

Facility Terms

(2020: Version 4)

BEFORE YOU ACCEPT ANY LETTER OF OFFER (WHICH INCORPORATES THESE TERMS), YOU SHOULD CAREFULLY CONSIDER:

- **YOUR FINANCIAL POSITION; AND**
- **THE PROVISIONS OF THESE TERMS, THE LETTER OF OFFER AND THE SECURITIES; AND**

YOU SHOULD SEEK ADVICE FROM YOUR LAWYER OR ACCOUNTANT.

FACILITY TERMS

(2020: Version 4)

These terms form part of the *letter of offer* from *us* to *you* and any *guarantor* and, once the *letter of offer* is accepted, *you* and any *guarantor* are bound by these terms, which may be varied by *us* from time to time under **clause 4**. These terms apply to all *facilities* described in each *letter of offer* between *us* and *you*.

We have subscribed to the Banking Code of Practice and will comply with the requirements of that code where they apply to *your* dealings with *us*. *You* can find out more about the Banking Code of Practice by contacting *us*.

For *your* assistance, defined expressions are shown in italics "*like this*" when used in these terms. Please refer to **clause 15** for the meaning of defined expressions.

1. CONDITIONS

Note: This clause sets out various steps that must be taken before *you* may request a *drawing* under a *facility*. Other requirements are set out in these terms and may be included in the *letter of offer*.

1.1 General conditions precedent

We are not obliged to provide a *drawing* under a *facility* unless:

- (a) *we* receive, in a form and substance satisfactory to *us*, the *letter of offer* duly accepted, the *securities* and any other documents *we* or *our* solicitors reasonably consider necessary;
- (b) *we* receive any other documents *we* or *our* solicitors reasonably require to evidence that all necessary action was taken to authorise the execution and delivery of each *relevant document* and each *material document*;

- (c) the relevant *account* for that *facility* has been established in accordance with *our* standard procedures and the requirements of all relevant *government bodies*;
- (d) the *securities* are stamped and registered in such jurisdictions and with such *government bodies* as are required for the *securities* to be valid, fully enforceable and to confer the priority specified in the *letter of offer* or, if not specified, as required by *us*;
- (e) any other requirement that *we* consider reasonably necessary, and that has been separately notified by *us* to *you* and/or the *guarantor* or is contained in the *letter of offer*, is satisfied (such additional requirement to be notified by *us* to *you* promptly after *we* decide to impose it);
- (f) if any of the *secured property* includes plant, equipment, crops, livestock or improvements, *we* receive proof of insurance of those items (for their full insurable value) and with an insurer approved by *us* with *our* interest noted on that insurance;
- (g) *we* receive satisfactory results to *our* searches and enquiries in connection with *you*, the *guarantor*, the *trust* and the *secured property*;
- (h) *we* are satisfied that each of the representations and warranties contained in each *relevant document* and each *material document* is correct;
- (i) *we* are satisfied that since the date of the relevant *letter of offer* no event has occurred that may have a *material adverse effect*;
- (j) *we* are satisfied that there is no subsisting *event of default*; and

(k) in the case of a *drawing* relating to an *external obligation*, we:

(1) approve the form, and the beneficiary, of the *external obligation* which must, unless otherwise agreed by us, have an expiry date before the *repayment date* for the *facility*;

(2) we have received an indemnity from you in relation to the *external obligation* (in form and substance acceptable to us); and

(3) we receive a request from you (in form and substance acceptable to us).

1.2 Conditions precedent for first *drawing* for development purposes

If any *drawing* under a *facility* is to be used to assist in completion of a *development*, the following must be received by us before the first *drawing* for that purpose is made:

- (a) evidence acceptable to us or our *consultant* that all *development consents* required in connection with that *development* have been obtained and are satisfactory;
- (b) evidence acceptable to us or our *consultant* that the *builder* is qualified, appropriately licensed and competent to complete the *development* in accordance with the *development consents*, the *plans and specifications* and the *building contract*, so that we can approve the *builder* (which approval will not be unreasonably withheld);
- (c) evidence acceptable to us that the contractor's all risks insurance is in place, that our interest is noted on the policy and the policy is satisfactory in all respects;

(d) evidence satisfactory to us or our *consultant* that the *plans and specifications* are in accordance with the *development consents*;

(e) evidence acceptable to us that each *material document* has been executed and is satisfactory in all respects; and

(f) evidence acceptable to us that all other *pre development conditions* have been met.

1.3 Further conditions precedent for *drawings* for development purposes

Our obligation to make available any *drawing* to assist in completion of a *development* is subject to the further conditions precedent that:

- (a) we receive a certificate from our *consultant* that the works in relation to the *development* for which the *drawing* is required have been satisfactorily completed and the *cost to complete* is less than the aggregate balance then remaining under all *facilities* available to assist in completion of the relevant *development* after the proposed *drawing*;
- (b) we receive a certificate from the *builder* confirming that all payments due to the *builder* under the *building contract* have been made other than those the subject matter of the proposed *drawing*;
- (c) we receive a certificate or statutory declaration from the *builder* confirming that all its subcontractors have been paid or will be paid from the proceeds of the proposed *drawing*; and
- (d) evidence that our *consultant* has been paid all of its costs and expenses.

1.4 Conditions precedent for *our* benefit

Acting reasonably, *we* may at *our* discretion waive or defer the satisfaction of any conditions precedent that are for *our* benefit at any time.

1.5 Conditions subsequent

You and/or each *guarantor* must comply with any conditions subsequent specified in the *letter of offer* within the time permitted by the *letter of offer*. Failure to do so will constitute an *event of default*.

2. USE OF FACILITY

Note: This clause sets out various requirements that apply to the use of a *facility*. Others may be specified in the *letter of offer*.

2.1 General

You and each *guarantor*:

- (a) agree that at no time may the debit balance of an *account* or the *external exposure* under all *outstanding external obligations* exceed the *facility limit* applicable to the relevant *facility*;
- (b) agree that the *facility* may only be used for an *approved purpose* and that any *drawing* used for any purpose other than an *approved purpose* must be immediately repaid;
- (c) authorise *us* to debit each *advance* under a *facility* to the *account* for that *facility* or to the *account* nominated for that purpose in the *letter of offer* on the date that it is provided to *you* or at *your* request; and
- (d) agree that the *facility* will be advanced in accordance with the *method of advance* (if any) specified in the *letter of offer*.

2.2 Usage and access

- (a) *Banking accounts terms and conditions* may regulate the way in which a *facility* can be accessed by *you* and, to the extent they apply to the use of a *facility*, they are incorporated in, and form part of, these terms.
- (b) In addition, but subject to the other provisions of these terms and the *letter of offer*, *you* may by notice in writing to *us* request a *drawing*.
- (c) *We* may, at any time after the occurrence of an *event of default*, cancel or restrict access to an *account* via any card, internet or telephone access arrangements, cheque or other arrangements described in *banking accounts terms and conditions*. If *you* are a *small business* or an individual *we* will only take such action subject to **clause 8.6**.

2.3 Term loans

- (a) If the *facility* is a *term loan* (other than one for *development* purposes), *we* may, after the first *advance* and by providing at least 30 days prior written notice to *you*, cancel any unutilised portion of the *facility limit*.

2.4 Cancellation by *us* and reinstatement

- (a) *We* may cancel any part of the *facility limit* that has not been utilised within 90 days of the date of the *letter of offer*. *We* will give *you* at least 30 days prior written notice of any cancellation.
- (b) If *we* have reasonable grounds to believe that an event has occurred, or is likely to occur, that may have a *material adverse effect*, *we* may cancel that part of the *facility limit* that has not been utilised without

prior notice to *you* if, based on *our* reasonable opinion, it is necessary for *us* to act to manage an immediate risk.

- (c) At *our* discretion, and provided there is no subsisting *event of default*, we may reinstate the cancelled portion of the *facility limit* at *your* request.

2.5 Non usage

- (a) If no *drawing* under a *facility* has been made within 90 days of the date of acceptance of the *letter of offer*, we may, by 30 days prior written notice to *you*, cancel that *facility*. We may give less than 30 days' notice or no notice if, based on *our* reasonable opinion, it is necessary for *us* to act to manage a material and immediate risk. If the *facility* is cancelled, *you* are no longer entitled to request any *advance* under that *facility*.

2.6 Prepayment

- (a) Where the *facility* has been provided at a variable *interest rate*, *you* may at any time repay all or any part of the debit balance of any *account* without any additional cost.
- (b) Where the *facility* relates to the issue of an *external obligation*, *you* may at any time discharge *your* obligations under that *facility* by returning the original of that *external obligation* and paying to *us* any amount paid by *us* under that *external obligation* which has not already been reimbursed by *you* together with interest on that amount.

2.7 Redraw

- (a) If the *letter of offer* indicates that a redraw option applies to the *facility*, we may, subject to this **clause 2.7**

and the other terms of the *letter of offer*, permit any prepaid amount to be redrawn by *you* provided it is not less than \$5,000 (or any other amount specified in the *letter of offer*) or such other amount as may be agreed by *us*.

- (b) A 'prepaid amount' is the amount by which the total repayments of principal made by *you* exceed the total repayments of principal required under the *facility* at any time.

- (c) The following conditions apply in relation to redraws:

- (1) the *facility* must have been fully drawn on the date that the first repayment on the *facility* was due;
- (2) the *facility* must not be fully repaid at the time *you* wish to redraw;
- (3) the amount of *your* early or additional repayments, less any previous redraws, must total the minimum amount (if any) of each redraw specified in the *letter of offer*;
- (4) *you* and any *guarantor* must have complied with the terms of the *facility* and each other *relevant document* to *our* satisfaction; and
- (5) the *securities* must not, in *our* reasonable opinion, have diminished in value nor varied in any other way from when they were given to *us*.

- (d) The amount of any redraw made under this clause will be debited to the *account* and will then incur interest on the same basis as principal owing on the *facility*.

2.8 Priority

Without prejudice to *our* rights under any *relevant document*, if *we* become aware that:

- (a) any other person holds a security interest or encumbrance over any *secured property*; or
- (b) the *securities* are not registered with the priority required by *us*,

then *we* are not obliged to continue to provide the *facility* until *we* have entered into a priority agreement with all relevant parties on terms satisfactory to *us*.

2.9 Payment on account of *outstanding sum*

- (a) If *we* receive a prepayment from *you* on account of *our* obligations under any *outstanding external obligation*, that prepayment will be held by *us* to cover *your* obligations under **clauses 12 and 14**. Nothing in this clause affects *our* rights under **clause 13.14**.

2.10 Gross up

If any law requires *you* to deduct or withhold an amount in respect of *tax* from any payment required under a *relevant document*, *you* must:

- (a) advise *us* in writing of that obligation;
- (b) pay the relevant *tax* and provide evidence of payment; and
- (c) increase the amount payable to *us* so that *we* receive the full amount payable as though no deductions or withholdings (including in relation to amounts payable under this **clause 2.10**) had been required.

2.11 Special drawdown provisions and undrawn facility fee

(a) Application

This **clause 2.11** applies to a *facility* if the *letter of offer* says that it applies.

(b) Drawdown period for a *facility*

You must draw down the *facility limit* in full within the *drawdown period*, unless *we* agree otherwise in writing. *We* may agree to vary the *drawdown period* at *our* discretion.

Unless otherwise specified in the *letter of offer*, the *facility limit* must be drawn down in one amount.

(c) Amounts undrawn are cancelled

We may, by 30 days prior written notice to *you*, cancel *your* access to any part of the *facility limit* that is not drawn down by the end of the *drawdown period* (unless the *drawdown period* will expire in less than 30 days, in which case *we* may give *you* a shorter notice period).

(d) Undrawn *facility* fee

During any part of the *drawdown period* when the *interest rate* applying to a *facility* is a *fixed interest rate*, *you* must pay *us* an undrawn *facility* fee of 0.2% per month on the daily amount of any part of a *facility limit* not drawn down. The undrawn *facility* fee is payable monthly in arrears.

(e) Procedure for *drawings*

- (1) *You* cannot make a drawing if to do so would cause the *facility limit* to be exceeded.
- (2) Funds paid to the *account* must be cleared before *you*

can draw against those funds.

(3) A payment instruction may be given to *our* regional office where *your facility* is administered by delivering it or posting it to *us* at that office, sending it to *us* at that office by email, or by phone to *us* at that office. A payment instruction is not effective until *we* receive and approve it.

(4) To make a *drawing* under any other type of *facility you* must complete and provide to *us* a disbursement authority (using a form approved by *us* for that purpose).

(f) **Method of payment**

A payment instruction or disbursement authority must specify which of the following payment methods *you* request *us* to use when making payment:

- (1) crediting the *account* or any other *account you* may have with *us* in accordance with *your* instructions;
- (2) posting *you* a cheque drawn in *your* favour;
- (3) depositing a cheque at a branch of *your* bank or other financial institution to the credit of *your* account; or
- (4) if cleared funds are required, by same day transfer, or other means, to the credit of the *account*. Any charges payable by *us* for arranging the deposit of clear funds will be charged to the *account*.

We will seek to make the relevant payment using the method requested by *you*, but *we* may make the payment by any other method *we* deem necessary and shall notify *you* of that method of payment.

(g) **Time limit on requests under facility**

If *you* wish to make a *drawing*, *you* must provide *us* with a payment instruction or disbursement authority (as applicable) before 10.00 a.m. on the *business day* on which *you* wish to make the *drawing*.

If *we* receive a payment instruction or disbursement authority later than 10.00 a.m., the applicable payment may not be available until the following *business day*.

(h) **Minimum amount of drawing**

The minimum amount of each *drawing* (if any) is as specified in the *letter of offer*, but a *drawing* for less than the minimum amount may be permitted where:

- (1) the *drawing* is being made to make a payment to another *facility* that *you* have with *us*; or
- (2) the amount available to be drawn is less than the minimum amount.

3. PAYMENT OBLIGATIONS

Note: This clause sets out various requirements relating to the payments required to be made including when those payments are required, how they are calculated and where, and how, they must be made.

3.1 General

All payments required to be made under or in connection with a *relevant document* must be made:

- (a) in cleared funds free of any set-off, counterclaim or deduction;
- (b) by 4 pm on a *business day*;
- (c) in Australian dollars; and
- (d) to *us* at *our* address shown in the *letter of offer* or as subsequently advised to *you* in writing.

3.2 Interest

- (a) *You* must pay interest on the debit balance of each *account*.
- (b) Subject to **clause 3.8**, interest will be calculated on the daily debit balance of an *account* at the *interest rate* applicable to the relevant *facility* (converted to a daily rate) and will be debited to that *account* (or to such other *account* specified in the *letter of offer*) on the dates specified in the *letter of offer* (or monthly in arrears if no dates are specified).
- (c) The *interest rate* may consist of a base rate and a margin. If it does, the current base rate applicable to the relevant *facility* can be obtained by contacting *us*.
- (d) Any *interest rate* set out in the *letter of offer* may change before the first *advance* is made if there is a change

in the *interest rate(s)* applicable to the relevant type of *facility*. *We* will notify *you* of any change to an *interest rate* in accordance with **clause 4**.

3.3 Conversion of *interest rate*

- (a) *You* may request *us* to change an applicable variable *interest rate* to a *fixed interest rate* or vice versa during the term of any *facility*.
- (b) If *we* agree to such a variation, the varied terms will be as agreed between *us* and *you*, and *we* will issue a revised *letter of offer*, or notice of agreed variation, to *you*. *Our* agreement may be subject to conditions.
- (c) If *we* agree to change a *fixed interest rate* to a variable *interest rate* prior to the end of a *fixed rate period*, one of *our* conditions may be that *you* pay a *break cost* calculated in accordance with **clause 7**.

3.4 Fees and charges

You must pay *us* all the fees and charges in the amounts and at the times specified in the *letter of offer* and (unless the *facility* is regulated by the *National Credit Code*) in the relevant *fees and charges schedule* and in each other *relevant document*, and *you* authorise and direct *us* to debit those fees to the relevant *account*, to such other *account* nominated in the *letter of offer* or to any other *account* *you* have with *us* on the due date for payment. *We* may then require *you* to pay the fee or charge immediately, collect it with *your* regular repayments, or require it to be repaid by one or more repayments.

3.5 Calculation

Interest and, where applicable, fees are calculated daily on the basis of a 365

day year or, in the case of a leap year, a 366 day year.

3.6 Repayments

- (a) Subject to clause **3.6(b)** you must repay to us the *outstanding sum* on or before the *repayment date* applicable to the relevant *facility* and must, if required by the *letter of offer*, make such other repayments on the due dates for payment specified in the *letter of offer*.
- (b) If the *facility* is an overdraft or on-demand *facility*, we will notify you promptly of our decision to terminate the *facility* and give you a reasonable period to repay the *outstanding sum*, although we may not give you a reasonable period to repay if, based on our reasonable opinion, it is necessary for us to require immediate payment in order to manage an immediate risk.
- (c) You must also immediately repay any amount by which the *outstanding sum* exceeds the *facility limit* at any time.
- (d) The original of each *external obligation* must be returned to us on the *repayment date* applicable to the *facility* relating to that *external obligation*.

3.7 Other costs and expenses

You must pay all other costs, charges, duties and expenses, including legal costs reasonably incurred (on a full indemnity basis registration costs, discharge costs, stamp duty, government charges, court fees and valuation costs, specified in any *relevant document* or which are incurred by us in connection with:

- (a) the preparation, negotiation and execution of each *relevant document* and *external obligation*;

- (b) the stamping and, where necessary, registration of each *relevant document* and *external obligation*;
- (c) the conduct of any searches and enquiries including obtaining any valuation or other report required by us and obtaining advice on any *trust deed*;
- (d) any valuations or revaluations undertaken by us in accordance with the *relevant documents*;
- (e) the enforcement and attempted enforcement or preservation by us of our rights under any *relevant document* or any *material document*, including any legal recovery costs (such as mediation costs) and any costs associated with restructuring or amending the *facilities*;
- (f) any request for amendment, consent, approval or waiver in connection with any *relevant document*, any *material document* or any *external obligation*; and
- (g) any advice obtained, or assessment undertaken, in connection with the *relevant documents*, the *material documents*, any *external obligation* or our rights and duties under them, including all costs and expenses of our *consultant*.

You authorise us to debit those costs and expenses to the relevant *account* with effect from the date we incur them, whether or not we have demanded payment from you or anybody else. You acknowledge that you are liable for these costs and expenses even if no *drawing* is ever made under the *facility*

3.8 Default interest

- (a) You and any *guarantor* must pay interest (or any fee in lieu of interest)

on any moneys due but unpaid under the *relevant documents*, including, without limitation, on any debit balance of an *account* in excess of the *facility limit* applicable to that *account*, at the *overdue rate*. Interest on unpaid amounts is calculated from but excluding the date the payment was due to and including the date the payment is made. Interest not paid when due will be capitalised monthly and will be debited to the relevant *account* on the first day of each month in arrears.

- (b) **Clause 3.8(a)** will not apply during any period where *you* are an individual or *small business farmer* and we are providing the *facility* for the purposes of a *farming operation* and the land *you* use for that operation is *in drought or is subject to natural disaster*. *You* may need to tell *us* about the circumstances and we will refund any interest (or fees charged in lieu of interest) which we charged *you* under **clause 3.8(a)** during the drought or natural disaster.

3.9 Merger

If the liability of *you* or a *guarantor* to pay to *us* any moneys payable under a *relevant document* becomes merged in any deed, judgement, order or other thing, then *you* or the *guarantor* (as the case may be) must pay interest on the amount owing from time to time under that deed, judgement, order or other thing at the higher of the rate payable under the applicable *relevant document* and the rate fixed by, or payable under, that deed, judgement, order or other thing.

3.10 Application of payments

We may apply any payment we receive in relation to *your facility* towards any amount that *you* and/or the *guarantor* owe *us*. We may do so in any way we see fit as

necessary to protect *our* legitimate business interests. To the extent permissible, any law, and any direction from *you* and/or a *guarantor*, as to how payments we receive should be applied, does not apply.

4. REVIEW AND VARIATION

Note: This clause contains provisions dealing with reviews of the *facilities* and variations which may be made.

4.1 Review

We may review the *facilities* and/or the financial position and performance of *you* and/or a *guarantor* at any time (provided that we will not review the *facilities* more than once in any 12-month period unless otherwise specified in the *letter of offer*) and at any other time when we suspect that an event or events which may have a *material adverse effect* has occurred. *You* and each *guarantor* must provide such information as we reasonably request to enable each such review to take place.

4.2 Rights following review

- (a) If following any review conducted by *us* in accordance with **clause 4.1**, we consider that there has been an event which has had a *material adverse effect* or that there has been a material adverse change in relevant market or industry conditions generally and this creates a material credit or security risk for *us*, we may require that *you* and/or each *guarantor* accept amended terms and conditions or provide additional *security*.
- (b) If *you* and/or each *guarantor* have not, within 14 *business days* of being requested by *us*, accepted the revised terms and conditions or provided the additional *security* requested, each *facility* will terminate and *you* will be required

to pay the *outstanding sum* within 30 days of the date of termination.

4.3 Saving provision

Nothing in this **clause 4** affects *our* rights should an *event of default* occur and *we* may exercise *our* rights as a result of an *event of default* even if negotiations under **clause 4** are in progress.

4.4 Change to terms

(a) In addition to *our* rights under **clause 4.2**, acting reasonably, *we* may vary any terms of the contract constituted by the *letter of offer* and these terms at any time dealing with:

- (1) the *interest rate* (except that *we* will not change a *fixed interest rate* during a *fixed rate period*);
- (2) any margin which applies to an *interest rate*;
- (3) the manner in which interest is calculated or applied;
- (4) the amount or frequency of repayments or minimum repayments;
- (5) fees and charges (provided that, if the *facility* is regulated by the *National Credit Code*, *we* will not change how the *break cost* is calculated, in a way which may have the effect of increasing it, during *fixed rate period*); or
- (6) the *facility limit*;
- (7) payment methods; or
- (8) any other reasonable change.

(b) *We* will give *you* notice of any variation in accordance with **clause 13.5** on or before the day the change takes effect. Any variation will take effect from the date specified in the notice. If any law (including the *National Credit Code*) or *code* applies to the *facility* and requires *us* to give *you* a minimum period of prior notice of a variation taking effect, *we* will give at least that minimum period of notice unless there are circumstances which permit a shorter notice period, or no notice, under the relevant law or *code*. *You* may not be notified of changes which reduce *your* obligations.

(c) If *you* are not satisfied with any change or variation, *you* may repay *your facility* in accordance with the early repayment provisions in the *letter of offer*.

4.5 Acceptance

You and/or each *guarantor* acknowledge that any usage by *you* of the relevant *facility* after the date that a variation is notified to *you* and/or each *guarantor* (whether under **clause 4.2** or **4.4**) constitutes acceptance of that variation.

5. REPRESENTATIONS AND WARRANTIES

Note: This clause contains various representations and warranties given by *you* and each *guarantor*. *We* rely on these representations and warranties when entering into the *facility* and when each *drawing* is made. Other warranties are included in **clause 10**, the *securities* and may also be set out in the *letter of offer*.

5.1 Representations and warranties

You and each *guarantor* represents and warrants that:

- (a) all information provided to *us*, including in the *finance application*, is true and correct and is not false or misleading;
- (b) if a corporation, it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws, and has the capacity to sue and be sued in its own name and to own its property and conduct its business as it is being conducted;
- (c) unless it has disclosed the contrary to *us* in writing prior to the date of acceptance of the *letter of offer*, it is not the trustee of any *trust*;
- (d) it has taken all necessary steps, and has all requisite power, to properly accept the *letter of offer* and execute, and enter into the transactions evidenced by, each *relevant document* and each *material document*;
- (e) each *relevant document* and *material document* to which it is a party is its valid and binding obligation, enforceable in accordance with its terms subject to laws relating to *insolvency* and creditor's rights generally and to the discretionary nature of equitable remedies;
- (f) acceptance of the *letter of offer* and execution of each other *relevant document* and each *material document*, and entering into the transactions evidenced by them, does not cause a breach of any existing law, its constitution (if applicable) or any other agreement to which it is a party;
- (g) other than as disclosed in writing to *us* prior to the date of acceptance of the *letter of offer*, it has not granted any *encumbrance* (other than a *permitted security interest*)
 - over all or any part of the *secured property*;
- (h) it has obtained all necessary consents, licences, approvals and other authorisations from all relevant persons and *government bodies* in connection with acceptance of the *letter of offer* and execution of each *relevant document* and each *material document* and entry into the transactions evidenced by them;
- (i) no *insolvency event* has occurred or is threatened;
- (j) it has paid all rates, *taxes* and other outgoings which are due and payable by it;
- (k) it has not failed to disclose to *us* any material information which a reasonable person would consider relevant to the assessment by *us* of the *finance application* and to *our* decision to provide the *facility*;
- (l) (unless the *facility* is *regulated* by the *National Credit Code*) the *drawings* provided, or to be provided, under each *facility* have been, or will be, applied wholly or predominantly for business or investment purposes (other than investment in residential property);
- (m) it has obtained and relied on such independent legal, accounting and other advice and information as is necessary or desirable to understand the *relevant documents* and its obligations under them;
- (n) it is in its, and its creditors, best interests for it to enter into and comply with its obligations under the *relevant documents*, that the transactions evidenced by the *relevant documents* to which it is a party are not uncommercial and that it has, or will, obtain a real benefit

from entering into, and performing its obligations under, the *relevant documents*;

- (o) no *event of default* has occurred;
- (p) it has complied with all *environmental legislation*, including in relation to the *development* (where relevant);
- (q) where relevant, it has obtained all necessary *development consents*;
- (r) its obligations under each *relevant document* rank at least equally with all its other unsecured and unsubordinated obligations except obligations mandatorily preferred by law;
- (s) it and its property are free of any right of immunity from set-off, proceedings or execution in respect of its obligations under the *relevant documents*;
- (t) no litigation or other proceedings are current or threatened against it and it is not aware of any *environmental liability* affecting it; and
- (u) no representation, warranty, promise, assurance or other statement has been made to it by any person (including *us* and *our* past or present servants and agents) concerning or relating to any *relevant document* or any *material document* other than those contained in the *relevant documents* or the *material documents*.

5.2 Reliance

You and each *guarantor* acknowledge that *we* rely on the representations, warranties, covenants and acknowledgements set out in these terms and in the other *relevant documents* in agreeing to provide the

facility and that *we* would not have agreed to provide the *facility* but for those representations, warranties, covenants and acknowledgements.

5.3 Survival and repetition

Each representation and warranty set out in these terms survives the acceptance of the *letter of offer* and is deemed to be repeated with reference to the facts and circumstances then existing on the date each *drawing* is provided and on the first *business day* of each month.

6. COVENANTS

Note: This clause contains various obligations by *you* and each *guarantor*. Others are contained elsewhere in these terms, in the *letter of offer* and in the *securities*.

6.1 Positive covenants

You and each *guarantor* must:

- (a) if a corporation, provide to *us* as soon as available (but in any case within 4 months after the end of each financial year) a copy of its *financial statements* for that year unless as otherwise stipulated in the *letter of offer*;
- (b) if a natural person or a partnership, provide to *us* as soon as possible (but in any case within 4 months after the end of each financial year) a copy of the balance sheet and profit and loss account of each of its businesses for that year;
- (c) ensure that all *financial statements* and other accounts provided to *us* are prepared in accordance with the *Corporations Act* (if applicable) and accounting principles and practices generally accepted in Australia and consistently applied;
- (d) if *we* reasonably suspect there has been a material adverse change in

- the financial position of *you* or a *guarantor*, provide to *us* within 14 days of request by *us*, copies of its most recently prepared trading statements, cash flow statements, budgets and balance sheets;
- (e) keep and maintain proper books of account (in accordance with the *Corporations Act*, if applicable), make true and correct entries of all its dealings and make its accounts and financial records available for inspection by *us* when we reasonably request;
- (f) maintain its assets in a good state of repair and condition (subject to fair wear and tear);
- (g) provide any information *we* may reasonably request in relation to its financial condition and its business operations, including any information specified in the *letter of offer*;
- (h) promptly provide to *us* details of all information in the possession of *you* and each *guarantor* relating to any additional financial indebtedness incurred by *you* or a *guarantor* since the latest financial information provided to *us*, including but not limited to indebtedness under all financial leases or other similar obligations;
- (i) take all action necessary to obtain and promptly renew all authorisations, approvals, consents, licences and exemptions required under any applicable law to conduct its business operations and to perform its obligations under, or required on its part for the validity and enforceability of, all *relevant documents* and each *material document*, including make all payments when due under any lease, licence or other arrangement for the use of any property;
- (j) notify *us* in writing as soon as it becomes aware of:
- (1) an *event of default*;
 - (2) any actual or threatened litigation, arbitration or mediation proceeding relating to it or any of the *secured property*;
 - (3) any notification to it of a proposal to compulsorily acquire, resume or confiscate any of its property; and
 - (4) any other thing which has, or may have, a *material adverse effect*;
- (k) comply with the provisions of the *Corporations Act* (if applicable) and all existing laws;
- (l) punctually comply with all requirements of any *government body*;
- (m) punctually pay all rents, instalments of purchase money, interest, rates, *taxes* and other money payable by it and, at the request of *us*, deliver evidence of its payment;
- (n) punctually perform all of its obligations under each *relevant document* and each *material document*;
- (o) promptly on receipt provide to *us* copies of all material correspondence, advices and notices, including notices of any default under, or in connection with, all *material documents*;

- (p) carry on and conduct its businesses in a proper and efficient manner;
- (q) keep *us* fully informed of all relevant information regarding it, including providing not less than 14 days prior written notice of any proposed change in name, business structure or contact details, and immediately notify *us* of any material changes in business activities;
- (r) insure and keep insured all its property able to be insured against loss or damage by fire and such other risks against which a prudent owner would insure for its full insurable value and maintain workers' compensation, public risk, employees' liability, business interruption and other insurances which are necessary or appropriate having regard to its business and property and other insurances specified by *us* or required under any *relevant document*, in all cases, with a solvent and respectable insurer approved by *us* and provide copies of the relevant policies and evidence of the currency of all insurances to *us* upon request; and
- (s) ensure that the following payments are promptly credited to the relevant *account* upon receipt:
- (1) an amount equal to the input tax credit to which it is entitled in relation to a *development* (irrespective of that credit being offset against other moneys owing to the Australian Tax Office) in connection with GST where *we* have funded that *development*; and
 - (2) full proceeds of settlement of *pre development*
- agreements* relating to the sale of all or any part of the property included in the *development* (inclusive of GST).
- ## 6.2 Negative covenants
- You* and each *guarantor* must not, until all moneys owing (actually and contingently) to *us* in relation to all *facilities* have been repaid in full:
- (a) cause or permit to exist any *encumbrance* other than a *permitted security interest* on any *secured property*;
 - (b) without *our* prior written consent (which will not be unreasonably withheld), advance any money or grant accommodation to any person, permit money to remain owing to it by any person or repay money now or in the future owing by it to any person, other than in the ordinary course of its ordinary business;
 - (c) without *our* prior written consent (which will not be unreasonably withheld), cause or permit *you* or any *guarantor* to enter into any merger, reconstruction or amalgamation or acquire any property or business or make any investment if the property, business or investment is substantial in relation to *you* or any *guarantor*;
 - (d) without *our* prior written consent (which will not be unreasonably withheld), vary, amend, terminate or otherwise deal with any *material document*;
 - (e) in any financial year, declare any dividend or dividends or otherwise pay or distribute any amount to any of its shareholders if it makes an operating loss before tax in that financial year or exceeding the

percentage (if any) set out in the *letter of offer* of its profit after tax in that financial year;

- (f) without *our* prior written consent (which will not be unreasonably withheld), cause or permit any change in the nature of its business as now conducted or to carry on any other business which is substantial in relation to its present business as now conducted; or
- (g) without *our* prior written consent (which will not be unreasonably withheld), enter into any derivative transaction except a *treasury agreement* or for the purpose of hedging any actual or projected *interest rate*, foreign exchange or other exposures arising in the ordinary course of trading and not for speculative purposes.

6.3 Valuation covenants

- (a) *You* and each *guarantor* agree that *we* may at our discretion, and at *your* expense, engage a valuer to value or revalue all or part of the *secured property* at least once every three years or at any time *we* reasonably consider necessary. Each valuation must:
 - (1) be addressed to *us* and be accompanied by confirmation from the valuer that *we* have, in relying on the valuation, the benefit of the valuer's professional indemnity insurance; and
 - (2) be in form and substance satisfactory to *us*.

6.4 Development covenants and acknowledgements

Where the *approved purpose* of a *facility* is, or includes, funding of a *development*, *you* and each *guarantor*:

- (a) acknowledge that any inspection of the *development* by *us* or *our consultant* is for *our* purposes only;
- (b) acknowledge that neither *we* nor *our consultant* are responsible for any part of the *development*, any defect or omission in the works relating to the *development* or any other thing in connection with the *plans and specifications*, the *building contract*, the *development* or the *development consents* even if approved by *us*;
- (c) covenant to provide to *us* upon request or procure the provision of:
 - (1) copies of all *plans and specifications*, *development consents* and the *building contract*;
 - (2) copies of all bills of quantity, surveys, purchase orders, invoices, payment receipts and other information relating to the *development*;
 - (3) copies of all progress reports and cash flow projections relating to the *development*; and
 - (4) such other information concerning the *development* as requested by *us* and/or *our consultant* to enable inspections of the *development* to be undertaken and to be satisfied with any progress claim made by the *builder* under the *building contract*;
- (d) agree to give *us* notice of each site meeting and to permit *our consultant* and any other person nominated by *us* to attend each site meeting;

- (e) covenant to provide *us* and *our consultant* access to any real or leasehold property relating to the *development* for the purpose of conducting inspections and to attend any site meetings;
- (f) covenant to take all necessary and reasonable steps to:
 - (1) ensure that each stage of the *development* is completed by the estimated completion date and in accordance with the *building contract*, *development consents* and *plans and specifications*;
 - (2) procure the issue of any certificate of occupancy, certificate of completion or similar certificate from the relevant *government body* upon completion of the *development* or the relevant stage of the *development* and provide a copy to *us* promptly after issue;
 - (3) meet all *cost overruns* from its own resources on a monthly basis and provide evidence to *us* of payment; and
 - (4) deliver to *us* any guarantee or security bond issued by the *builder* under, and in accordance with, the *building contract*;
- (g) acknowledge that *we*, in determining the amount of a *drawing* requested to meet the costs of the *development*, will, unless otherwise agreed, exclude the value of materials claimed which are off-site or delivered on site but not incorporated in the *development*;
- (h) covenant not to amend the *building contract* or agree to any change to the *plans and specifications* without *our* prior written consent (which will not be unreasonably withheld);
- (i) unless otherwise specified in the *letter of offer*, covenant not to agree to, or request, any variation to the works as outlined in the *building contract* without *our* prior written consent (which will not be unreasonably withheld); and
- (j) covenant to comply with all *environmental legislation* relating to, or affecting, the *development* and provide prompt notice to *us* of any actual or alleged breach of any such *environmental legislation*.

6.5 PPSA Law

- (a) *We* need not give any notice under the *PPSA Law* (including a notice of a verification statement) unless the notice is required by the *PPSA Law* and cannot be excluded.
- (b) If *you* and/or any *guarantor* hold any security interests for the purposes of the *PPSA Law*, *you* or the *guarantor* (as the case may be) agrees to implement, maintain and comply in all material respects with procedures for the perfection of those security interests. These procedures must include procedures designed to ensure that the relevant party takes all steps under the *PPSA Law* to continuously perfect any such security interest, including all steps necessary:
 - (1) for *you* or the *guarantor* to obtain the highest ranking priority possible under the *PPSA Law* in respect of the security interest (such as perfecting a purchase

money security interest or perfecting a security interest by control); and

- (2) to reduce the risk as far as possible of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described in the registration by serial number).

- (c) You and each *guarantor* agree to arrange an audit of the above *PPSA Law* procedures, if requested by *us*. Such costs of any audit are for *your account*.

7. BREAK COSTS

Note: This clause applies where a *fixed rate period* applies to a *facility* and sets out the additional costs which may be payable in certain circumstances.

7.1 Break costs

You must pay *us* break costs if:

- (a) you prepay all or part of a *facility* before the end of a *fixed rate period* under it, even if you do this with *our* consent or as the result of a demand we are entitled to make;
- (b) you change all or part of a *fixed interest rate* to a floating or variable *interest rate* before the end of the relevant *fixed rate period*, even if you do this with *our* consent;
- (c) unless otherwise specified in the *letter of offer*, you prepay all or part of a *facility* during an *interest period* in respect of which interest is calculated on the basis of BBSW or LIBOR, even if you do this with *our*

consent or as the result of a demand we are entitled to make; or

- (d) the *outstanding sum* includes accommodation which becomes immediately payable under **clause 2.4, clause 2.5, clause 5.1, clause 6.1, clause 8.6 and clause 12** or any other provision of these terms or a *transaction document* during a period where the *interest rate* is fixed,

each a **break event** in respect of an amount of *outstanding money* (**break amount**).

7.2 Break costs calculation

The formula for calculating *break costs* is complex and is available upon request.

Break costs may be incurred following a *break event* if the *wholesale swap rate* falls between the *fixed rate commencement date* of the *facility* and the date of the *break event* (the *break date*).

Break costs represent the present value of notional additional interest costs that may be incurred by *us* in re-lending the break amount to another customer on the *break date* using money that *we* arranged to fund *your facility* at the earlier *fixed rate commencement date*. The additional interest cost is estimated by reference to the difference between the *fixed rate commencement date wholesale swap rate* and the *break date wholesale swap rate*.

Break costs are calculated in 5 steps:

- Calculate in respect of the *break amount* the present value of each notional wholesale interest cost to *us* (interest calculated at the *fixed rate commencement date wholesale swap rate*) ("**Step 1**").

This involves calculating as at the *break date* the present value of each notional wholesale interest cost to *us* (using the *break date wholesale swap rate* as the

discount factor to obtain present values as at the *break date*), in respect of each future *interest period* and *required payment* payable by *you* from the *break date* and for the remainder of the *fixed rate period*.

This represents the present value of the notional wholesale interest amounts payable by *us* for the remainder of the *fixed rate period* (as if the *break event* had not occurred). The amounts are calculated using the following:

- the current *facility* account balance;
 - the timing and dollar amounts of *your* required payments;
 - any unpaid interest *you* owe;
 - the *fixed rate commencement date* *wholesale swap rate*; and
 - the *break date* *wholesale swap rate*.
- Calculate in respect of the *break amount* the present value of each notional wholesale interest cost to *us* (interest calculated at the *break date* *wholesale swap rate*) ("**Step 2**").

This involves calculating as at the *break date* the present value of wholesale interest cost to *us* (using *the break date* *wholesale swap rate* as the discount factor to obtain present values as at the *break date*), in respect of each future *interest period* and required payment payable by *you* from the *break date* and for the remainder of the *fixed rate period*.

This represents the present value of the notional wholesale interest amounts payable by *us* for the remainder of the *fixed rate period* (as if the *break amount* was notionally lent by *us* to another customer on the *break date*). The amounts are calculated using the following:

- the current *facility* account balance;
 - the timing and dollar amounts of *your* required payments;
 - any unpaid interest *you* owe; and
 - the *break date* *wholesale swap rate*.
- Aggregate the present values of all notional interest payments calculated at Step 1 ("**Step 3**").

This involves aggregating the present values of all notional interest payments

determined in Step 1 above as at the *break date*.

- Aggregate the present values of all notional interest payments calculated at Step 2 ("**Step 4**").

This involves aggregating the present values of all notional interest payments determined in Step 2 above, as at the *break date*.

- Calculation of *break costs* ("**Step 5**").

The *break costs* is the amount determined in Step 3 above less the amount determined in Step 4 above, subject to a minimum of zero. A simplified version of the *break costs* formula is:

Aggregate of present values of <i>our</i> interest payments calculated at the <i>fixed rate commencement date</i> <i>wholesale swap rate</i> (Step 3) LESS Aggregate of present values of <i>our</i> interest payments calculated at the <i>break date</i> <i>wholesale swap rate</i> (Step 4) EQUALS <i>Break costs</i> (Step 5)
--

There is uncertainty and risks associated with *break costs*. *Break costs* may be substantial if the *break date* *wholesale swap rate* is substantially less than the *fixed rate commencement date* *wholesale swap rate*. It is not possible to accurately predict whether the *wholesale swap rate* will go up or down, by how much and when. However, we can provide *you* with an estimate of the likely *break costs* if *you* are seeking to prepay all or part of a *facility* before the end of a *fixed rate period*.

A fixed rate loan may not be suitable for *you* if *you* plan to terminate the *facility* during the *fixed rate period*.

The *break cost administration fee* is an amount to compensate *us* for administrative expenses arising out of a prepayment.

7.3 Acknowledgements

Where the *facility* is provided at a *fixed interest rate* or is the subject matter of a *treasury agreement* you and each *guarantor* acknowledge that:

- (a) it understands that movements in interest rates generally may result in it losing the possible benefit of having a *facility* with an *interest rate* that is fixed;
- (b) it has assessed, understands and accepts the risk of movements in *interest rates* generally;
- (c) it understands the consequences of repayment (voluntarily or otherwise) of a *facility* to which a *fixed interest rate* or *treasury agreement* applies;
- (d) it has been advised to obtain, and has had sufficient opportunity to obtain, financial advice prior to making its decision to accept a *fixed interest rate* or to enter into the corresponding *treasury agreement*; and
- (e) it has not otherwise relied on any advice or opinion from *us* or any of *our* officers or agents (past or present) in deciding to accept a *fixed interest rate* or to enter into the corresponding *treasury agreement*.

8. DEFAULT

Note: This clause lists the *events of default* and what happens if an *event of default* occurs.

8.1 Breach of any term

- (a) If *you* breach any term of the *letter of offer* or any *relevant document*, *we* will not be obliged to provide *you* any

new financial accommodation under the *facility*.

- (b) If *you* are a *small business* or an individual, *we* will only act on **clause 8.1(a)** if the breach is by its nature material and *we* have provided *you* with a reasonable opportunity to rectify the breach (which will be 30 days, or such shorter period as in *our* opinion is reasonably necessary for *us* to protect *our* legitimate business interests).

8.2 Events of default

You are in default if *we* make a determination that an *event of default* has occurred. A determination by *us* will be conclusive evidence of the matter unless it is otherwise proved to be incorrect. *You* must promptly inform *us* in writing if any *event of default* occurs.

8.3 Monetary events of default

It is an *event of default* if *you* fail to pay any money due to *us* under the *letter of offer* or any *relevant document* by the due date (after allowing for any applicable grace period in the *letter of offer* or *relevant document*).

8.4 Non-monetary events of default

Each of the following is an *event of default*.

- (a) an *insolvency event* occurs to *you* or a *guarantor*;
- (b) *you* or a *guarantor* no longer has legal capacity;
- (c) enforcement proceedings are taken against *you* or *guarantor*, or any of its assets, by another creditor;
- (d) early repayment is required under a separate financing arrangement *you* or a *guarantor* has with *us*, or default based action is taken against *you* or a *guarantor* by *us*, in each case due

to an *event of default* which is described in this clause 8.4;

- (e) we believe on reasonable grounds that *you* or a *guarantor* has not complied with the law or any requirement of a statutory authority, and such non-compliance has, or has the potential to have, a material effect on any business *you* conduct;
- (f) it becomes unlawful for *you* or *us* to continue with the *facility* or any *relevant document*;
- (g) *you* or a *guarantor* gives *us* information, or makes a representation or warranty to *us*, that is materially incorrect or misleading (including by omission), and is such that *we* would not have provided the *facility*, or would only have provided the *facility* on different terms, if *we* had known the correct information;
- (h) *you* use the *facility* for a purpose not approved by *us*, for an illegal or improper purpose, or to finance an illegal or improper activity;
- (i) *your* assets or a *guarantor's* assets are dealt with, or attempted to be dealt with, in breach of the terms of the *letter of offer* or any *relevant document* without *our* prior written consent (which will not be unreasonably withheld), including:
 - (i) any of the *secured property* becomes subject to a mortgage or charge without a priority agreement being in place between *us* and the other security holder on terms acceptable to *us* (acting reasonably);
 - (ii) any of the *secured property* becomes subject to a mortgage or charge without *our* prior written consent

(which will not be unreasonably withheld); or

- (iii) the amount secured by any mortgage or charge over the *secured property* is increased without *our* prior written consent (which will not be unreasonably withheld);

- (j) *you* or a *guarantor* does not provide financial information required by any agreement with *us*;

- (k) *you* or a *guarantor* does not maintain a licence or permit necessary to conduct any business *you* conduct;

- (l) *you* or a *guarantor* does not maintain insurance required by agreement with *us*;

- (m) legal or beneficial ownership, or management control, of *you* or a *guarantor*, or its business, changes without *our* prior written consent (which will not be unreasonably withheld);

- (n) without *our* prior written consent (which will not be unreasonably withheld), the status, capacity or composition of *you* or a *guarantor* changes, including:

- (i) *you* or a *guarantor* ceases to carry on its business or a material part of its business, or disposes of substantially all of its assets; or

- (ii) if *you* or a *guarantor* are an individual, *you* or a *guarantor* are sentenced to jail for a term of longer than 12 months;

and each of the following is an *event of default* where *you* are not an individual or *small business*:

- (o) the *secured property* is:
 - (i) substantially damaged or destroyed, and *we* consider in *our* reasonable opinion that the *secured property* cannot be expected to be reinstated within a reasonable time and without material loss of any material income from the *secured property*; or
 - (ii) taken out of *your* control;
- (p) there is a material reduction in the value of the *secured property*;
- (q) *you*, or any person on behalf of *you*, breach any material undertaking given to *us* or any condition imposed by *us*;
- (r) all repairs necessary to keep the *secured property* in good repair are not made in a timely fashion;
- (s) any amount required to be paid in connection with the *secured property* (including council rates, water rates, land tax or shared title contributions) is not paid within 90 days of due date; or
- (t) any other event agreed in writing by *you* to be an *event of default* for the purposes of the *facility*.

8.5 Exercise of rights

Subject to clause 8.6 (which applies if *you* are a *small business* or an individual), at any time after an *event of default* occurs, *we* may sign anything and do anything *we* consider appropriate to recover the *outstanding sum* and deal with the *securities*. *We* may do this how and when *we* in *our* absolute discretion decide, and with or without taking possession of the *secured property*, whether or not in conjunction with other property, despite any omission, neglect, delay, and without liability for loss or need to account as

mortgagee or chargee in possession. Without limitation, *we* may do any one or more of the following by notifying *you*:

- (a) cancel all or any part of any *facility*;
- (b) terminate the *facility*;
- (c) make the *outstanding sum* under or in connection with any *facility* immediately due for payment or payable on demand;
- (d) exercise any power or privilege conferred by law, equity, the *letter of offer* or any *relevant document*; or
- (e) perform any one or more of *your* obligations under the *letter of offer* or any *relevant document*.

8.6 Notice of enforcement

- (a) If *you* are a *small business* or an individual, *we* will only act on a specific non-monetary *event of default* if the event by its nature is material, or *we* reasonably consider that the event has had, or is likely to have, a material impact on:
 - (1) *your* or a *guarantor's* ability to meet your or their financial obligations to *us* (or our ability to assess this);
 - (2) *our* security risk (or *our* ability to assess this); or
 - (3) *our* legal or reputation risk where an event in clause 8.4(e), 8.4(f), 8.4(g) or 8.4(h) occurs.
- (b) If *you* are a *small business* or an individual and an *event of default* has occurred, *we* will not:
 - (1) require *you* to repay the *facility*;

- (2) take enforcement action against *you*; or
 - (3) enforce any security held to secure repayment of the facility,
- unless:
- (4) for a monetary *event of default*, we have given *you* at least 30 days' written notice of the *event of default* unless a shorter period of notice or no notice is permitted by clauses 8.6(c), 8.6(d) or 8.6(e); or
 - (5) for a non-monetary *event of default*:
 - (A) we have given *you* notice specifying the grounds on which we consider there to be a non-monetary *event of default* (unless clause 8.6(c) or 8.6(e) applies and we are not required to give *you* any notice); and
 - (B) if the *event of default* can be remedied, we have allowed a reasonable period of time for *you* to remedy the *event of default* (which must be at least 30 days unless a shorter period or no period is permitted by clauses 8.6(d) or 8.6(e)) and *you* have not remedied the *event of default* within the given period.
- (c) If *you* are a *small business* or an *individual*, we do not need to give *you* notice to repay *your facility* if *your facility* is an overdraft or an on-demand facility. However, if a failure to repay that *facility* on demand also constitutes default under another loan with *us*, we will enforce that other loan based on that default.
 - (d) If *you* are a *small business* or an individual and *your facility* is not regulated by the *National Credit Code*, we may give less than 30 days' notice to remedy the *event of default* if it is reasonable for *us* to do so to manage a material and immediate risk relating to the nature of the relevant *event of default*, *your* particular circumstances, or the value of the *security*.
 - (e) If *your facility* is regulated by the *National Credit Code*, we do not need to give *you* a default notice or wait 30 days before commencing enforcement action if:
 - (1) we reasonably believe that we were induced by fraud by *you* or a *guarantor* to enter into the *letter of offer*;
 - (2) we have made reasonable attempts to locate *you* or a *guarantor* but without success;
 - (3) a court authorises *us* to begin enforcement proceedings; or
 - (4) we reasonably believe that *you* or a *guarantor* has removed or disposed of the *secured property*, or that urgent action is necessary to protect the *secured property*.
 - (f) We can take action even if we do not do so promptly after the default occurs. We do not lose any rights or

forgive any defaults unless we do so in writing.

8.7 Other agreements

We may recover the *outstanding sum* by exercising *our* rights under the *letter of offer* and/or any *relevant document* without prejudice or reference to *our* rights under any *relevant document*.

8.8 Limitation of liability

We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of *our* rights or remedies, except where such loss arises from fraud, negligence or wilful misconduct by *us*, *our* employees or any receiver or agent we appoint.

8.9 Investigation

If we reasonably believe that an *event of default* is, or may be, continuing, we may appoint a person to investigate whether this belief is accurate. *You* and/or the *guarantor* must co-operate with and comply with all reasonable requests made by this person. If there is or was an *event of default*, *you* must pay all costs reasonably incurred in connection with the investigation.

9. GST PROVISIONS

Note: This clause sets out various requirements that <i>you</i> and/or the <i>guarantor</i> must observe and deals with the payment of any applicable GST

9.1 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under a *relevant document* are exclusive of GST.

9.2 Payment of GST

If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member,

on any supply made under any *relevant document*, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

9.3 Timing of GST payment

The recipient will pay the amount referred to in **clause 9.2** in addition to and at the same time that the consideration for the supply is to be provided under the *relevant document*.

9.4 Tax invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 9.2**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

9.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under a *relevant document*, the amount payable by the recipient under **clause 9.2** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

9.6 Reimbursements

Where a party is required under a *relevant document* to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

10. TRUSTS

Note: This clause applies where *you* or a *guarantor* acts as trustee of a *trust*, whether or not *we* are aware of the existence of that *trust*.

10.1 Additional representations and warranties

You and each *guarantor* represents and warrants to *us*, in relation to each *trust*, that:

- (a) the *trust* is validly formed and the *trust deed* has been validly executed and stamped;
- (b) it is validly appointed as the trustee of the *trust*, is not in breach of its obligations as trustee, and no circumstances exist by which it may be removed as trustee;
- (c) each *relevant document* and each *material document* is executed pursuant to, and in proper exercise of its powers as trustee of, the *trust* and all formalities required in connection with such execution have been observed;
- (d) the *approved purpose* and performance by it of its obligations under the *relevant documents* and the *material documents* is for a proper purpose of, and provides commercial benefit to, the *trust* and its beneficiaries;
- (e) it is entitled to be fully indemnified out of the assets of the *trust* for its liability under each *relevant document* and each *material document*, and it has not charged its right of indemnity to any other party;
- (f) it will, at *our* request, exercise its right of indemnity against the assets of the *trust*;
- (g) it is the legal owner of all the assets of the *trust*;
- (h) there is no dispute between it and any other person in relation to the *trust* or the assets of the *trust*;
- (i) it is empowered to carry on its business as now conducted or contemplated and to own its property and assets in its capacity as trustee of the *trust*, and there is no restriction or condition in the *trust deed* upon such activity by it;
- (j) the *trust* has not terminated and no event for the vesting of the assets of the *trust* has occurred;
- (k) the assets of the *trust* have not been re-settled or set aside and are sufficient to satisfy its right of indemnity;
- (l) all action required under the *trust deed* in relation to execution of the *relevant documents* and the *material documents* and the entry into the transactions contemplated by them has been taken; and
- (m) any copy of a *trust deed* supplied to *us* is a true and complete copy of the original, and no other documents exist which affect the terms of the *trust*.

10.2 Further obligations

You or the *guarantor* (as the case may be) must not, without *our* consent which will not unreasonably be withheld:

- (a) cease to be the trustee of the *trust* or do anything which would cause or enable its removal, or retire, as trustee of the *trust*;

- (b) cause or permit the *trust* to be determined or a vesting date to be appointed;
- (c) do or permit anything which adversely affects its right of indemnity against the assets of the *trust*;
- (d) re-settle, set aside or distribute any of the assets of the *trust* unless required to do so by the *trust deed*;
- (e) in any way vary or permit to be varied the terms of the *trust deed*;
- (f) make any distribution of the capital of the trust fund of the *trust* or, whilst any *event of default* subsists, the income of the *trust*;
- (g) issue, redeem, cancel, transfer or otherwise deal with any units issued under the *trust deed*;
- (h) mix or blend the assets of the *trust* with any other assets; or
- (i) delegate any of its power as trustee of the *trust* or exercise any power of appointment.

10.3 Additional covenants

You and each *guarantor* must:

- (a) ensure that no other person is appointed as trustee of the *trust* and, if *we* consent to any person becoming a trustee of the *trust* (whether in replacement of or in addition to *you* of the *guarantor*), procure such person to enter into a deed with *us* under which that person agrees to perform the obligations identical to those of *you* or the *guarantor* under the *relevant documents* and the *material documents*; and
- (b) comply with all of its duties as trustee of the *trust*.

10.4 Liability

The liability of *you* and any *guarantor* under the *relevant documents* and the *material documents* is not limited or otherwise affected by it being trustee of the *trust* or by the extent of its ability to indemnify itself out of the assets of the *trust*. *You* and/or each *guarantor* are liable under the *relevant documents* and the *material documents* personally and as trustee of the *trust*.

11. PARTNERSHIP

Note: This clause applies where *you* enter into the agreement as partners in a partnership.

11.1 Partnership

Where *you* enter into a *relevant document* or any *material document* as partners in a partnership:

- (a) *you* represent and warrant that *you* are all the partners of that partnership;
- (b) each of *you* as a separate, independent, principal and personal obligation must pay to *us* all amounts due under the *facility* whether or not *we* may recover any sum from the partnership assets;
- (c) the *relevant documents* and the *material documents* continue to be binding on each of *you* notwithstanding any changes in the composition of the partnership;
- (d) if the partnership is dissolved:
 - (1) *you* must immediately give written notice of that event to *us*; and
 - (2) each of *you* must act in relation to the administration of the partnership assets in the manner (if any) directed by *us*;

- (e) a retiring partner is not discharged from any liability to *us* as a result of an agreement between the then existing partners; and
- (f) the obligations of a retiring partner to *us* under any *relevant document* and any *material document* are not affected by anything which might otherwise affect them at law or in equity.

relation to which the *interest rate* is fixed, prior to the expiry of the *fixed rate period*,

except where such loss arises from fraud, negligence or wilful misconduct by *us*, *our* employees or a receiver or agent *we* appoint.

12.2 Scope

Each indemnity contained in these terms and in any other *relevant document* is:

- (a) a continuing obligation;
- (b) an additional, separate and independent obligation;
- (c) not limited by, and does not limit, any other indemnity; and
- (d) survives the termination of that *relevant document*

12. INDEMNITIES

Note: This clause contains certain indemnities given by *you* and each *guarantor* to *us* and provisions dealing with the extent of those indemnities.

12.1 Nature

You and each *guarantor* indemnifies, and must keep indemnified, *us* against any liability, loss, cost or expense (including consequential and economic loss) which *we* incur or sustain or for which *we* become liable, directly or indirectly, which is caused, or contributed to, by:

- (a) any *event of default*;
- (b) any *environmental liability*;
- (c) the exercise or attempted exercise or preservation of any right by *us* under any *relevant document* or any *material document*;
- (d) any act by *us* in reliance on any communication purporting to be from *you* or to be given on *your* behalf;
- (e) any *drawing* requested by *you* not being provided by *us* for any reason, other than a default by *us*;
- (f) any claim against *us* under, or in connection with, an *external obligation*; and
- (g) the repayment to, or receipt by, *us* of all or any part of an *advance*, in

13. GENERAL

Note: This clause contains various additional provisions relevant to the arrangements between *us*, *you* and the *guarantor*.

13.1 Certificate

A certificate signed by *us* or any *authorised officer* stating an amount owing to *us* at a particular date or as to any other matter or thing is conclusive evidence against *you* and/or the *guarantor* (as the case may be) unless proved incorrect.

13.2 Assignment

- (a) *We* may assign, novate or otherwise deal with *our* rights under the *letter of offer* or any *relevant document* in any way *we* wish at any time without the consent of *you* or a *guarantor*. Neither *you* nor any *guarantor* may assign, novate or otherwise deal with or encumber any rights under the *letter of offer* or any *relevant document* without *our* prior written consent.

- (b) We may disclose information about you, the *letter of offer* or any *relevant document* to anybody involved in an actual or proposed assignment, novation or dealing by us with our rights under the *letter of offer* or any *relevant document*.

13.3 Statements

We will provide you with an *account statement* in relation to each *facility*:

- (a) as frequently as specified in the *letter of offer*, or
- (b) if no frequency is specified in the *letter of offer*, at least as frequently as required by any law or *code* which applies to the *facility*

Statements may be provided by us in any way described in **clause 13.5**.

13.4 Electronic communications

To the extent permitted by any applicable law or *code*:

- (a) a requirement under a *relevant document* or any applicable law or *code* to give or provide information (including notices and statements) in writing may be satisfied by giving or providing the information by means of an *electronic communication*; and
- (b) a requirement under a *relevant document* or any applicable law or *code* for a signature by a person will be taken to be met if a method is used to identify the person and indicate their intention which satisfies the requirements of the *Electronic Transactions Act*.

13.5 Notices and other communications

- (a) All notices, notifications, demands, certificates, consents, approvals, waivers and other communications given or provided under a *relevant*

document (all “communications” for the purposes of this **clause 13.5**) must be given or provided in writing.

- (b) Communications from you or a *guarantor* to us may be:
 - (1) left at, or sent by pre-paid post to, our address set out in the *letter of offer* or such other address as we advise you of in writing from time to time;
 - (2) given or provided in such other manner as is provided for by any law or *code* which applies to the *facility*.
- (c) You and each *guarantor* agree that communications from us to you or the *guarantor* (as the case may be) may be given or provided as follows (subject to any different or additional requirements of any law or *code* which applies to the *facility*):
 - (1) if you or the *guarantor* have provided us with an email address, sent electronically to that email address or such other email address as you or the *guarantor* (as the case may be) may advise us of in writing from time to time;
 - (2) if you have access to an internet banking facility provided by us, made available by us for you to view by using that internet banking facility;
 - (3) by such other method of *electronic communication* as is permitted by law;
 - (4) delivered to you personally;
 - (5) left at, or sent by pre-paid post to, the address for you or the *guarantor* (as the case

may be) set out or in the *letter of offer* or the address of the place of residence or business of *you* or the guarantor last known to us; or

- (6) left at any real property that is *secured property*; or
- (7) in such other manner as is allowed by law (which may include publication of notices in newspapers in some cases).

(d) If a communication is given or provided by:

- (1) post, it will be deemed received five *business days* after posting (or seven *business days* after posting if sent to or from a place outside Australia);
- (2) email, it will be deemed received at the time shown in the sender's email system as the time that the email was sent; and
- (3) being made available to view by using *our* internet banking facility, it will be deemed received at the time it is posted on that facility.

13.6 No merger

- (a) Subject to **clause 15.4**, nothing in these terms prejudicially affects any *security* or any rights *we* may have against *you*, any *guarantor* or any other person nor do the *securities* prejudicially affect *our* rights under these terms.
- (b) These terms do not merge with or prejudicially affect, and are not prejudicially affected by, any *encumbrance* or other right or

remedy to which *we* are entitled or a judgement which *we* obtain against *you* or a *guarantor* or any other person in connection with the *relevant documents*. *We* may still exercise *our* rights under the *relevant documents* as well as under the judgement, other *encumbrance* or the right or remedy.

13.7 No waiver or variation

Subject to **clause 4**, any waiver under, or variation of, a *relevant document* is effective only to the extent it is in writing.

13.8 Exercise of rights

No failure on *our* part to exercise, no delay in exercising and no course of dealing with respect to any rights, powers or remedies under any *relevant document* impairs or operates as a waiver of those rights, powers or remedies. No single or partial exercise of any of these rights, powers or remedies precludes any further exercise of them or the exercise of any other rights, powers or remedies.

13.9 Moratorium

Any legislation that varies, prevents or prejudicially affects the exercise by *us* of any right, power or remedy conferred on *us* under any *relevant document* is, to the extent permitted by law, excluded.

13.10 Time of the essence

Time is of the essence of *your*, and any *guarantor's*, obligations under any *relevant document*.

13.11 Severance

Any provision of a *relevant document* that is prohibited, void or unenforceable in any jurisdiction, whether pursuant to the law or a *code* is, as to that jurisdiction, ineffective to the extent only of the prohibition or unenforceability without invalidating the remaining provisions or affecting the

validity or enforceability of the provision in any other jurisdiction.

If *you* are a *small business* or an *individual* and *we* combine of set-off your account, then *we* will promptly inform *you* that *we* have done so.

13.12 Terms which may operate unfairly

If:

- (a) the contract constituted by the *letter of offer* and these terms is a *consumer contract* or *small business contract*; and
- (b) a term of the contract would, but for this clause, be 'unfair' (as defined in section 12BG(1) of the *ASIC Act*),

we may only apply or rely upon that term to the extent that doing so is reasonably necessary to protect *our* legitimate interests.

13.13 Power of attorney

You and each *guarantor* irrevocably appoints *us* as its attorney with power to appoint and remove at *our* pleasure any one or more of *our authorised officers* as substitute attorneys to do, at any time after the occurrence of an *event of default* (and after allowing for any period of remedy), everything that *you* or that *guarantor* may lawfully authorise an agent to do in relation to any *relevant document* or any *material document*. *We* or *our* appointed *authorised officers* must act reasonably in the exercise of any rights, powers or functions under this **clause 13.13**.

13.14 Set-off and combination

- (a) To the extent permitted by any law or *code*, *you* and each *guarantor* authorise *us* at any time to set-off against, or combine with any money, any amount standing to the credit of any *account* of *you* and/or the *guarantor* with *us* in or towards satisfaction of any sum due but unpaid by *you* and/or the *guarantor* (as the case may be) to *us* under any *relevant document* or other agreement or arrangement.

- (b) *We* have no obligation to exercise *our* rights under this clause.
- (c) To the extent legally permissible, *you* and each *guarantor* may not exercise against *us* any right of set-off otherwise available.

13.15 Governing law

These terms and the *letter of offer* are governed by the laws of the jurisdiction of *our* address as shown in the *letter of offer* and, if no address is shown, where the *account* is situated. *You* and each *guarantor* submit to the non-exclusive jurisdiction of the courts of that place.

13.16 Authorisation

You and each *guarantor* authorise *us* to provide a copy of any *relevant document* to any *government body* in which the *securities* are to be stamped, lodged, filed or registered.

13.17 Authorised officers

A determination by, or an opinion of, *our authorised officer* given to *you* and/or the *guarantor* is deemed to be a determination by, or an opinion of, *us*.

13.18 Rights cumulative

Our rights under the *relevant documents* are cumulative and are in addition to any other rights *we* have.

13.19 Disclosure

We may disclose to any person any information in *our* possession relating to *you*, the *guarantor*, the *relevant documents*, the *material documents* and any *external obligation* if:

- (a) *you* or the *guarantor* (as the case may be) consent (which consent may not be unreasonably withheld);
- (b) *we* are legally required or permitted to do so;
- (c) *we* are otherwise permitted under the *relevant documents* or the *material documents* to do so;
- (d) it is publicly available;
- (e) it is in accordance with any directive or request of a *government body*;
- (f) that person proposes to enter, or has entered, into a contract or dealing with *us* in connection with the *relevant documents* or the *material documents* or the subject matters of the *relevant documents* or the *material documents*;
- (g) that disclosure is necessary or desirable to enable *us* to exercise or deal with its rights or obligations under the *relevant documents*, the *material documents* or any *external obligation*;
- (h) that disclosure is to a related body corporate (as that expression is defined in the *Corporations Act*) of *us*; or
- (i) that disclosure is to *you* or any *guarantor*.

13.20 Illegality

If *our* compliance with *our* obligations under the *relevant documents* becomes illegal, *we* may by written notice cancel the *facility*. Upon receipt of such notice of cancellation *you* must immediately pay to *us* the *outstanding sum* and all other moneys owing (actually or contingently) by *you* to *us* in connection with that *facility*.

13.21 Death of a borrower

The *outstanding sum* must be repaid within 180 days from the date *you* die (or if there is more than one borrower, the last of *you* dies), unless other arrangements are made for the continuation of the *facility* to *our* satisfaction.

13.22 Business days

If:

- (a) the day on which any payment is due under a *relevant document* is not a *business day*, that payment must be made on the preceding *business day*; and
- (b) the day on which any other thing is to be done under a *relevant document* is not a *business day*, that thing must be done on the following *business day*.

13.23 Privacy Act

We will comply with *our* obligations under the *Privacy Act 1988* (Cth) in *our* dealings with *you* and a *guarantor*. *Our* privacy policy is available at any of *our* offices and on *our* website.

13.24 Other legislation

If *we* consider that the *Anti-Money Laundering & Counter-Terrorism Financing Act 2006* (Cth) or any similar legislation may apply to *you*, a *guarantor* or to any use of a *facility*:

- (a) *you* and each *guarantor* must provide to *us* such information as *we* may require to ensure *we* comply with *our* obligations under that legislation; and
- (b) *we* may take such steps including, refusing to provide a *facility*, withdrawing a *facility* and disclosing information, as *we* consider

necessary to comply with *our* obligations under that legislation.

by any commission or benefit which may have been, or be, received by *us* and any such commission or benefit (even if quantifiable) is to be ignored.

13.25 Further assurance

- (a) *You* and each *guarantor* agree to do anything which *we* deem is reasonably necessary (such as obtaining consents, signing and producing documents) to manage *our* risks and in order to bind *you*, each *guarantor* and any other person intended to be bound under the *relevant documents* and to show whether *you* and each *guarantor* is complying with the *relevant documents*.
- (b) Without limiting the above paragraph, *you* and each *guarantor* agree to make such amendments to the *relevant documents*, and to do such other things, as *we* may reasonably require from time to time to ensure that any security interest that *we* have arising out of or in connection with the *relevant documents* is perfected under the *PPSA Law* and to otherwise protect *our* position under the *PPSA Law*.
- (c) *We* will provide *you* with a reasonable period to review any additional requirements under this **clause 13.25**.

13.26 Commissions

You and each *guarantor* acknowledge that:

- (a) *we* may pay or be paying a commission or other benefit to third parties in connection with a *facility*;
- (b) *we* may receive or have received a commission or benefit in connection with a *facility*; and
- (c) the obligation of *you* and/or a *guarantor* to reimburse any fees, costs or expenses is not affected

13.27 Counterparts

The *letter of offer* may consist of a number of copies, each executed by one or more parties to the *letter of offer*. When taken together, the executed copies are taken as making up the one document.

14. EXTERNAL OBLIGATIONS

Note: This clause sets out the provisions which apply to a *facility* which is, or includes, an *external obligation*

14.1 Application

This **clause 14** applies where the *facility* is, or involves, the issue by *us* of an *external obligation*.

14.2 Payment

You and each *guarantor* irrevocably and unconditionally authorise *us* to pay immediately any amount claimed at any time against *us* under any *external obligation* and acknowledge that *we* may pay the amount of any such claim:

- (a) without reference to, or obtaining any further authority from, *you* or a *guarantor*; without enquiring whether the claim has been properly made; and
- (b) notwithstanding that *you* or a *guarantor* (or any other person) may dispute the validity of the claim; and
- (c) notwithstanding any direction from *you* or a *guarantor* not to make that payment.

14.3 Voluntary payment

We may, at any time (in *our* absolute discretion) and without notice to you or a *guarantor*, make a voluntary payment to the holder of any *external obligation* to terminate *our* obligations under, or in connection with, that *external obligation*.

14.4 Reimbursement

You must pay to *us*, immediately following *our* demand for payment, an amount equal to each amount demanded from, or paid (whether voluntarily or otherwise) by, *us* under an *external obligation*. You irrevocably and unconditionally authorise *us* to debit to the relevant *account* (or if *you* have no existing *account* with *us*, to open an *account* in *your* name and debit to that *account*) any payment made by *us* under, or in connection with, an *external obligation*, even if we have not demanded payment from you.

15. DEFINITIONS AND INTERPRETATION

Note: This clause contains various definitions that are used in both these terms and the *letter of offer*. It also contains simple rules to assist in understanding these terms and the *letter of offer*.

15.1 Definitions

In these terms:

“account” means, in relation to a *facility*, the account specified in the *letter of offer* relating to that *facility* or (if no account is specified) the account established by *us* in *your* name for recording all transactions connected with that *facility*;

“advance” means each advance of funds made under a *facility* by *us* to *you* or at *your* request or direction;

“approved purpose” means the permitted purpose for a *facility* specified in the *letter of offer*;

“ASIC Act” means the *Australian Securities and Investments Commission Act 2001* (Cth);

“Australian dollars” and **“\$”** means the currency of Australia;

“authorised officer” means:

- (a) for *us*, any director, secretary or attorney of *ours*, any lawyer acting for *us*, any employee of *ours* whose title includes the word “manager” or who is acting in such a role, and any person appointed as an authorised officer by *our* board; and
- (b) for *you*:
 - (1) if *you* are an individual, *you*; or
 - (2) if *you* are a corporation, any director or secretary of yours, or any person from time to time nominated by *you* as an authorised officer by written notice to *us* accompanied by certified copies of signatures of all persons so appointed.

“banking accounts terms and conditions” means any terms and conditions regulating how a *facility* may be accessed which are issued by *us* from time to time and which are published on *our* website or are available by contacting *us*;

“break cost” means a break cost calculated in accordance with **clause 7**;

“break cost administration fee” has the meaning given to it in **clause 7.2**;

“break date” has the meaning given to it in **clause 7.2**;

“break date wholesale swap rate” means the *wholesale swap rate* referable to the date of the *break event* and remaining duration of a *fixed rate period*;

"break event" has the meaning given to it in **clause 7.1**;

"builder" means the person referred to as the builder in the *building contract*;

"building contract" means the contract made between *you* and/or a *guarantor* and the *builder* in connection with the *development*, a certified copy of which will be or has been provided to *us*;

"business day" means a day on which banks in general are open for business in the city of *our* address as shown, or as otherwise specified in, the *letter of offer*;

"cash flow budget" means a budget prepared and agreed to by *you* and submitted to, and accepted by, *us* from time to time, as required to be provided to *us* under a *relevant document*;

"code" means any code of practice that applies to a *facility*, including the Banking Code of Practice;

"consultant" means a quantity surveyor, investigative accountant, lawyer, valuer, real estate agent, consultant or other suitably qualified person appointed by *us* at *your* cost in all respects;

"consumer contract" has the meaning given in section 12BF(3) of the *ASIC Act*;

"Corporations Act" means the Corporations Act 2001 (Cth);

"cost overrun" means the difference (if a negative number) between the estimated cost of each stage of the *development* provided to, and approved by, *us* and the actual amount required to complete that stage of the *development*;

"cost to complete" means at any time the amount required to complete the *development* in accordance with the *building contract*, the *plans and*

specifications and the *development consents* as estimated by *our consultant*;

"development" means the building or other works which are to be carried out by the *builder* in accordance with the *developments consents*, the *plans and specifications* and the *building contract*;

"development consents" means each approval, licence, permit, or consent from any *government body* necessary or desirable to enable the *development* to be completed;

"drawdown period" means, if **clause 2.11** applies to a *facility*, the drawdown period specified in the *letter of offer* or, if none is specified, the period of 4 months starting on *the establishment date*.

"drawing" means a use of a *facility* by, or at the request or direction of, *you* including, the making of an *advance* and the issue of an *external obligation*;

"electronic communication" has the meaning given in the *Electronic Transactions Act*;

"Electronic Transactions Act" means the *Electronic Transactions Act 1999* (Cth);

"encumbrance" means, in relation to any property, any interest in or right over the property, and, anything which prevents, restricts or delays the registration of any interest in or right over the property and includes any "security interest" under, and as defined in, any *security*;

"environmental legislation" means any law, regulation, statute, code, treaty, licence, condition or ordinance relating to environmental matters including land use and development, planning, pollution, waste disposal, toxic and hazardous substances, conservation of natural or cultural resources, climate change, resource allocation, rehabilitation, contamination, health, safety and occupational health, safety and welfare;

"environmental liability" means any obligation, expense, fine, penalty, cost, damage or expense which could be imposed on *us*, *you* and/or a *guarantor* directly or indirectly arising from a breach of any *environmental legislation* by any person or as a result of the retrospective effect of any *environmental legislation*;

"establishment date" means the first day of the second month after the date *we* write to *you* to confirm the terms of the *facility*.

"event of default" means any of the events referred to in **clauses 8.3 and 8.4** and any other event of default (however described) referred to in a *letter of offer* or a *relevant document*;

"external exposure" means, at any time, the maximum liability (actual or contingent) of *us* at that time under each *outstanding external obligation* plus any amount paid by *us* under an *external obligation* which has not been reimbursed to *us* under **clause 14.4**;

"external obligation" means any letter of credit, bank guarantee, performance bond or other obligation to a third party assumed by *us* at *your* request or direction;

"facility" means each facility which *we* agree to provide to *you* in a *letter of offer* and any other arrangement between *us* and *you* relating to the provision of financial accommodation by *us* to *you*, including the issue by *us* of an *external obligation* at *your* request;

"facility limit" means in relation to a *facility*, the amount specified in, or determined in accordance with, the *letter of offer* as the *facility limit* for that *facility*;

"farmer" is as defined in the Banking Code of Practice;

"farming operation" is as defined in the Banking Code of Practice;

"fees and charges schedule" means the document entitled Schedule of Fees and Charges published by *us* from time to time, a copy of which is available on *our* website or by contacting *us*;

"finance application" means, in relation to a *facility*, any finance application, however described, made by *you* and/or a *guarantor* to *us* relating to that *facility* together with all documents attached to, or forming part of, that application;

"financial statements" means:

- (c) a statement of financial performance;
- (d) a statement of financial position; and
- (e) a statement of cash flows,

together with any notes to those documents and a directors' declaration as required under the *Corporations Act* and any other information necessary to give a true and fair view;

"fixed interest rate" means an *interest rate* which *we* have agreed to fix for a period;

"fixed rate commencement date" means the date on which *your fixed rate period* commences;

"fixed rate commencement date wholesale swap rate" means the *wholesale swap rate* referable to the *fixed rate commencement date* and duration of a *fixed rate period*.

"fixed rate period" means a period during which a *fixed interest rate* applies;

"government body" means any person, body politic or other thing exercising an executive, legislative or other governmental function or any judicial function and any person deriving by delegation a right directly or indirectly from any other *government body*;

“**GST Law**” has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**guarantor**” means each person, if any, described in the *letter of offer* as a *guarantor* and any other person who, now or in the future, gives an indemnity, a guarantee or a guarantee and indemnity to *us* in relation to *your* obligations to *us*, and if there is more than one person so described or included, a reference to “*guarantor*” is a reference to them jointly and each of them severally;

“**insolvency event**” means, in relation to a person:

- (a) the appointment of a liquidator, provisional liquidator, administrator or controller (as those expressions are defined in the *Corporations Act*) to the person or over the whole or any of the person’s property;
- (a) the person being, or stating that the person is, unable to pay all the person’s debts as and when they become due and payable;
- (b) the person commits an act of bankruptcy (as defined in *Bankruptcy Act 1966* (Cth));
- (c) the person being, or stating that the person is, an insolvent under administration (as defined in the *Corporations Act*) or is otherwise deemed insolvent under the *Corporations Act*;
- (d) the person is taken under section 459F of the *Corporations Act* to have failed to comply with a statutory demand;
- (e) any event described in section 461 of the *Corporations Act* occurs in relation to the person; or

- (f) any action is taken to make any appointment referred to in this definition;

“**interest period**” means the period of time nominated as such in the *letter of offer* and any other arrangement between *us* and *you* relating to the provision of financial accommodation by *us* to *you*, or a period of time that we agree with *you*, or the period of time we set in relation to the determination of interest rates from time to time if no period of time is stated in the *letter of offer* and any other arrangement between *us* and *you*;

“**interest rate**” means, in relation to a *facility*, the interest rate specified in, or determined in accordance with, the *letter of offer* or these terms for that *facility*;

“**is in drought or natural disaster**” is as defined in the Banking Code of Practice.

“**letter of offer**” means each letter of offer from *us* to, or accepted or executed by, (whether alone or jointly with any other person) *you* and/or a *guarantor* accompanying or incorporating these terms, and each other agreement or arrangement which incorporates these terms entered into between *us* and *you* and/or a *guarantor* which relates to the provision of financial accommodation, or the issue of an *external obligation*, by *us* to, or at the request of, *you*;

“**material adverse effect**” means a material adverse effect upon:

- (a) the ability of *you* or a *guarantor* to comply with obligations under any *relevant document* or *material document*;
- (b) the value, effectiveness, priority or enforceability of any *security*; or
- (c) the financial position, management or business operations of *you* or a *guarantor*;

"material documents" means all *pre development agreements*, the *building contract*, the *plans and specifications*, the *development consents* and all other documents we and you agree are material documents;

"method of advance" means a method of advance specified in the *letter of offer*;

"National Credit Code" means the National Credit Code set out in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth)

"outstanding external obligation" means any *external obligation* under which we have any actual or contingent liability to the beneficiary of that *external obligation*;

"outstanding sum" means, at any time, the aggregate of the debit balance of each *account*, the *external exposure*, accrued interest, costs, expenses, accrued fees and any amount payable pursuant to **clause 7.1**;

"overdue rate" means:

- (a) if a "default rate" is specified in the *letter of offer*, that rate; or otherwise
- (b) the aggregate of 3% per annum and the *interest rate* applicable to a *facility* or, if no *interest rate* is applicable to a *facility*, the aggregate of 3% per annum and *our* unsecured lending rate (as published from time to time);

"permitted security interest" means an *encumbrance* which:

- (a) is in favour of, or has been approved in writing by *us*; or
- (b) constitutes a purchase money security interest in inventory arising in the ordinary course of *your*, or a *guarantor's* (as applicable), business; or

- (c) arises by operation of law or statute to secure the payment of *taxes* or other moneys to a *government body* provided those *taxes* or moneys are not due for payment;

"plans and specifications" means the plans and specifications in respect of the *development* which have been approved by *us* or *our consultant* and all relevant *government bodies*;

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

"PPSA Law" means:

- (a) the *PPSA*;
- (b) any regulations made at any time under the *PPSA*; and
- (c) any amendment made at any time to any other legislation as a consequence of a law referred to in sub-paragraphs (i) and (ii) above;

"pre development agreements" means any agreement relating to the sale or lease of the whole or any portion of the property comprised in a *development*;

"pre development conditions" means all terms and conditions which must be met by *you* and/or a *guarantor* (as set out in the *letter of offer*), prior to the first *drawing* for the purposes of funding a *development*;

"relevant document" means:

- (a) each *letter of offer*;
- (b) these terms;
- (c) the *securities*;
- (d) the *banking accounts terms and conditions*;

- (e) each *fees and charges schedule*, unless the *facility* is regulated by the *National Credit Code*;
- (f) any indemnity given to *us* in connection with an *external obligation*;
- (g) each *treasury agreement*;
- (h) any other agreement or arrangement made between *you* and/or any *guarantor* (whether alone or jointly with any other person) and *us*;
- (i) any document required in connection with, or to give effect to, a transaction contemplated by any document listed above;
- (j) any document amending or varying any of the above;
- (k) any document in connection with the full or partial discharge or release of any *security* or any other *relevant document*; and
- (l) any document agreed between the parties to be a *relevant document*;

“repayment date” means, in relation to a *facility*, the date specified in the *letter of offer* as being the repayment date or termination date for that *facility*;

“secured property” means property subject, or intended to be subject, to a *security*;

“securities” means any security agreement, mortgage, charge, lien, indemnity, guarantee, guarantee and indemnity and other security interest described in the *letter of offer* or held by *us* which secures or guarantees an obligation or liability of *you* or a *guarantor* to *us* together with any document required in connection with, or to give effect to, a transaction contemplated by any of them;

“small business” has the meaning given in the Banking Code of Practice at the date of the letter of offer.

“small business contract” has the meaning given in section 12BF(4) of the *ASIC Act*;

“taxes” means all present and future *taxes*, levies, imposts, stamp and other duties, fees, compulsory loans, withholdings or deductions and penalties and interest imposed in relation to any of them, but does not include a tax on *our* net income or *GST*;

“term loan” means a *facility* in respect of which the amount available to be drawn does not ordinarily increase as repayments are made (except to the extent that any redraws are allowed if prepayments are made);

“treasury agreement” means any *interest rate* swap agreement, *interest rate* cap agreement, *interest rate* collar agreement, forward rate agreement, forward exchange agreement, option agreement, futures contract, hedging agreement and any other derivative agreement which may now or in the future be made between *us* and *you* and/or a *guarantor*;

“trust” means any trust or settlement of which *you* or a *guarantor* is trustee, whether or not *we* have been notified of the existence of such *trust*; and

“trust deed” means each instrument establishing or varying a *trust*.

“we”, “us” and “our” means or refers to the bank identified in the *letter of offer* and its successors and assigns.

“wholesale swap rate” means the wholesale swap rate as displayed on the FINANCIAL MARKETS OVERVIEW page of the Thomson Reuters Screen website (or any replacement page which displays that rate) for that date (and as published on the following *business day* in the Australian Financial Review);

“**you**” and “**your**” means or refers to each person described in the *letter of offer* as the borrower and, if more than one person is so described, a reference to “*you*” or “*your*” is a reference to *you* jointly and each of *you* severally.

15.2 Interpretation

In these terms:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes all other genders;
- (c) “person” includes a partnership, a corporation, an unincorporated association and an authority;
- (d) the whole includes any part;
- (e) headings and notes do not affect its interpretation;
- (f) a reference to a document or legislation includes a reference to that document or legislation as varied, amended or replaced from time to time;
- (g) a reference to a person includes that person’s executors, administrators, successors and permitted assigns;
- (h) a reference to time is to time in the city used for the purposes of determining a *business day*;
- (i) where an example of something is given, it does not limit what else may be included;
- (j) words and expressions which are not defined in these terms but which have a defined meaning in *GST Law* have the same meaning as in the *GST Law*;

(k) a reference to an accounting term is (unless otherwise defined) a reference to that term as it is used in the accounting standards (as defined in the *Corporations Act*) or, if not inconsistent with those standards, in generally accepted accounting principles and practices in Australia; and

(l) words and expressions which are not defined in these terms but which have a defined meaning in the *PPSA Law* have the same meaning as in the *PPSA Law*.

15.3 Two or more borrowers

Where two or more of *you* are named as the borrower in the *letter of offer*:

(a) the provisions and obligations in the *relevant documents* applying to *you*, including the obligation to repay *the outstanding sum*, apply to *you* jointly and to each of *you* severally; and

(b) each of *you* nominates, appoints and authorises the first person who is named as borrower in the *letter of offer*, on behalf of all of *you*:

(1) to do all necessary acts, matters and things to apply for the *facility* including to provide information to *us*; and

(2) to receive any notice, demand, consent, communication or other document from *us* in relation to the *facility*;

and authorises *us* to rely upon this authority in all *our* dealings with *you*.

15.4 Inconsistency

To the extent of an inconsistency between these terms, the *letter of offer* and any *security*, the following order of precedence applies:

- (a) first, any special conditions specified in the *letter of offer*;
- (b) second, the remainder of the *letter of offer*;
- (c) third, these terms; and
- (d) fourth, the *security*.