is reasonable to do so, if the Secured Property includes any real property, subdivide or improve that real property;
  - (vii) if permitted by law, purchase or retain the Secured Property;
  - (viii) do anything else the law allows us to do as mortgagee, chargee or secured party or which you could do as the Owner of the Secured Property;
  - (ix) appoint any Person or Persons to be a Receiver to take any of the above actions (other than under clause 25.4(a)(i)), as defined in the Receiver's terms of appointment.
  - (x) carry on the Business or any other business you carry on;
  - (xi) have access to and make use of your fixtures, plant and equipment which are part of the Secured Property; and
  - (xii) make a call on uncalled capital and premiums if they form part of the Secured Property.

- (b) We may do any or all of the things in clause 25.4(a) in any order and we may do them at any time after the time stated in the Default Notice (if any) elapses.
- (c) You must pay us any amount reasonably incurred or spent by us in exercising any powers whilst we are in possession or control of the Secured Property. Each such amount is part of the Amount Owing.

## 25.5 Removing your goods

- (a) If we take possession or control of any of the Secured Property, you must promptly remove all goods (including furniture, or plant and equipment) which are not part of the Secured Property. If you do not do so, we may remove the goods from the Secured Property and:
  - (i) store them in another place; or
  - (ii) if the goods have little or no value, dispose of them without notice to you
- (b) In determining how to dispose of the goods, we may have them independently appraised or valued. Unless you can produce satisfactory evidence to the contrary, the independent appraisal or valuation is sufficient evidence of the condition or value (or both) of the goods.
- (c) If we store the goods in another place, we will give you notice promptly of the location of the goods. If you do not claim the goods within 30 days of the date of our notice we may:
  - (i) leave the goods in storage and the manager of the place where your goods are stored may sell those goods to meet its charges for storing those goods; or
  - (ii) sell those goods on your behalf and we will pay any proceeds of such sale into an account that we open with us in your name; or
  - (iii) dispose of the goods in any other manner we choose, if the likely costs of sale exceeds the value of the goods.
- (d) The reasonable costs of removal, delivery, storage, sale, or disposal are part of the Amount Owing. We may use the proceeds deposited in the account referred to in clause 25.6(c)(ii) to pay our reasonable costs of removing, disposing, storing, sale or delivery of the goods.
- (e) After the goods have been sold or disposed of under this clause 25.6 and, if applicable, we have paid any proceeds into an account in your name, we will have no more liability to you for them.
- (f) We will act reasonably where we do anything under this clause 25.6.

## 25.6 Expenses of enforcement

The expenses referred to in clause 11.1(b) also include:

- (a) the reasonable costs incurred in removing and storing goods in accordance with clause 25.6; and
- (b) any costs, charges and expenses referred to in clause 28 where incurred in connection with enforcing the Security Interest.

## 26. Interest on Amount Owing

### 26.1 Payment of interest

If any part of the Amount Owing is owing on an account that is not covered by a Secured Agreement you must pay us interest at the rate determined in accordance with clause 26.2 on that amount until it has been paid in full.

### 26.2 Rates

- (a) We will charge interest at the rate we have agreed with you. If we have not agreed a rate, we will charge the prevailing rate that applies to similar accounts.
- (b) We calculate the daily interest rate by dividing the annual percentage interest rate by 365.

### 26.3 Charging interest

- (a) Interest accrues daily. We calculate and charge interest on the unpaid daily balance of the account at the daily interest rate that applies to the relevant part of the Amount Owing and on the basis of a year of 365 days (even in a leap year).
- (b) As the interest accumulates it becomes part of the Amount Owing. We will debit the accumulated amount from the account each month.

### 26.4 Court orders

If any obligation to pay us an amount under the Security Interest becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest rate we apply from time to time is the higher of the rate we may charge under this clause 26 or any other agreement (including a Secured Agreement) under which the Amount Owing is owing and the rate payable under the court order and this clause 26 will apply in relation to the payment of that interest.

## 27. Indemnities

- (a) If you or another Person gave us incorrect or misleading information or made false declarations in the Security Interest, any Secured Agreement or a related contract, before or after you signed the Security Document, then you must indemnify us against any loss we incur as a result.

- (b) If we take any enforcement action under the Security Interest, you must indemnify us against all claims which anyone who has any interest in all or any part of any Secured Property may make against us.

## 28. Costs, charges and expenses

- (a) You must pay any reasonable costs, charges and expenses that we reasonably incur, or any Receiver or agent of ours reasonably incurs, in connection with:
- (i) any of your accounts;
  - (ii) the Secured Property; or
  - (iii) the Security Interest or any Secured Agreement.
- (b) These amounts may include:
- (i) duties and taxes;
  - (ii) insurance premiums;
  - (iii) legal costs on a full indemnity basis (even if a court does not award costs on that basis);
  - (iv) commissions and fees charged by real estate agents, brokers, auctioneers and valuers; and
  - (v) advertising expenses.
- (c) You must also pay all reasonable costs we incur:
- (i) in preparing, completing or registering the Security Interest or any Secured Agreement or any interest under the Security Interest or Security Agreement, releasing the Secured Property from the Security Interest or releasing any Secured Agreement;
  - (ii) if we are ordered to produce documents or attend proceedings that relate to you, the Secured Property, the Security Interest or any Secured Agreement; and
  - (iii) if we exercise any right granted to us under the Security Interest or by law.
- (d) You authorise us from time to time to deduct from any account of yours with us all amounts referred to in this clause 28.

## 29. Effectiveness and binding

If the Amount Owing is owing or payable on a joint account or you are a:

- (a) partnership;
- (b) firm;
- (c) committee;
- (d) trustee; or
- (e) unincorporated body,

the Security Interest remains effective and continues to bind you regardless of death, retirement, accession, addition, amalgamation, incorporation or otherwise to the partnership, firm, committee, trustee or unincorporated body, or any change to its name or style.

## 30. Third parties

- (a) If any Person:
- (i) presents an instrument for registration, or
  - (ii) takes any action and claims that an instrument has been prepared or signed or the action has been taken under powers or rights derived from the Security Interest,

then it will not be necessary for any Person authorised under law or taking an interest under the instrument to enquire whether the facts and circumstances by which those powers or rights are derived have occurred and the facts and circumstances by which those powers or rights are derived will be deemed to have occurred.

- (b) The Persons referred to in clause 30(a) will not be affected by notice or failure to enquire about matters relating to payment of the Amount Owing or the Security Interest.

## 31. Set-off

- (a) Without limiting any other rights we may have, if a Default occurs we may apply the whole or any part of the Deposit towards the Amount Owing without having to take you to court. We can do this at any time.
- (b) You agree that if the Deposit is not in Australian dollars we may convert the Deposit (or any part of the Deposit) into Australian dollars. Such conversions will be at our usual rates of exchange for transactions of similar amounts and currencies at the time of conversion.



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