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Document:

**General security agreement**

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Subject:

**All present and after acquired property of the Grantor – no exceptions**

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Parties:

1. **The Customer**  
as defined in clause 1.1(m)  
(Grantor)
2. **Harrington Drilling Pty Ltd**  
ACN 074 542 448  
(Secured Party)



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# General security agreement

## Parties:

1. **The Customer**  
as defined in clause 1.1(m)  
(Grantor)
  
2. **Harrington Drilling Pty Ltd**  
ACN 074 542 448  
161 Edward Road, Geraldton, Western Australia  
(Secured Party)

## Operative part:

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# 1. Definitions and interpretation

## 1.1 Definitions

In this agreement unless the context otherwise requires:

- (a) **Accounts** means, for a period, a profit and loss statement and statement of cashflows for that period, and a balance sheet as at the end of that period, together with any notes to them and any statement or report (including any directors' declarations and any auditors' report) that is required by applicable law to be prepared in relation to them.
- (b) **Ancillary Security** means any deed or other instrument supplemental or ancillary to this agreement which is intended to provide ancillary security for the payment of the Secured Money.
- (c) **Attorney** means an attorney appointed under or for the purposes of this Security Interest.
- (d) **Approval** means any approval, permit, certificate, authorisation, consent, exemption, filing, licence, notarisation, registration or waiver, however described, and any renewal of or variation to any of them.
- (e) **Books** has the same meaning as in the Corporations Act.
- (f) **Business Day** means a day other than a Saturday or Sunday or public holiday in Western Australia.
- (g) **Chattel Paper** has the same meaning as in the PPSA.
- (h) **Collateral** means:

**If the Grantor is a company or individual and not a trustee**

all the Grantor's present and after acquired property. It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a Security Interest.

**If the Grantor is a company or individual and trustee only charging trust property**

all the Grantor's present and after acquired property which is the subject of the Trust. It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a Security Interest.

**If the Grantor is a company or individual and trustee and charging both trust property and non trust property**

all the Grantor's present and after acquired property. It includes:

- (1) anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a Security Interest as that term is defined in the PPSA; and
- (2) Trust Property.

**if the Grantor is a partnership granting security over partnership assets**

all the present and after acquired property of the Partnership. It includes anything in respect of which the Partnership has at any time a sufficient right, interest or power to grant a Security Interest.

- (i) **Contract** means a contract for goods and services formed under Parts A, B, and C of the Credit Application.
- (j) **Control Event** means:
  - (1) in respect of any Collateral that is, or would have been, a Revolving Asset:
    - (A) the Grantor breaches, or attempts to breach clause 3.1 ("Restricted dealings") in respect of the Collateral or takes any step which would result in it doing so; or
    - (B) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this agreement; or
    - (C) (distress is levied or a judgment, order or Security is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security, over the Collateral; or)
    - (D) the Secured Party gives a notice to the Grantor that the Collateral is not a Revolving Asset. (However, the Secured Party may only give a notice if the Secured Party reasonably considers that it is necessary to do so to protect its rights under this agreement or if an Event of Default is continuing); or
  - (2) in respect of all Collateral that is or would have been Revolving Assets:
    - (A) a voluntary administrator, liquidator or provisional liquidator is appointed in respect of the Grantor or the winding up of the Grantor begins; or
    - (B) a receiver, receiver and manager or controller is appointed to any of the Grantor's property; or



- (C) something having a substantially similar effect to paragraph (A) or (B) happens under any law.
- (k) **Corporations Act** means the Corporations Act 2001 (Cth).
- (l) **Credit Application** means the application for commercial credit – Version 1.1/30 June 2021 made by the Customer to the Secured Party.
- (m) **Customer** means the person described in the Credit Application.
- (n) **Encumbrance** means:
- (1) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or
  - (2) an agreement to create or give any arrangement referred to in paragraph (1) of this definition.
- (o) **Event of Default** means an event or circumstance described in clause 9.1.
- (p) **Fixtures** means all fixtures and fittings and fixed plant, machinery and equipment on any real property (freehold or leasehold) owned by the Grantor.
- (q) **Government Agency** means a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.
- (r) **Insolvency Event** means, in respect of a person:
- (1) an order being made, or the person passing a resolution, for its winding up;
  - (2) an application being made to a court for an order for its winding up;
  - (3) an administrator being appointed to the person;
  - (4) in relation to a person:
    - (A) is resolution is made to appoint a Controller or analogous person to the person or any of the person's property; or
    - (B) an application is made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property,
  - (5) the holder of a Security Interest taking possession of any of the person's property;
  - (6) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
  - (7) the person:
    - (A) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
    - (B) being taken by applicable law to be (or if a court would be entitled or required to presume that the person is) unable to pay its debts or otherwise insolvent;

- (8) the process of any court or authority being invoked against the person or any of its property to enforce any judgment or order for the payment of money or the recovery of any property, unless the person is able, within 5 Business Days, to satisfy the Secured Party that there is no substantial basis for the judgment or order in respect of which the process was invoked;
  - (9) the person dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;
  - (10) the person taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act);
  - (11) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
  - (12) any analogous event,
- unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the Secured Party.
- (s) **Insurances** means all contracts and policies of insurance that are taken out by or on behalf of the Grantor or in which the Grantor has an interest.
  - (t) **Interest Rate** means the rate specified in the Contract.
  - (u) **Key Contract** means a key contract (if any) described in a Contract.
  - (v) **Other Secured Property** means every presently existing or after acquired legal or equitable right, estate or interest of the Grantor in any undertaking or property, including all real and personal property of whatever nature and wherever situated, other than Collateral.
  - (w) **Partnership** means the partnership (if any) described in the Credit Application.
  - (x) **Permitted Encumbrance** means:
    - (1) an Encumbrance created under a Transaction Document; or
    - (2) an Encumbrance that the Secured Party approves before it arises, where the amount secured does not increase, and the time for payment of that amount is not extended beyond the amount and time approved by the Secured Party.
  - (y) **PPSA** means the Personal Property Securities Act 2009 (Cth).
  - (z) **Receiver** means a receiver or a receiver and manager.
  - (aa) **Relevant Person** means the Grantor or any party to a Transaction Document other than the Secured Party.
  - (bb) **Revolving Asset** means any Collateral:
    - (1) which is:
      - (A) inventory;
      - (B) a negotiable instrument;
      - (C) machinery, plant or equipment which is not inventory and has a value of less than (AUD\$1,000.00) or equivalent;
      - (D) money (including money withdrawn or transferred to a third party from an account of the Grantor with a bank or other financial institution); and

- (2) in relation to which no Control Event has occurred, subject to clause 3.4 (“Conversion to Revolving Assets”)
- (cc) **Secured Money** means all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Grantor to the Secured Party on any account at any time under or in connection with any of the Transaction Documents or any transaction contemplated by them, whether:
- (1) present or future, actual or contingent;
  - (2) incurred alone, jointly, severally or jointly and severally;
  - (3) the Grantor is liable on its own account or the account of, or as surety for, another person and without regard to the capacity in which the Grantor is liable;
  - (4) due to the Secured Party alone or with another person;
  - (5) the Secured Party is entitled for its own account or the account of another person;
  - (6) arising from any relationship; or
  - (7) originally contemplated by the Grantor or the Secured Party or not.
- (dd) **Security Interest** has the same meaning as that term is defined in the PPSA and includes the security interest created by this agreement.
- (ee) **Tax** means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a Government Agency, together with any related interest, penalty, fine or other charge.
- (ff) **Transaction Document** means:
- (1) the Contract;
  - (2) this agreement;
  - (3) an Ancillary Security;
  - (4) any document or agreement that the parties agree in writing is to be a Transaction Document for the purposes of this agreement;
  - (5) any document or agreement that is entered into under any of the above;
  - (6) any document or agreement that amends, supplements, replaces or novates any of the above; and
- any undertaking (whether or not in writing) by or to a party or its lawyers that is given under or relates to any of the above.
- (gg) **Trust** means the trust (if any) described in the Credit Application.
- (hh) **Trust Property** means for a Trust, all the Grantor’s present and after acquired property which is the subject of the Trust. It includes anything in respect of which the Grantor as trustee of the Trust has at any time a sufficient right, interest or power to grant a Security Interest.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision.
- (b) the singular includes the plural and vice versa.
- (c) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa.
- (d) a reference to any gender includes all genders.
- (e) a reference to a clause is to a clause of this agreement.
- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.
- (g) a reference to any party to this agreement or any other document or agreement includes that party's executors, administrators, substitutes, successors and permitted assigns.
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

### 1.3 Headings

In this agreement, headings are for convenience of reference only and do not affect interpretation.

### 1.4 Business day

If the day on which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, that act, matter or thing shall be done on the following Business Day.

### 1.5 Liability of parties

If two or more parties are included in the definition of **Grantor**, then, in this agreement:

- (a) a liability of the Grantor under this agreement is a joint liability of all of them and a several liability of each of them;
- (b) a right given to the Grantor under this agreement is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by the Grantor is made by each in respect of itself.

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## 2. Security Interest

### 2.1 Security Interest

The Grantor:

- (a) grants in favour of the Secured Party, a Security Interest in the Collateral; and
- (b) charges in favour of the Secured Party, the Other Secured Property;

to secure the payment of the Secured Money, and to secure the performance of all of the Grantor's other obligations to the Secured Party at any time.

## 2.2 Transfer by way of security

- (a) The Security Interest is:
  - (1) A transfer by way of security of Collateral consisting of:
    - (A) Accounts and Chattel Paper (each as defined in the PPSA) which are not, or cease to be, Revolving Assets; or
    - (B) a Key Contract.
- (b) To the extent any Collateral is not transferred, this Security Interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Collateral.

## 2.3 Consideration

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

## 2.4 Indebtedness and payment of Secured Money

- (a) The Grantor acknowledges and agrees that this agreement is a Security Interest which secures payment to the Secured Party of the Secured Money.
- (b) The Grantor undertakes to pay the indebtedness described in clause 2.4(a) as specified in the Contract and if no mechanism is specified, then on demand.

## 2.5 Nature of security

The Grantor acknowledges and confirms that:

- (a) the Security Interest granted under clause 2.1(a) is a first-ranking Security Interest;
- (b) the charge referred to in clause 2.1(b) constitutes a first-ranking fixed charge at general law, and to the extent it is not effective at law to create a fixed charge over any Other Secured Property, the charge over that Other Secured Property is a first-ranking floating charge;
- (c) for the purposes of determining the Secured Party's rights, powers and remedies at general law, the Security Interest in the Collateral granted under clause 2.1(a) operates as a charge;
- (d) the Security Interest in the Collateral referred to in clause 2.1(a) is effective and attaches to:
  - (1) presently existing property when the Grantor signs this agreement or any earlier time as specified in section 20(2) of the PPSA; and
  - (2) after-acquired property, as soon as the Grantor acquires any right or interest in that property;
- (e) clause 2.5(e) does not affect when the charge is effective over the Other Secured Property; and
- (f) the Security Interest in the Collateral has the same priority in relation to all Secured Money, including future advances.

## 2.6 Conversion from floating to fixed

In respect of any Other Secured Property that is subject to a floating charge, the charge (whether under the terms of this agreement or at law), immediately and automatically becomes fixed:

- (a) in respect of any Secured Property if the Secured Party notifies the Grantor that the Other Secured Property is to be subject to a fixed charge;
- (b) in respect of any Collateral, if this agreement becomes enforceable under clause 9; and
- (c) if the law provides that the charge under this agreement becomes fixed.

## **2.7 Conversion from fixed to floating**

If any Other Secured Property becomes subject to a fixed charge under clause 2.6 ("Conversion from floating to fixed"), the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Other Secured Property specified in the notice is released from a fixed charge and is then again subject to a floating charge. Secured Property can become subject to a floating or a fixed charge under this clause 2.7 ("Conversion from floating to fixed") any number of times.

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## **3. Dealings with Collateral**

### **3.1 Restricted dealings**

The Grantor must not do, or agree to do, any of the following unless it is permitted to do so by clause 3.2 ("Permitted dealings") or another provision in a Transaction Document:

- (a) create or allow another interest in any Collateral, other than any Permitted Encumbrance; or
- (b) dispose, or part with possession, of any Collateral.

### **3.2 Permitted dealings**

The Grantor may do any of the following in the ordinary course of the Grantor's ordinary business unless it is prohibited from doing so by another provision in a Transaction Document:

- (a) create or allow another interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset; or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

### **3.3 Revolving Assets**

If a Control Event occurs in respect of any Collateral then automatically:

- (a) that Collateral is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Collateral immediately operates as a fixed charge; [and]
- (c) if the Collateral is Accounts or Chattel Paper, it is transferred to the Secured Party by way of security; and
- (d) the Grantor may no longer deal with the Collateral under clause 3.2 ("Permitted dealings").

### **3.4 Conversion to Revolving Assets**

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause 3, the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.

### 3.5 Inventory

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a security interest under this agreement. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

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## 4. Statutory powers and notices

### 4.1 Exclusion of PPSA provisions

To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (1) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (2) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this agreement to permit the Grantor and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify the Grantor that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions, as notified to the Grantor by the Secured Party; and
- (d) the Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

### 4.2 Exercise of rights by Secured Party

If the Secured Party exercises a right, power or remedy in connection with this agreement, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

### 4.3 No notice unless mandatory

- (a) To the extent the law permits, the Grantor waives:
  - (1) its rights to receive any notice that is required by:
    - (A) any provision of the PPSA (including a notice of a verification statement); or
    - (B) any other law before a secured party or Receiver exercises a right, power or remedy; and
  - (2) any time period that must otherwise lapse under any law before a secured party or Receiver exercises a right, power or remedy.
- (b) If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

- (c) However, nothing in this clause prohibits the Secured Party or any Receiver from giving a notice under the PPSA or any other law.

#### 4.4 Appointment of nominee for registration

- (a) For the purposes of section 153 of the PPSA, the Secured Party appoints the Grantor as its nominee, and authorises the Grantor to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Grantor which is:
  - (1) evidenced or created by Chattel Paper (or a Key Contract);
  - (2) perfected by registration under the PPSA; and
  - (3) transferred to the Secured Party under this agreement.
- (b) This authority ceases when the registration is transferred to the Secured Party.

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## 5. Representations and warranties

### 5.1 General representations and warranties

The Grantor represents and warrants to the Secured Party that:

- (a) **status**

it and each of its subsidiaries is a company limited by shares under the Corporations Act;
- (b) **power**

it has full legal capacity and power to:

  - (1) own its property and to carry on its business; and
  - (2) enter into the Transaction Documents and to carry out the transactions that they contemplate;
- (c) **corporate authority**

it has taken all corporate action that is necessary or desirable to authorise its entry into the Transaction Documents and its carrying out the transactions that they contemplate;
- (d) **Approvals**

it holds each Approval that is necessary or desirable to:

  - (1) enable it to properly execute the Transaction Documents and to carry out the transactions that they contemplate;
  - (2) ensure that each Transaction Document is legal, valid, binding and admissible in evidence; or
  - (3) enable it to properly carry on its business,

and it is complying with any conditions to which any of these Approvals is subject;
- (e) **documents effective**

each Transaction Document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), and the Security



Interest and each Ancillary Security is an effective Security Interest over the property that is stated to be subject to it with the priority that it contemplates, subject to any necessary stamping or registration;

**(f) ranking**

its payment obligations under each Transaction Document rank ahead of all its unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law;

**(g) no contravention**

neither its execution of the Transaction Documents, nor the carrying out by it of the transactions that they contemplate, does or will:

- (1) contravene any law to which it or its property is subject or any order of any Government Agency that is binding on it or its property;
- (2) contravene any Approval;
- (3) contravene any undertaking or instrument binding on it or its property; or
- (4) contravene its constitution;

**(h) no litigation**

no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened against it or any of its property;

**(i) Accounts**

**the Accounts:**

- (1) Accounts and any other financial statements and reports that it has given to the Secured Party have been prepared in accordance with the laws of Australia and (unless inconsistent with those laws) generally accepted accounting principles consistently applied;
- (2) the Accounts that it has given to the Secured Party give a true and fair view of the financial condition of it and each of its subsidiaries as at the date to which they are made up and of the results of operations of it and each of its subsidiaries for the period that they cover; and
- (3) there has been no change since the date of the most recent Accounts that it has given to the Secured Party that could have an adverse effect on it;

**(j) other information**

- (1) the other information and reports (if any) that it has given to the Secured Party in connection with any Transaction Document are true and accurate in all material respects and not misleading in any material respect (including by omission); and
- (2) any forecasts and opinions in them are fair and reasonable (and were made or formed after due inquiry and consideration),

as at the date of this agreement, or if given later, when given;

**(k) disclosure of relevant information**

it has disclosed to the Secured Party all the information that is material to an assessment by the Secured Party of the risks that it assumes by entering into any Transaction Document;

**(l) no filings or Taxes**

it is not necessary or desirable, to ensure that any Transaction Document is legal, valid, binding or admissible in evidence, that any Transaction Document or any other document be filed or registered with any Government Agency, or that any Taxes be paid;

**(m) no default**

no Event of Default has occurred and is continuing, and it is not in breach of any other document or agreement; and

**(n) no Security Interest**

none of its property, and no property of any of its subsidiaries, is subject to a Security Interest other than a Permitted Security Interest.

**5.2 Representations and warranties regarding Secured Property**

The Grantor represents and warrants that:

**(a) title**

it has good right and title to, and full power to charge, the Secured Property in the manner provided in this agreement; and

**(b) no Security Interests**

the Secured Property is free from all Security Interests other than Permitted Security Interests.

**5.3 Repetition of representations and warranties**

The representations and warranties in this clause are taken to be repeated:

(a) whenever the Secured Party provides financial accommodation, the repayment of which is secured by this agreement; and

(b) every 3 months after the date of this agreement.

**5.4 No representations by the Secured Party**

The Grantor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Secured Party in deciding to enter into this agreement or to exercise any right under it.

**5.5 Reliance on Representations and Warranties**

The Grantor acknowledges that the Secured Party agreed to take part in the transactions that this agreement contemplates in reliance on the representations and warranties that are made or repeated in this clause.

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## 6. Grantor's obligations

### 6.1 General obligations

The Grantor must:

**(a) obligation to pay**

punctually pay the Secured Money when it becomes payable in accordance with the terms of any written agreement between the Grantor and the Secured Party or, in the absence of any agreement or after default under any agreement, on demand by the Secured Party;

**(b) maintain status**

maintain, and ensure that each of its subsidiaries maintains, its status as a company limited by shares that is incorporated (or is taken to be incorporated) under the Corporations Act;

**(c) comply with law**

comply with, and ensure that each of its subsidiaries complies with, all applicable law including by paying when due all Taxes for which it or its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it or the relevant subsidiary has made adequate reserves for them);

**(d) keep Books**

- (1) keep, and ensure that each of its subsidiaries keeps, proper Books recording its activities and those of each of its subsidiaries (including financial records in accordance with the Corporations Act), and permit the Secured Party or its representatives on request to examine and take copies of them; and
- (2) keep the Books relating to the activities of the Grantor at its registered office or at its principal place of business;

**(e) hold Approvals**

obtain and maintain each Approval that is necessary or desirable to:

- (1) execute the Transaction Documents and to carry out the transactions that they contemplate;
- (2) ensure that each Transaction Document is legal, valid, binding and admissible in evidence; or
- (3) enable it to properly carry on its business,

and must comply with any conditions to which any of these Approvals is subject;

**(f) no administrator**

not appoint, and ensure that none of its subsidiaries appoints, an administrator without notice to the Secured Party;

**(g) registration and duty endorsement**

immediately at its own cost:

- (1) ensure that this agreement is registered (and not just provisionally) under section 263 of the Corporations Act;

- (2) register this agreement in any other places which the Secured Party notifies to the Grantor if the Secured Party is reasonably satisfied that registration is necessary or desirable to perfect the Security Interest or to protect the rights of the Secured Party under this agreement; and
- (3) ensure that this agreement is endorsed with duty for the proper amount in each state and territory of Australia in which this agreement is subject to duty;

**(h) material adverse effect**

promptly disclose in writing to the Secured Party all facts relating to the Grantor, the Transaction Documents and anything in connection with them which affect the ability of any party to perform its obligations under the Transaction Documents or which are material to the assessment of the nature and amount of risk undertaken by the Secured Party in entering the Transaction Documents and doing anything in connection with them.

## 6.2 Reports and information

The Grantor must give the Secured Party:

**(a) annual Accounts**

as soon as possible (and in any event within 120 days) after the end of each of its financial years, a set of its audited Accounts for that financial year, prepared in accordance with the laws of Australia and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and prepared, if the Grantor is a small proprietary company (as defined in the Corporations Act), as if it were a large proprietary company (as defined in the Corporations Act);

**(b) notice of default**

as soon as it becomes aware that an Event of Default has occurred, full details of that Event of Default;

**(c) other information**

promptly on request (and in any event within 5 Business Days), any other information relating to the financial condition, business, property and affairs of itself or any of its related bodies corporate that the Secured Party reasonably requests.

## 6.3 Financial undertakings

The Grantor must:

**(a) negative pledge**

not create or permit to exist any Security Interest over any Secured Property, other than a Permitted Security Interest;

**(b) no disposal of property**

not dispose of, declare a trust over or otherwise create an interest in, and must ensure that none of its subsidiaries disposes of, declares a trust over or otherwise creates an interest in, all or a substantial part of its property (either in one or several transactions, whether or not related) except:

- (1) as permitted by clause 3;
- (2) with the consent of the Secured Party;
- (3) at arm's length and for full value in a transaction that is entered into in the ordinary course of its ordinary business; or

- (4) by a subsidiary of the Grantor:
  - (A) to the Grantor; or
  - (B) to another subsidiary of the Grantor if the Grantor's ownership interest in the receiving subsidiary is at least the same as the Grantor's percentage ownership in the disposing subsidiary.

#### 6.4 Undertakings regarding Secured Property

The Grantor must:

**(a) outgoings**

punctually pay all outgoings (including rent and Taxes) payable in relation to the Secured Property:

**(b) maintenance**

- (1) maintain Secured Property in a good state of repair and in good working order and condition; and
- (2) immediately remedy every defect in the repair and condition of Secured Property (fair wear and tear excepted) if required to do so by the Secured Party;

**(c) not alter Secured Property**

ensure that:

- (1) no material alteration is made to Secured Property; and
- (2) no material variation, waiver, release, rescission, repudiation or termination is made to or in connection with any document or agreement included in or relating to Secured Property,

without the Secured Party's consent;

**(d) acquisition of real property**

- (1) if it becomes bound to complete the acquisition of any real property (freehold or leasehold), immediately notify the Secured Party; and
- (2) if it receives any deed or document of title relating to the real property, immediately hand them to the Secured Party;

**(e) licences and permits**

obtain and renew at the proper times all licences, permits, authorities and documents necessary or desirable in relation to its business;

**(f) calls on capital**

not, without the Secured Party's consent:

- (1) call up or receive in advance of calls any of the uncalled capital (including any amount characterised as a premium when the relevant shares were issued) charged by this agreement; and
- (2) apply the uncalled capital to any purpose except towards payment of the Secured Money;

**(g) carrying on business**

- (4) carry on its business in a proper and efficient manner; and

- (5) not make any substantial change to the general nature or scope of its business from that carried on at the date of this agreement (other than an extension of the business to include related activities) without the Secured Party's consent;

**(h) property or business outside jurisdiction**

immediately notify the Secured Party if the Grantor starts to carry on business or establishes a place of business in any jurisdiction except the jurisdictions in which it:

- (1) is registered;
- (2) is carrying on business; or
- (3) has a place of business,  
at the date of this agreement;

**(i) preserve and protect security**

promptly do everything necessary or reasonably required by the Secured Party to:

- (1) preserve and protect the value of Secured Property; or
- (2) protect and enforce its title and the Secured Party's title as Secured Party to Secured Property;

**(j) book and other debts**

collect and realise all book and other debts and other receipts due to it in the ordinary course of its business;

**(k) insurance**

- (1) obligation to insure
  - (A) keep the Secured Property that is of an insurable nature insured against risks of destruction, loss or damage to its full insurable value on a replacement and reinstatement basis; and
  - (B) take out public risk and other Insurances with respect to Secured Property (including business interruption insurance),  
in the manner and to the extent that the Secured Party requires;
- (2) premiums  
pay when due all premiums and other amounts necessary to keep each insurance policy in force;
- (3) insurers  
take out each insurance policy with reputable insurers approved by the Secured Party in the joint names of the Grantor and the Secured Party;
- (4) information for Secured Party  
deliver to the Secured Party:
  - (A) on request, certificates of currency in relation to those Insurances and any other details about those Insurances that the Secured Party requires; and
  - (B) every 12 months, a report about the Insurances current at the date of the report and claims and other material events with respect to those Insurances during the previous 12 months;

- (5) no prejudice to policies  
not do or permit anything to be done, or omit to do or permit not to be done anything that may prejudice or make void or voidable any of those Insurances;
- (6) policy contents  
ensure that each insurance policy provides that:
- (A) the proceeds from any claim in relation to insurance of Secured Property is to be paid to the Secured Party. If no Event of Default exists, the Secured Party must make the proceeds available to the Grantor as it needs them to pay amounts payable to replace or repair the affected Secured Property;
  - (B) all rights of the insurers to set off or counter claim or to make any other deduction or withholding as against the Secured Party and all persons claiming under the Secured Party are waived;
  - (C) all claims against the Secured Party and all persons claiming under the Secured Party for premiums on other amounts are waived;
  - (D) the Secured Party's right to the proceeds of any claim is not affected by any breach of any warranty, declaration or condition in any insurance policy or any non-disclosure; and
  - (E) if any premiums or other amounts relating to any insurance policy are not paid, the insurer will not terminate the policy unless:
    - (i) it has given at least 30 days' notice to the Secured Party; and
    - (ii) the amounts have not been paid by the Grantor or any other person before the notice period expires;
- (7) Secured Party may maintain insurance  
if any default is made by it in maintaining any insurance policy or if any insurance policy becomes void or voidable for any reason, permit the Secured Party (at the Secured Party's discretion) to maintain that insurance policy at the Grantor's cost;
- (8) collection by Secured Party  
do everything necessary and give all documents and other information necessary to enable the Secured Party to recover any money due under any insurance policy;
- (9) notice to Secured Party  
notify the Secured Party if:
- (A) an event occurs that gives rise to a claim under an insurance policy; and
  - (B) an insurance policy is varied,
- as soon as possible after becoming aware of it;
- (10) maintenance of policies  
without limiting the above paragraphs, not cause or take any step to bring about the cancellation, material change or reduction of any insurance policy unless it has given 60 days' notice to the Secured Party; and

(11) proceeds

if Secured Property is destroyed, lost or damaged, use the proceeds of the insurance policies to replace or repair the affected Secured Property.

**(l) payments to directors and shareholders**

not without the Secured Party's consent:

- (1) lend any money or repay any loans to directors, shareholders, members of their families or companies controlled by any of them;
- (2) declare or pay any dividends; or
- (3) in any financial year, pay any salary or other benefits to persons who are directors, shareholders, members of their families or companies controlled by any or all of them in excess of the amount or at a greater rate than was paid to those persons during the preceding financial year;

**(m) exercise rights**

at the Secured Party's request, take any action reasonably required against any person to protect and enforce its rights relating to the Secured Property; and

**(n) comply with obligations**

do everything the Grantor is required to do under or in connection with Secured Property.

## 6.5 Further assurances

The Grantor must duly and punctually comply with and observe:

- (a) all statutes now or later in force; and
- (b) all present and future requirements and orders of any authority (statutory or otherwise),

which apply to the Secured Property.

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## 7. Secured Party's powers

### 7.1 Secured Party may exercise powers without notice

To the full extent permitted by law, the Secured Party is not required to give any notice or allow any time to elapse before:

- (a) enforcing a Transaction Document;
- (b) appointing a Receiver; or
- (c) exercising any power, right, discretion or remedy given to the Secured Party by any law,

and the Grantor waives any statutory requirements for notice or lapse of time.

### 7.2 Secured Party's right to make good a default

- (a) If the Grantor breaches this agreement, the Secured Party may do everything it considers to be necessary or desirable to attempt to remedy the breach to the Secured Party's satisfaction. The Secured Party is not obliged to do so.



- (b) Clause 7.2(a) does not limit any other right the Secured Party has under this agreement or at law.

### 7.3 Powers on enforcement

If this agreement has become enforceable, the Secured Party, without notice to the Grantor, may:

- (a) exercise any of the powers that might be exercised by a Receiver even if a Receiver has not been appointed; and
- (b) complete any transfer or instrument of any nature executed by or on behalf of the Grantor in blank and deposited with the Secured Party as Ancillary Security, in favour of the Secured Party or any appointee of the Secured Party or any other person.

### 7.4 Inspection

The Secured Party may enter without notice at any reasonable time on any land or building occupied by the Grantor or forming part of the Secured Property or in which any goods that form part of the Secured Property are located to:

- (a) inspect their state and condition; and
- (b) inspect and take copies of or extracts from any Books that in any way relate to Secured Property or the Grantor's business.

### 7.5 Calls

- (a) If this agreement has become enforceable, the Grantor authorises the Secured Party and any Receiver to:
  - (1) make calls on the members of the Grantor in relation to the Grantor's uncalled capital (including any amount characterised as a premium when the relevant shares were issued);
  - (2) sue (in the name of the Grantor or otherwise) to recover money due in relation to calls; and
  - (3) give valid receipts for that money.
- (b) If this agreement has become enforceable, the Grantor's directors may not do so.
- (c) This authority is not terminated by any change in the Grantor's directors and is assignable.

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## 8. Power of attorney

### 8.1 Appointment of Attorneys

The Grantor irrevocably appoints the Secured Party and as an independent appointment appoints any Receiver, severally its attorney to:

- (a) **all acts necessary**

do anything necessary or desirable in the opinion of the Secured Party or the Attorney to:

- (1) give full effect to this agreement;
- (2) better secure the Secured Property to the Secured Party in a manner consistent with this agreement; or

- (3) assist in the execution or exercise of any power,  
including execute any transfer (including any transfer in blank) or other document;
- (b) recover Secured Property**  
demand, sue for, recover and give discharge for Secured Property;
- (c) commence actions**  
commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of Secured Property;
- (d) bankruptcy and winding up**  
take any necessary proceedings to procure the bankruptcy or the winding up of any debtor of the Grantor in connection with the Secured Property, and attend and vote at meetings of creditors, receive dividends in any bankruptcy or winding up or appoint a proxy for any of these things;
- (e) compound debts**  
compound, settle or compromise any debt of the Grantor in connection with the Secured Property;
- (f) execute deeds**  
execute any deed of assignment, composition or release in connection with the Secured Property;
- (g) exercise rights**  
exercise all or any powers, rights, discretions and remedies available under or in connection with the Secured Property (including rights available under the Corporations Act or any other statute); and
- (h) general**  
do anything else that the Grantor must or may do, or that the Secured Party may do, under this agreement or by law,

at the Grantor's cost.

## 8.2 Substitutes

Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.

## 8.3 General

- (a) An Attorney may do anything contemplated by this clause even if the Attorney is affected by an actual or potential conflict of interest or duty, or might benefit from doing it.
- (b) An Attorney may do anything contemplated by this clause in its name, in the name of the Grantor or in the name of both of them.
- (c) The Grantor must ratify anything done by an Attorney under this clause.
- (d) The Grantor gives the power of attorney in this clause:
- (1) to secure performance by the Grantor of its obligations to the Secured Party under this agreement and any property interest of the Secured Party under this agreement; and
  - (2) for valuable consideration, receipt of which is acknowledged by the Grantor.

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## 9. Enforcement

### 9.1 Circumstances when this agreement may be enforced

The Secured Money will immediately become payable at the Secured Party's option (despite any delay or previous waiver of the right to exercise that option) without the need for any demand or notice, and this agreement will immediately become enforceable (whether or not the Secured Money has become payable in this manner) if any of the following events occurs:

**(a) non-payment**

if a Relevant Person fails to pay any amount that is due and payable by it under any Transaction Document within 3 Business Days of its due date;

**(b) other obligations**

if a Relevant Person fails to comply with any of its obligations under any Transaction Document (other than a failure referred to elsewhere in this clause) and:

- (1) the Secured Party considers that the failure cannot be remedied; or
- (2) the Secured Party considers that the failure can be remedied, and the failure is not remedied within 5 Business Days after the Secured Party requires the Relevant Person to remedy it;

**(c) misrepresentation**

if any representation, warranty or statement made by, or repeated by, the Grantor, in or in connection with any Transaction Document is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;

**(d) Insolvency Event**

if a Insolvency Event occurs in respect of any Relevant Person;

**(e) maintenance of capital**

if any Relevant Person passes a resolution:

- (1) to permit the giving of financial assistance, whether directly or indirectly, for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or of any right or interest in shares in it or in any holding company of it;
- (2) for the reduction of its share capital (including the purchase of its shares but excluding a redemption of redeemable shares); or
- (3) to limit its ability to make calls on its uncalled share capital,

without the Secured Party's consent;

**(f) cross-default**

if any condition, covenant, term or provision of any Transaction Document is breached or not complied with, or an event of default (however described) occurs under any Transaction Document;

**(g) Security Interest**

if the Grantor:

- (1) creates or permits to exist any Security Interest over or affecting any Secured Property, other than a Permitted Security Interest;

- (2) sells, transfers, assigns, leases, licenses, surrenders or otherwise disposes of or parts with the possession of Secured Property; or
- (3) attempts to do anything specified in the preceding subparagraphs;

**(h) compulsory acquisition**

if all or a material part of the property of any Relevant Person is compulsorily acquired by any Government Agency or any Relevant Person sells or divests itself of all or a material part of its property because it is required to do so by a binding order from a Government Agency, and any Relevant Person does not receive compensation for the acquisition, sale or disposal which is acceptable to the Secured Party;

**(i) inability to perform**

if a Relevant Person ceases for any reason to be able lawfully to carry out all the transactions which any Transaction Document contemplates may be carried out by it;

**(j) provisions void**

if all or any material provision of any Transaction Document is or becomes void, voidable, illegal or unenforceable or of limited force (other than because of equitable principles or laws affecting creditors' rights generally), or a Relevant Person claims this to be the case;

**(k) special investigations**

if any matter relating to any Relevant Person becomes subject to an investigation under any law relating to companies;

**(l) change of control**

if, in the Secured Party's opinion, there is a change in the identity of any of the persons who are able to control:

- (1) the composition of the board of directors or other governing body of any Relevant Person;
- (2) more than half of the voting rights attaching to the capital of any Relevant Person; or
- (3) more than half of the issued capital of any Relevant Person (excluding any part of that capital that carries no right to participate beyond a specified amount in the distribution of either profit or capital),

including the acquisition by any means by a person of a relevant interest (as defined in the Corporations Act) in shares of any Relevant Person that is sufficient to allow that person either alone or jointly with others to exercise the control referred to in paragraph (1), (2) or (3);

**(m) constitution**

the constitution of a Relevant Person is amended without the Secured Party's consent;

**(n) Event of Default**

if an event of default under any of the Transaction Documents occurs;

**(o) Trust Event of Default**

an event of default specified in the clause headed Trustee Covenants (if any);

**(p) termination of lease**

a lease or licence of any property on which a Relevant Person carries on business is terminated because of any default by a Relevant Person; and

**(q) factoring**

a Relevant Person offers for sale or sells, factors, alienates, charges, encumbers or parts with possession of or disposes of any of its book and other debts or any of its rights relating to any of those book debts without the Secured Party's consent; and

## 9.2 Enforcement despite earlier payment

This agreement may be enforced:

- (a) even if the Secured Party accepts a payment of interest or other amount after any default; and
- (b) without the need for any notice to, or of any consent or agreement of, the Grantor or any other person.

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## 10. Default interest

### 10.1 Grantor must pay interest

- (a) The Grantor must pay interest on each amount that is not paid when due (unless the Grantor is already required to pay interest on the unpaid amount by the terms of an agreement between the Secured Party and the Grantor), from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with paragraph (b). This interest must be paid on demand.
- (b) Interest on an unpaid amount accrues each day at the Interest Rate and is capitalised (if not paid) every 7 days.

### 10.2 Interest after judgment

If a liability of the Grantor becomes merged in a judgment or order, the Grantor, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgment or order until it is paid in full, at the higher of the rate that applies under the judgment or order and the rate calculated in accordance with clause 10.1.

### 10.3 Accrual and calculation of interest

Interest under this clause:

- (a) accrues daily; and
- (b) is calculated on the basis of the actual number of days on which interest has accrued and of a 365 day year.

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## 11. Appointment of Receiver

### 11.1 Appointment

- (a) If this agreement has become enforceable (whether or not the Secured Party has entered into possession of all or any of the Secured Property) the Secured Party may at any time:

- (1) appoint any person or any 2 or more persons jointly and severally to be a receiver or receiver and manager (or an additional receiver or receiver and manager) of Secured Property;
  - (2) remove the Receiver and in case of the removal, retirement or death of any Receiver appoint another as a replacement; and
  - (3) fix the remuneration of the Receiver.
- (b) Subject to clause 11.2 and the next sentence, every Receiver appointed under this subclause will be the Grantor's agent and the Grantor alone will be responsible for his acts and defaults and remuneration. The Secured Party may by notice to the Grantor and the Receiver require the Receiver to act as the Secured Party's agent.

### 11.2 Receiver other than as Grantor's agent

The power to appoint a Receiver under this clause may be exercised even though:

- (a) at the time when this agreement becomes enforceable or when an appointment is made, an order may have been made or a resolution may have been passed to wind up the Grantor; or
- (b) a Receiver appointed in the circumstances specified in the preceding paragraph may not, or may not in some respects, act as the Grantor's agent.

### 11.3 Powers of Receiver

The Receiver will have full power to do all or any of the following:

- (a) **take possession**  
take possession of, collect and get in Secured Property and for that purpose to take proceedings (in the name of the Grantor or otherwise);
- (b) **give up possession**  
give up possession of Secured Property;
- (c) **exercise Secured Party's rights:**
  - (1) exercise all or any of the Secured Party's powers, rights, discretions and remedies under this agreement; and
  - (2) comply with the directions given by the Secured Party;
- (d) **carry on business:**
  - (1) carry on or agree to carrying on the business of the Grantor in and with Secured Property and to stop doing so; and
  - (2) effect all repairs, purchases and Insurances, and generally to do everything that the Grantor might do in the ordinary conduct of its business to:
    - (A) protect or improve Secured Property; or
    - (B) obtain income or returns from Secured Property and to conduct the Grantor's business,  
without being responsible for any loss;
- (e) **borrow from Secured Party:**
  - (1) borrow from the Secured Party any money that may be required for any of the purposes mentioned in paragraph (d); and

- (2) (in the name of the Grantor or otherwise) secure any money borrowed by mortgage or charge over Secured Property so that the mortgage or charge may rank in priority to, equally with or after the Security Interest,

without the Secured Party being bound to enquire whether the borrowing is necessary or proper or responsible for the misapplication or non-application of any money borrowed;

**(f) hire out, lease or license**

hire out, lease or license Secured Property (including in the name of the Grantor) for any term at the rent or licence fee and on terms that seem desirable to the Receiver (with or without a purchase option and whether or not the Receiver has taken possession);

**(g) exercise rights**

exercise all or any powers, rights, discretions and remedies available under or in connection with the Secured Property (including rights available under the Corporations Act or any other statute);

**(h) registration**

do everything necessary to obtain registration of the Secured Property in the Secured Party's name or in the name of the Secured Party's nominee;

**(i) settle disputes:**

- (1) settle, arrange and compromise any accounts, claims, questions or disputes that may arise in connection with the Grantor's business or the Secured Property or in any way relating to this agreement; and
- (2) execute releases or other discharges in relation to the settlement, arrangement, or compromise;

**(j) sell**

sell or agree to sell (whether or not the Receiver has taken possession), exchange or otherwise dispose of (absolutely or conditionally) Secured Property (or agree to do so):

- (1) by public auction, private sale or tender for cash or on credit;
- (2) in one lot or in parcels;
- (3) with or without special conditions, (such as conditions as to title or time or method of payment of purchase money) including by allowing the purchase money to remain:
  - (A) outstanding on the security of a mortgage over the property sold or over any other property; or
  - (B) owing without any security; and
- (4) on other terms the Receiver considers desirable,

without being responsible for any loss;

**(k) transfer on sale**

execute transfers and assignments of Secured Property (including in the name of the Grantor), and do everything to complete any sale under paragraph (j) that the Receiver thinks necessary;

- (l) insure**

insure Secured Property that is of an insurable nature against risks of destruction, loss or damage for the amounts and on the terms that the Receiver thinks appropriate;
- (m) sever Fixtures**

sever Fixtures belonging to the Grantor and sell them apart from any other part of the Secured Property;
- (n) employees and agents**

engage employees, agents, advisers and contractors for any of the purposes of this clause on terms that the Receiver thinks appropriate;
- (o) give receipts**

give receipts for all money and other property that may come into the hands of the Receiver in exercise of any power given by this agreement;
- (p) enforce contracts**

carry out and enforce or otherwise obtain the benefit of all contracts:

  - (1) entered into or held by the Grantor in connection with the Secured Property;  
or
  - (2) entered into in exercise of the powers given by this agreement;
- (q) make debtors bankrupt**

make debtors bankrupt and wind up companies and do everything in connection with any bankruptcy or winding up that the Receiver thinks desirable to recover or protect Secured Property;
- (r) perform undertakings**

do everything necessary to perform any undertaking of the Grantor in this agreement;
- (s) receive money**

receive all money or other property payable or deliverable to the Grantor from Secured Property;
- (t) desirable or incidental matters:**

  - (1) do or cause to be done everything that the Receiver thinks desirable in the interests of the Secured Party; and
  - (2) do anything incidental to the exercise of any other power;
- (u) take legal proceedings**

take proceedings (including in the name of the Grantor) in connection with any of the above; and
- (v) delegate**

with the Secured Party's consent delegate any of the powers given to the Receiver by this clause to any person.



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## 12. Protection of Secured Party and appointees

### 12.1 Protection of Secured Party and Receiver

- (a) The Secured Party is not obliged to:
- (1) notify any debtor or member of the Grantor or any other person of this agreement; or
  - (2) enforce payment of any money payable to the Grantor, or take any step or proceeding for any similar purpose,
- but may do so.
- (b) None of the Secured Party or any Receiver is liable for any omission or delay in exercising any power, right, discretion or remedy under this agreement or for any involuntary loss or irregularity that may occur in relation to the exercise or non-exercise of any of them except to the extent of its own fraud, gross negligence or wilful misconduct.

### 12.2 Conflict of interests

The Secured Party, an Attorney and a Receiver may exercise or agree to exercising a power given by this agreement or by law even though that person may have a conflict of interests in exercising the power.

### 12.3 Liability for loss

- (a) The Secured Party is not liable for any loss that the Grantor suffers as a direct or indirect result of the exercise or attempted exercise of, or failure to exercise, any of its rights contained in this agreement; and
- (b) except to the extent of its own fraud, gross negligence or wilful misconduct.
- (c) If the Secured Party or a Receiver enters into possession of Secured Property, none of the Secured Party or any Receiver is liable:
- (1) to account as mortgagee in possession or for anything except actual receipts; or
  - (2) for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable,
- except to the extent of its own fraud, gross negligence or wilful misconduct.

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## 13. Application of money

### 13.1 Order

- (a) Money that the Secured Party or a Receiver receives under or because of this agreement is to be applied in the following order:
- (1) expenses  
first in payment of all expenses that the Secured Party or a Receiver incurs in or incidental to the exercise or attempted exercise of a power or otherwise in relation to any Transaction Document;

- (2) outgoings  
then in payment of any other outgoings that the Receiver or the Secured Party thinks it appropriate to pay;
  - (3) Receiver  
then in payment to the Receiver of any remuneration (whether by way of commission or otherwise);
  - (4) indemnities  
then in payment to the Secured Party or a Receiver of any amount necessary to give effect to any indemnity contained in this agreement; and
  - (5) Secured Money  
then in payment to the Secured Party of the Secured Money.
- (b) Any surplus will belong to the Grantor or other persons entitled to it. The Secured Party or Receiver may pay the surplus to the credit of a bank account in the name of the Grantor or other person entitled to it and will then be under no further liability in relation to it. The surplus will not accrue interest.

### **13.2 Only actual receipts credited**

In applying any money towards the Secured Money, the Grantor's account will be credited only with the amount of the money that the Secured Party actually receives for that purpose. The credit will date from the time of receipt.

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## **14. Continuing security**

### **14.1 Continuity**

The Security Interest:

- (a) is a continuing security, and remains in full force until a final irrevocable discharge of the Security Interest is given to the Grantor despite any transaction or other thing (including a settlement of account or intervening payment); and
- (b) will apply to the present and future balance of the Secured Money.

### **14.2 Limitations on Grantor's rights**

Until the Secured Money has been irrevocably paid and discharged in full, the Grantor may not:

- (a) share in any Guarantee, Security Interest or money received or receivable by the Secured Party in relation to the Secured Money or stand in the place of the Secured Party in relation to any Guarantee, Security Interest or right to receive money;
- (b) in reduction of its liability under this agreement, raise a defence, set off or counterclaim against the Secured Party or claim a set off or make a counterclaim against the Secured Party; or
- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any document or agreement to which the Secured Party is a party.

### 14.3 No marshalling

The Secured Party is not under any obligation to marshal or appropriate in favour of the Grantor or to exercise, apply, perfect or recover any Security Interest that the Secured Party holds at any time or any funds or property that the Secured Party may be entitled to receive or have a claim on.

### 14.4 Effect of Insolvency Event

- (a) If a Insolvency Event has occurred in relation to a Relevant Person, any amount paid by that Relevant Person (as the case may be) (the "relevant payment") will only be applied against any Secured Money if:
  - (1) the Secured Party forms the opinion in good faith (which will be conclusively binding on the Grantor) that it will not be required to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors; or
  - (2) a final judgment is given by a court of competent jurisdiction in favour of the Secured Party that it is not required to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors.
- (b) If an amount is applied against any Secured Money and the Secured Party forms the opinion in good faith that it is obliged to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors:
  - (1) the Secured Party's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
  - (2) the Grantor must immediately do anything (including the signing of documents) required by the Secured Party to restore to the Secured Party any Guarantee or Security Interest to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- (c) Any discharge or release between the Secured Party and the Grantor is subject to reinstatement of the Secured Party's rights under this subclause.

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## 15. Indemnities

### 15.1 Indemnity for breach or preservation of rights

The Grantor must indemnify the Secured Party against, and must pay the Secured Party on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with:

- (a) any Event of Default;
- (b) the administration, and any actual or attempted preservation or enforcement, of any rights under any Transaction Document;
- (c) any amount required to be paid under any Transaction Document not being paid on its due date including because of:
  - (1) the cancellation, termination or alteration of any swap or other arrangement made by the Secured Party to fund that amount; or

- (2) any liquidation or re-employment of deposits or other funds acquired by the Secured Party to fund that amount.

## 15.2 Indemnity for exercise of rights or proceedings

To the extent permitted by law, the Grantor must indemnify each of the Secured Party, and each Receiver, Attorney, agent, administrator of the Grantor or other person appointed under this agreement or the Corporations Act by or on behalf of the Secured Party as Secured Party under this agreement against, and must pay each of them on demand the amount of all losses, liabilities, expenses and Taxes that they each incur:

- (a) (directly or indirectly) in the exercise or attempted exercise of any of the powers, rights, discretions or remedies (express or implied) vested in them under this agreement or the Corporations Act; and
- (b) in connection with all proceedings, expenses, claims and demands in relation to anything done or omitted in any way relating to Secured Property,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

## 15.3 Recovery from Secured Property

A person who is entitled to be indemnified for a loss, liability, expense or Tax under clause 15.1 or 15.2 may recover the amount to be indemnified direct from the Secured Property.

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# 16. Discharge

## 16.1 Discharge

The Secured Party must at the request and cost of the Grantor reconvey, surrender or release any remaining Secured Property (as appropriate) to the Grantor and the Secured Property will then be discharged from the Security Interest:

- (b) when the Secured Party is satisfied that:
  - (1) all the Secured Money has been irrevocably paid and discharged in full or satisfied in accordance with this agreement and (without limiting this) that clause 14.4 will not later apply; and
  - (2) no amount remains contingently payable or may become payable on the security of the Security Interest (including under an indemnity); and
- (c) on payment or retention of all expenses incurred by or payable to the Secured Party, or any Receiver or Attorney.

## 16.2 Insolvency Event

Any discharge is subject to clause 14.4.

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# 17. Confidentiality

A party must not disclose any information concerning the contents of, or the transactions contemplated by, any Transaction Document to any person who is not a party, except to the extent that:

- (a) the disclosure is expressly permitted by a Transaction Document;
  - (b) the other party consents to the disclosure;
  - (c) the information is already in the public domain, unless it entered the public domain because of a breach of confidentiality by the party;
  - (d) the disclosure is made on a confidential basis to the party's officers, employees, agents, financiers or professional advisers, and is necessary for the party's business;
  - (e) the disclosure is necessary to comply with any applicable law, or an order of a court or tribunal;
  - (f) the disclosure is necessary to comply with a directive or request of any Government Agency or stock exchange (whether or not having the force of law) so long as a responsible person in a similar position would comply;
  - (g) the disclosure is necessary or desirable to obtain an Approval from any Government Agency or stock exchange; or
  - (h) the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal, other Government Agency or stock exchange.
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## **18. Grantor as trustee**

### **18.1 Application**

If the Grantor enters into this agreement as trustee of a trust, then this clause 20 applies.

### **18.2 Grantor's acknowledgements and undertakings**

The Grantor:

- (a) acknowledges that this agreement is binding on it personally and in its capacity as trustee of the Trust; and
- (b) in giving this agreement, charges the whole of its legal and beneficial interest in the Collateral and Other Secured Property; and
- (c) shall cause any successor to it as trustee of the Trust to execute such documents as the Secured Party may require to ensure that this agreement is binding on each such successor; and
- (d) upon the occurrence of an Event of Default and on demand by the Secured Party, shall exercise the Grantor's rights of indemnity in relation to the Trust Fund and its rights against the beneficiaries of the Trust to cause payment of the Secured Money to the Secured Party or otherwise hold such rights for the Secured Party; and
- (e) acknowledges that the giving of this agreement does not constitute a conflict of interest by the Grantor nor does the giving of this agreement constitute a breach of the terms of the Trust.

### **18.3 Representations and warranties**

The Grantor represents and warrants that:

- (a) it is the trustee of the Trust and no action has been taken to remove or replace it; and

- (b) it has disclosed to the Secured Party full particulars of the terms of the Trust and provided to the Secured Party copies of the Trust Deed and any documents relating to the Trust required by the Secured Party prior to the execution of this agreement; and
- (c) any copies of the Trust Deed and any other documents relating to the Trust including variations, deletions, substitutions and additions to the Trust Deed delivered to the Secured Party before execution of this agreement are true copies of those documents in force at the date of this agreement; and
- (d) it has power under the Trust Deed to execute and perform its obligations under this agreement and all necessary action has been taken to authorise the execution and performance of this agreement under the Trust Deed; and
- (e) this agreement is executed and all transactions secured by this agreement are or will be entered into as part of the due and proper administration of the Trust and are or will be for the benefit of the beneficiaries of the Trust; and
- (f) it has an unrestricted and unlimited right to be fully indemnified out of the Trust Fund; and
- (g) it is not in default under the Trust Deed; and
- (h) no vesting date for the Trust has been determined prior to the final vesting date for distribution specified in the Trust Deed; and
- (i) it has complied with all fiduciary obligations directly or indirectly imposed on it; and
- (j) the rights of the Secured Party will rank in priority to the claims of the beneficiaries of the Trust.

#### **18.4 Time when representations and warranties made**

These representations and warranties are taken to be also made:

- (a) whenever the Secured Party provides accommodation the repayment of which is secured by this agreement; and
- (b) every three months after the date of this agreement.

#### **18.5 Prohibitions**

Except with the Secured Party's prior consent:

- (a) the Trust Deed will not be varied; or
- (b) the Grantor will neither retire as trustee of the Trust nor appoint any new or additional trustee; or
- (c) the Grantor will not do or suffer or omit to do any act or thing in breach of the Trust; or
- (d) the Grantor will not exercise or permit to allow to be exercised any power to change the vesting date of the Trust or permit or allow an early determination of the Trust; or
- (e) the Grantor will not release or otherwise cause or permit to be lost or diminished the rights of indemnity which the Grantor may now or in the future have against the Trust Fund or against the beneficiaries.

#### **18.6 Additional Event of Default**

An Event of Default occurs if:

- (a) the Grantor fails to disclose such trusteeship and details of the Trust to the Secured Party prior to the execution of this agreement; or

- (b) the Grantor ceases to be sole trustee of the Trust without the Secured Party's prior consent; or
  - (c) any part of the capital of the Trust Fund is distributed in any way without the Secured Party's prior consent; or
  - (d) any application or order is sought or made in any Court for:
    - (1) removal of the Grantor as trustee of the Trust; or
    - (2) accounts to be taken in respect of the Trust; or
    - (3) any property of the Trust to be brought into Court or administered by the Court or under its control; or
  - (e) any notice is given or meeting summoned or proposal put forward for the removal of the Grantor as trustee of that part of the Trust Fund which comprises the Collateral and Other Secured Property or for the appointment of any other person as trustee jointly with the Grantor; or
  - (f) anything is done through the exercise of any power under the Trust Deed to the constitution of the Trust which might in the Secured Party's opinion detrimentally affect its security under this agreement; or
  - (g) in the case of a unit trust, any unit is issued, transferred, redeemed, encumbered or otherwise dealt with, without the Secured Party's prior consent.
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## 19. General

### 19.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this agreement (Notice) must be:
  - (1) in legible writing and in English;
  - (2) addressed to the party to whom it is to be given (Addressee) in accordance with the contact details set out below or as notified by the Addressee for the purposes of this clause (Contact Details):
    - (A) If to the Grantor: - as specified in the Credit Application.
    - (B) If to the Secured Party: - as specified in the Credit Application.
  - (3) signed by or on behalf of the sender (if an individual) or where the sender is a company, an officer of the sender;
  - (4) either:
    - (A) delivered by hand to the address set out in the Contact Details;
    - (B) sent by pre-paid mail to the address set out in the Contact Details; and/or
    - (C) sent by email to the email address of the Addressee set out in the Contact Details,and is deemed received by the Addressee in accordance with clause 19.1(b).
- (b) Without limiting any other means by which the sender may be able to prove that a Notice has been received by the Addressee, a Notice is deemed to be received, if:

- (1) delivered by hand, when delivered to the Addressee;
- (2) sent by post, on the 5<sup>th</sup> Business Day after the date of posting; or
- (3) sent by email:
  - (A) when the sender receives an automated message confirming delivery; or
  - (B) 1 hour after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,whichever happens first, but if delivery or receipt is on a day which is not a Business Day or is after 5.00pm (Addressee's time), it is deemed to be received at 9.00am on the following Business Day.

- (c) A Notice sent by email is deemed compliant with this clause if the email attaches a .pdf file of the Notice.

## 19.2 Governing law

- (a) This agreement is governed by the law in force in Western Australia/Other.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with any Transaction Document.

## 19.3 Liability for expenses

The Grantor must indemnify the Secured Party against, and must pay the Secured Party on demand the amount of, all Taxes (other than Excluded Taxes) and expenses incurred in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of each Transaction Document;
- (b) the transactions that each Transaction Document contemplates; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, any Transaction Document,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

## 19.4 Giving effect to this agreement

The Grantor must do anything, and must ensure that its employees and agents do anything, that the Secured Party may reasonably require to:

- (a) give full effect to this agreement;
  - (b) better secure the Secured Property to the Secured Party in a manner consistent with this agreement; or
  - (c) assist in the execution or exercise of any power,
- including execute any transfer (including any transfer in blank) or other document.

## 19.5 Waiver of rights

A right may only be waived in writing, signed by the Secured Party, and:



- (a) no other conduct of the Secured Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

#### **19.6 Operation of this agreement**

- (a) This agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- (b) Any right that the Secured Party may have under this agreement is in addition to, and does not replace or limit, any other right that the Secured Party may have.
- (c) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

#### **19.7 Operation of indemnities**

- (a) Each indemnity in this agreement survives the expiry or termination of this agreement.
- (b) The Secured Party may recover a payment under an indemnity in this agreement before it makes the payment in respect of which the indemnity is given.

#### **19.8 Consents**

Where this agreement contemplates that the Secured Party may agree or consent to something (however it is described), the Secured Party may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this agreement expressly contemplates otherwise.

#### **19.9 Statements by Secured Party**

A statement by the Secured Party on any matter relating to any Transaction Document (including any amount owing by the Grantor) is conclusive unless clearly wrong on its face evidence of its contents.

#### **19.10 Set-off**

- (a) If an Event of Default occurs, the Secured Party, without notice to the Grantor, may combine any account that the Grantor holds with the Secured Party with, or set off any amount that is or may become owing by the Secured Party to the Grantor against, any amount owing by the Grantor to the Secured Party under any Transaction Document. For this purpose the Secured Party may:
  - (1) change the terms (including the repayment date) of any account or other payment obligation between the parties;
  - (2) convert amounts into different currencies in accordance with the Secured Party's usual practice; and

(3) do anything (including execute any document) in the name of the Grantor that the Secured Party considers necessary or desirable.

(b) This subclause overrides any other document or agreement to the contrary.

**19.11 No merger**

Nothing in this agreement merges with any other Security Interest, or any Guarantee, judgment or other right or remedy, that the Secured Party may hold at any time.

**19.12 Exclusion of contrary legislation**

Any legislation that adversely affects an obligation of the Grantor, or the exercise by the Secured Party of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

**19.13 Inconsistency with other documents**

If this agreement is inconsistent with any other document or agreement between the parties, this agreement prevails to the extent of the inconsistency.

**19.14 Counterparts**

This agreement may be executed in counterparts.

**19.15 Attorneys**

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.