



## Jobs for NSW - Accelerating Growth Loan Pilot Standard Terms – Borrower with Guarantor

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### 1. Definitions, Interpretation

#### 1.1 This Loan Agreement

1.1.1 The terms and conditions on which the Lender agrees to provide the Loan to the Borrower are contained in:

- (a) the Offer Letter (including the Loan Schedule) accepted by the Borrower and any other Obligor;
- (b) the Standard Terms;
- (c) each Finance Document;
- (d) any other document or agreement that the Lender and the Borrower agree will form part of this Loan Agreement;
- (e) any document or agreement created under or contemplated by any of the above documents; and
- (f) any document or agreement that amends, varies or replaces any of the above documents.

1.1.2 To the extent that any provision of these Standard Terms is inconsistent with any other provision of this Loan Agreement, that other provision will prevail.

#### 1.2 Definitions

In this Loan Agreement:

**Accepted Accounting Principles** means accounting standards under the Corporations Act and, if not inconsistent with those standards, generally accepted accounting principles, standards and practices in Australia, consistently applied.

**Aggregate Jobs Created** means the meaning as defined in the Loan Schedule.

**Approved Purpose** means the approved purpose described in Item 2 of the Loan Schedule.

**Authorisation** means:

- (a) any authorisation, consent, approval, resolution, licence, exemption, filing, lodgement, registration, agreement, notarisation, certificate, permission or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action by a Governmental Agency.

**Authorised Officer** means:

- (a) in the case of the Lender, each officer or employee of the Lender delegated to sign documents or notices on behalf of the Lender; and
- (b) in the case of any other party, any director or company secretary of that party.

**Availability Period** means the Availability Period described in Item 2 of the Loan Schedule.

**Avoided Transaction** means any payment, settlement, transaction, transfer or other dealing by or on behalf of an Obligor in connection with any Finance Document which is or becomes avoided for any reason, including:

- (a) as a result of any law relating to bankruptcy, insolvency or the protection of creditors; or
- (b) any legal limitation, disability or incapacity of or affecting any person.

**Borrower** means the person or persons described as the Borrower in Item 1 of the Loan Schedule.

**Business Day** means a day (not being a Saturday, Sunday or a public holiday) on which banks are generally open for business in New South Wales.

**Conditions Precedent** means the conditions precedent described in Item 8 of the Loan Schedule.

**Contested Taxes** means a Tax assessed as payable by a person where the person:

- (a) is contesting the assessment in good faith;
- (b) is not required to pay the Tax before the contest is determined; and
- (c) has set aside sufficient reserves to pay the Tax and any other cost payable if the contest is unsuccessful.

**Control** has the meaning given in section 50AA of the Corporations Act and in relation to any entity includes the direct or indirect power to direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity.

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

**Default** means an Event of Default or any event or circumstance which would (on the giving of notice, lapse of time or fulfilment of any condition, or any combination of those) become an Event of Default.

**Distribution** means any payment made by way of dividend, benefit, entitlement and any other distribution of any kind relating to any management or other fee or interest, or to which any person may become entitled as a result of holding the office of a director in, or holding a shareholding in, any Obligor or a unit holding or other beneficial interest in any trust in respect of which an Obligor is the trustee.

**Drawdown Date** means the date on which the Loan is or is proposed to be advanced to the Borrower.

**Drawdown Notice** means a notice referred to in clause 3.2 of the Standard Terms.

**Event of Default** means any event or circumstance described in clause 12.

**Fair Work Commission** means the commission constituted pursuant to the *Fair Work Act 2009* (Cth).

**Final Repayment Date** means the date so specified in Item 4 of the Loan Schedule.

**Finance Debt** means any indebtedness (whether present or future, actual or contingent) for or in respect of:

- (a) money borrowed or raised and debit balances at banks or financial institutions;
- (b) any liabilities as lessee under any lease which in accordance with Accepted Accounting Principles would be treated as a finance or a capital lease;
- (c) any indemnity obligation in relation to any guarantee, indemnity, bond or letter of credit or similar instrument issued by a bank or financial institution;
- (d) any bond and any guarantee, indemnity, letter of credit or similar assurance in relation to financial loss given in connection with any Finance Debt (as referred to in any other paragraph of this definition);
- (e) amounts raised in connection with any acceptance credit, bill acceptance, endorsement or discounting arrangement;
- (f) amounts raised in connection with any bond, debenture, note, loan stock or similar instrument;
- (g) receivables sold or discounted (except to the extent they are sold on a non-recourse basis);
- (h) any amount of capital and premium payable on or in connection with the redemption of any preference shares or any amount of purchase price payable for or in connection with the acquisition of redeemable preference shares (but only where the relevant obligation is classified by the auditors as a financial liability in the accounts);
- (i) any hedging or other derivative transaction;

- (j) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset; or
- (k) amounts raised under any other transaction or series of transactions having the commercial effect of a borrowing or raising of money.

**Finance Documents** means:

- (a) this Loan Agreement;
- (b) each Drawdown Notice;
- (c) each Security Document;
- (d) any priority or intercreditor agreement entered into between the Lender, an Obligor and any other person;
- (e) each Accession Letter;
- (f) any other document that the Lender and the Borrower agree will be a "Finance Document" for the purposes of this Loan Agreement; and
- (g) any document or agreement that amends, varies or replaces any of the above documents.

**Financial Accounts** means in respect of any period:

- (a) a statement of financial position as at the end of that period;
- (b) a statement of financial performance and comprehensive income for that period;
- (c) a statement of changes in equity for that period; and
- (d) a statement of cash flows for that period, together with any notes to those statements and any accompanying reports, statements, declarations and other documents or information.

**Financial Quarter** means each three calendar month period ending on 31 March, 30 June, 30 September and 31 December.

**Financial Year** means the annual accounting period of a corporate or trust entity.

**Governmental Agency** means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

**Guarantee** means:

- (a) a guarantee, indemnity, undertaking, letter of credit, Security Interest, acceptance or endorsement of a negotiable instrument or other obligation (actual or contingent) given by any person to secure compliance with an obligation by another person;
- (b) an obligation (actual or contingent) of a person to ensure the solvency of another person or the ability of another person to comply with an obligation, including by the advance of money or the acquisition for valuable consideration of property or services; or
- (c) an option under which a person is obliged on the exercise of the option to buy:

- (i) any debt or liability owed by another person; or
- (ii) any property which is subject to a Security Interest.

**Guaranteed Money** means all of the Money Owing by the Borrower.

**Guarantor** means each person described as a Guarantor in Item 1 of the Loan Schedule or any other person that becomes a Guarantor by providing an Accession Letter to the Lender.

A person is **Insolvent** if:

- (a) in relation to a corporation:
  - (i) it is presumed or deemed to be unable, or admits inability, to pay its debts as they fall due, or suspends making payment on any of its debts or a moratorium is declared in respect of any of its indebtedness;
  - (ii) any action, proceedings or other procedure or step is taken in relation to:
    - (A). the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of that corporation;
    - (B). a composition, assignment or arrangement with any creditor of that corporation;
    - (C). the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of that corporation or any of its assets; or
    - (D). the enforcement of any Security Interest over any assets of that corporation;
  - (iii) any expropriation, attachment, sequestration, distress or execution affects any asset of that corporation; or
  - (iv) an event occurs in relation to that corporation which is analogous to anything referred to above or which has a substantially similar effect;
- (b) in relation to a natural person:
  - (i) the person is or states that they are unable to pay all of their debts as and when they become due and payable;
  - (ii) a bankruptcy notice is issued against the person or a receiver or a trustee for creditors or a trustee in bankruptcy is appointed to any of that person's property;
  - (iii) the person enters into, attempts to enter into, or convenes a meeting for the purpose of entering into, an arrangement, assignment or composition with their creditors; or
  - (iv) an event occurs in relation to that person which is analogous to anything referred to above or which has a substantially similar effect.

**Interest Payment Date** means each of the following dates:

- (a) each dated specified in Item 3 of the Loan Schedule; and
- (b) the Final Repayment Date, or such other dates as specified by the Lender by notice to the Borrower.

**Interest Rate** means the interest rate so specified in Item 3 of the Loan Schedule.

**Lender** means the Crown in Right of the State of New South Wales acting through the Minister for Industry, Resources and Energy on behalf of Jobs for NSW Fund (ABN 72 189 919 072).

**Loan** means the loan provided by the Lender to the Borrower under the terms of this Loan Agreement.

**Loan Agreement** means the agreement constituted by the documents and agreements described in clause 1.

**Loan Amount** means the amount specified in Item 2 of the Loan Schedule, as reduced or cancelled under this Loan Agreement.

**Loan Schedule** means the document called "Loan Schedule" enclosed with the Offer Letter and comprising part of this Loan Agreement.

**Material Adverse Effect** means a material adverse effect on:

- (a) the business, operation, property, condition (financial or otherwise) or prospects of an Obligor;
- (b) the ability of an Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of the whole or any material part of any Finance Document or any material rights or remedies of the Lender under any Finance Document.

**Money Owning** means, at any time, all amounts that are actually or contingently owing by the Obligors to the Lender under the Finance Documents, including the aggregate Principal Outstanding and interest, fees and costs, as determined by the Lender.

**Obligors** means the Borrower and each Guarantor.

**Offer Letter** means the most recent offer letter from the Lender to the Borrower enclosing the Loan Schedule.

**Permitted Finance Debt** means:

- (a) Finance Debt incurred under the Loan or otherwise provided by the Lender;
- (b) Finance Debt incurred under any facility made available to an Obligor before the date of this Loan Agreement, and in an amount not exceeding the aggregate limit of that facility as it exists on that date;
- (c) a loan made available by an Obligor to another Obligor; or
- (d) Finance Debt incurred with the Lender's prior consent.

**Permitted Security Interest** means, in respect of an Obligor:

- (a) any Security Interest registered against the Obligor as at the date of this Loan Agreement;
- (b) any lien arising by operation of law and in the ordinary course of trading so long as the debt it secures is paid when due, or contested in good faith and appropriately provisioned;
- (c) any title retention arrangements entered into by the Obligor in the ordinary course of trading on the supplier's usual terms of sale so long as the debt it secures is paid when due, or contested in good faith and appropriately provisioned;
- (d) any Security Interest provided for by any of the following transactions if the transaction does not, in substance, secure payment or performance of an obligation:
  - (i) a transfer of an account or chattel paper;
  - (ii) a commercial consignment; or
  - (iii) a PPS Lease; or
- (e) any Security Interest created with the Lender's prior consent.

**PPS Lease** has the meaning provide in the PPSA.

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

**Principal Outstanding** means, at any time, amount of the loan advanced which remains outstanding.

**RAA** means the New South Wales Rural Assistance Authority.

**Related Party Debt** means all money that, at any time and for any reason and on any basis, is or may become actually or contingently owing by any Obligor to another Obligor or to any shareholder of an Obligor.

**Review Event** means the review events specified in Item 6 of the Loan Schedule.

**Secured Property** means any asset which is subject to a Security Interest in favour of or for the benefit of the Lender under a Security Document.

**Security Documents** means:

- (a) a document described as a Security Document in Item 5 of the Loan Schedule;
- (b) any other document that the Lender and the Borrower agree will be a "Security Document" for the purposes of this Loan Agreement; and
- (c) any Security Interest at any time which is collateral to any of the above documents.

**Security Interest** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA;

- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest, or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist.

**Standard Terms** means these Standard Terms, comprising part of this Loan Agreement.

**Subsidiary** in relation to any entity, has the meaning given in the Corporations Act but as if "body corporate" includes any entity. It also includes an entity required by Accepted Accounting Principles to be included in the consolidated annual financial statements of that entity or that would be required if that entity were a corporation.

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**Trust** means, in relation to an Obligor, the Trust specified in relation to that party in Item 1 of the Loan Schedule and any other trust (whether or not disclosed to the Lender) in respect of which that party enters into a Finance Document as trustee.

**Trust Deed** means, in respect of a Trust and the relevant Obligor trustee, the trust deed and any other document establishing or evidencing the Trust.

### 1.3 Interpretation

In this Loan Agreement, unless the contrary intention appears:

- 1.3.1 a reference to any document or instrument is a reference to that document or instrument as amended, novated, supplemented, extended, restated or replaced;
- 1.3.2 a reference to any statute includes regulations and other instruments under it and any consolidations, amendments, re-enactments and replacements of it;
- 1.3.3 a reference to a person or entity includes an individual, a firm, body corporate, unincorporated association, governmental authority, trust or partnership or any two or more of the foregoing and any reference to a particular person or entity includes that person's or entity's executors, administrators, legal personal representatives, successors, substitutes (including by novation) and assigns;
- 1.3.4 a reference to "includes" or "including" means "includes, without limitation" and "including, without limitation" respectively;
- 1.3.5 a reference to any Event of Default or Default which is "continuing" is a reference to that event which has occurred and in respect of which the



Lender has not confirmed in writing to the Borrower that such event has been remedied to the Lender's satisfaction or waived by the Lender;

- 1.3.6 where a word or phrase is given a defined meaning in this Loan Agreement, the other grammatical forms of the word or phrase have a corresponding meaning;
- 1.3.7 a reference to a time and date for performance of an obligation by a party is a reference to the time and date in Sydney, New South Wales and is to be adhered to strictly;
- 1.3.8 a heading is for reference only and it does not affect the meaning or interpretation of this Loan Agreement;
- 1.3.9 the singular includes the plural and vice versa and a reference to one gender includes the other gender;
- 1.3.10 a reference to a right includes an interest, power, remedy, privilege and cause of action however arising;
- 1.3.11 a reference to an accounting term is to be interpreted in accordance with Accepted Accounting Principles applicable from time to time; and
- 1.3.12 a reference to "\$", "A\$", "AUD" or "Australian dollars" denotes the lawful currency of the Commonwealth of Australia.

#### **1.4 Role of RAA**

The Lender notifies the Borrower that it has appointed RAA to act as administrator in respect of this Loan Agreement, including in connection with the making of payments under this agreement and the issuing of relevant notices. All actions of RAA are taken to be actions of the Lender for the purpose of this Loan Agreement, and the making of payments by the Borrower to RAA satisfies the Borrower's obligations to make payments to the Lender.

#### **1.5 Role of the Department**

The Lender notifies the Borrower that the Department of Industry, Skills and Regional Development acting through its Jobs for NSW division will manage the rights and obligations of Jobs for NSW on behalf of the Lender.

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## **2. Loan**

- 2.1 At the Obligors' request, the Lender agrees to make available to the Borrower a loan in an amount not exceeding the Loan Amount and on the terms and conditions of this Loan Agreement.
- 2.2 The Borrower must only use the Loan for the Approved Purpose.
- 2.3 The Lender is not obliged to provide the Loan and will not do so unless and until all applicable requirements set out in the Conditions Precedent have been satisfied or waived.

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### **3. How to request the Loan**

- 3.1 The Loan Amount may be requested for a single advance of funds.
- 3.2 To request the Loan, the Borrower must provide a Drawdown Notice to the Lender which:
- 3.2.1 must be in the form of Schedule 1 (or in another form acceptable to the Lender);
  - 3.2.2 must be signed by an Authorised Officer of the Borrower and given to the Lender at least 5 Business Days (or a shorter period agreed by the Lender) before the Borrower requires the Lender to advance the Loan Amount;
  - 3.2.3 must specify a Drawdown Date which is a Business Day within the Availability Period;
  - 3.2.4 is effective on receipt by the Lender in legible form; and
  - 3.2.5 cannot be changed, cancelled or revoked once provided to the Lender, without the Lender's prior consent.
- 3.3 At the close of business on the last day of the Availability Period, the Loan cannot be requested and is taken to be cancelled.

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### **4. Interest**

Interest:

- 4.1 accrues at the Interest Rate from the Drawdown Date until the Loan Amount is repaid in full;
- 4.2 is to be calculated on the basis of a 365 day year and for the actual number of days elapsed from and including the day when the money on which the interest is payable becomes owing to the Lender by the Borrower until but excluding the day of payment of that money; and
- 4.3 is payable on each Interest Payment Date.

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### **5. Repayment and prepayment**

- 5.1 The Borrower must repay the Money Owing as follows:
- 5.1.1 the Borrower must repay the applicable amount of the Principal Outstanding to the Lender on each repayment date in accordance with Item 4 of the Loan Schedule; and
  - 5.1.2 on the Final Repayment Date, the Borrower must pay to the Lender the Money Owing.

- 5.2 If the Borrower wishes to make a voluntary prepayment in respect of the Principal Outstanding:
- 5.2.1 subject to clauses 5.2.2 and 5.2.3, the Borrower may prepay the Loan Amount or a part of it on any Business Day;
  - 5.2.2 the Borrower may only make a prepayment by giving to the Lender 5 Business Days' (or such shorter period agreed by the Lender) prior notice specifying the prepayment date and the amount of the prepayment; and
  - 5.2.3 the Borrower must prepay in accordance with any notice given and pay any accrued but unpaid interest on the amount prepaid up to the date of payment.
- 5.3 Once an amount of Principal Outstanding is repaid under this Loan Agreement, it is not available for further borrowing.
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## **6. Interest on unpaid amounts**

- 6.1 The Obligors must pay interest on any unpaid amount which is due and payable by an Obligor under any Finance Document at a rate of 2% per annum over the Interest Rate applicable at that time.
- 6.2 Interest on any unpaid amount is payable on demand by the Lender and accrues daily from the relevant due date up to the actual date of payment and will be calculated on the basis of a 365 day year.
- 6.3 The Lender can capitalise any interest that is not paid when due at such intervals as the Lender elects.
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## **7. Withholding tax**

- 7.1 Each Obligor must make all payments to the Lender under the Finance Documents without any withholding or deduction, unless required by law.
- 7.2 If a law requires an Obligor to deduct or withhold an amount on account of Taxes from any payment made by that Obligor under a Finance Document (other than a Tax on the Lender's net income), then that Obligor must:
- 7.2.1 make that required withholding or deduction and pay the required amount to the relevant taxing authority within the time allowed and in the minimum amount required by law;
  - 7.2.2 provide the Lender with the original receipts for that payment to the relevant taxing authority (or any other evidence reasonably satisfactory to the Lender); and
  - 7.2.3 pay an additional amount to the Lender (and the amount payable by that Obligor under the relevant Finance Document is increased) so that, after making all required withholdings or deductions, the Lender receives an amount equal to the payment it would have received if those withholdings or deductions had not been required.

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## 8. What if it becomes unlawful for the Lender to provide the Loan?

- 8.1 If the Lender decides that it is unlawful to continue to provide the Loan:
- 8.1.1 the Lender will promptly notify the Borrower of that decision and the Loan Amount will be cancelled on the date on which the Lender provides that notice; and
  - 8.1.2 if required by the Lender, the Borrower must pay the Money Owing on the date specified by the Lender in its notice, provided that, if the law permits, such date will be at least 30 days after the date on which the Lender gives notice under clause 8.1.2.

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## 9. Making Payments

- 9.1 Each Obligor must make all payments to the Lender under the Finance Documents:
- 9.1.1 in immediately available funds;
  - 9.1.2 not later than 4.00pm (local time in the place of payment) on the due date (or, if that is not a Business Day, on the previous Business Day);
  - 9.1.3 to the account specified by the Lender to that Obligor or as the Lender otherwise directs from time to time; and
  - 9.1.4 without any counterclaim, deduction, withholding or set-off, except as required by law.
- 9.2 If the Borrower or any Obligor determines that it will be unlikely to be able to make a scheduled payment under this Loan Agreement, it must notify the Lender as soon as possible after such determination.

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## 10. Representations and warranties (what each Obligor tells the Lender)

- 10.1 Each Obligor represents and warrants to the Lender that:
- 10.1.1 **(status)** if a corporation, it is duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all required power and holds all necessary Authorisations required for carrying on its business as now conducted;
  - 10.1.2 **(binding obligations)** its obligations under the Finance Documents to which it is a party are valid, binding and enforceable against it;
  - 10.1.3 **(benefit)** it will benefit by entering into the Finance Documents to which it is a party;
  - 10.1.4 **(no breach of obligations)** in entering into and performing its obligations under the Finance Documents to which it is a party, it will

not breach its constitutional documents or any law, obligation or instrument binding on it;

- 10.1.5 (**power**) it has all necessary power and, if a corporation, has obtained all Authorisations required to enable it to enter into and perform its obligations under the Finance Documents to which it is a party;
- 10.1.6 (**no Default**) no Default is continuing;
- 10.1.7 (**disclosure**) it has disclosed to the Lender all information it holds which is likely to be material to an assessment of the risk to the Lender in entering into the Finance Documents;
- 10.1.8 (**information correct**) all information that it has provided to the Lender (including Financial Accounts) is complete, correct and not misleading by omission or otherwise and, since the date on which that information was provided to the Lender, there has been no change in its financial position or any other matter that may have a Material Adverse Effect;
- 10.1.9 (**Financial Accounts**) the most recent Financial Accounts that it has provided to the Lender have been prepared in accordance with any applicable law and using Accepted Accounting Principles consistently applied and give a true and fair view of its financial position;
- 10.1.10 (**litigation**) as far as it is aware, there is no court or other proceeding or dispute that is current, pending or threatened which, if determined against it, might have a Material Adverse Effect;
- 10.1.11 (**Fair Work Commission**) it has not been the subject of any determination against it by the Fair Work Commission, nor is it aware of any proceeding or dispute that is current or pending in relation to the Fair Work Commission;
- 10.1.12 (**Insolvent**) it is not Insolvent;
- 10.1.13 (**Taxes and entitlements**) it has paid all Taxes (other than Contested Taxes) and employee superannuation entitlements when due;
- 10.1.14 (**trustee**) it does not enter into the Finance Documents as a trustee of any trust, except as disclosed in writing to the Lender. If (whether disclosed to the Lender or not) it is entering into any Finance Documents as trustee of a Trust:
  - (a) the Trust has been properly constituted;
  - (b) it is the sole trustee of the Trust (or if it is a joint trustee, then all trustees are party to the relevant Finance Documents, to the Lender's satisfaction) and, as far as it is aware, no action has been proposed or taken to remove it as trustee;
  - (c) its entry into and performance of its obligations under the Finance Documents to which it is a party will benefit the Trust;
  - (d) it has given the Lender a complete copy of the Trust Deed which has been duly executed and stamped and has not been revoked;

- (e) it has the power and authority as trustee to enter into and perform its obligations under the Finance Documents to which it is a party;
  - (f) it has an unrestricted right to be fully indemnified from the Trust's assets in relation to all liabilities incurred by it in connection with the Finance Documents to which it is a party;
  - (g) it is not in breach of any of its obligations as trustee of the Trust;
  - (h) no action has been taken or proposed to terminate the Trust; and
  - (i) it has not delegated any of its powers as trustee or exercised any power of appointment.
- 10.2 **(Repeated daily)** These representations and warranties are taken to be repeated on each day during the term of the Loan except to the extent that the Borrower or any Guarantor provides a written statement to the Lender outlining why they cannot accurately give any representation or warranty and the Lender has accepted that statement in writing.
- 10.3 **(Reliance acknowledged)** The Borrower and each Guarantor acknowledges that, in entering into the Finance Documents and agreeing to provide the Loan and each Drawing, the Lender has relied on these representations and warranties.

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## 11. Undertakings (what Obligors must or must not do)

- 11.1 **(Loan Schedule)** Each Obligor must comply with all undertakings provided by it in the Loan Schedule.
- 11.2 **(Information that must be provided to the Lender by Obligors)** Each Obligor must promptly give the Lender:
- 11.2.1 **(Authorised Officers)** written details of any change of its Authorised Officers and any "know your customer" information required by the Lender in relation to any new Authorised Officers;
  - 11.2.2 **(changes)** as soon as possible after becoming aware of it, written details of any material change to any information provided by an Obligor to the Lender in connection with the Loan, including any information provided in an application to the Lender for the provision of the Loan or any information provided in connection with a Drawdown Notice;
  - 11.2.3 **(litigation)** written details of any current, pending or threatened litigation, arbitration or action in relation to it or its Secured Property or assets which relate to the *Fair Work Act 2009* (Cth) or which otherwise would have, or which might if adversely determined have, a Material Adverse Effect;
  - 11.2.4 **(notices from Governmental Agencies)** copies of notices, orders and other documents received by it from any Governmental Agency which may result in a Material Adverse Effect, promptly on receipt;

- 11.2.5 (**PPSR information**) all necessary information (including serial numbers) to enable the Lender to register financing statements or financing change statements in relation to any Security Interest held or intended to be held by the Lender under the Security Documents at any time;
  - 11.2.6 (**corporate notices**) a copy of each notice or other document sent or given by it to its members or any class of members or creditors or any class of creditors or to ASIC, at the same time the original is sent or given;
  - 11.2.7 (**certificate of no Default**) following any request by the Lender, a certificate signed by two of its directors (or its sole director if applicable) certifying that no Default is continuing;
  - 11.2.8 (**Default**) as soon as possible after a Default occurs, written details of that Default and the steps being taken to remedy it; and
  - 11.2.9 (**other information**) any other information the Lender reasonably requests.
- 11.3 (**Things an Obligor must not do**) an Obligor must not do any of the following things, or agree or attempt to do any of them, without the Lender's prior consent:
- 11.3.1 (**create a Security Interest**) create or allow any Security Interest over or affecting any of its Secured Property or other assets, except for a Permitted Security Interest;
  - 11.3.2 (**restrictions on certain Obligors**) if it is an Obligor that is a corporation or that enters into any Finance Document as trustee of a Trust:
    - (a) sell, transfer, part with possession of, surrender or otherwise deal with any of its Secured Property which is a non-circulating asset or any of its rights in connection with that Secured Property;
    - (b) sell, transfer, part with possession of, surrender or otherwise deal with any of its other assets, or any of its rights in connection with those assets, except a disposal of inventory in the ordinary course of its ordinary business;
    - (c) obtain or permit to exist any Finance Debt from any person, or provide or continue to provide any Finance Debt to any person, other than Permitted Finance Debt;
  - 11.3.3 (**deposit money**) deposit money with any person in circumstances where that money is not repayable unless it or another person pays or discharges other indebtedness or performs or observes another obligation owed to that person or another person;
  - 11.3.4 (**move Secured Property outside Australia**) move any Secured Property outside Australia except in the ordinary course of its ordinary business;

- 11.3.5 (**arm's length dealings**) deal in any way with any person except at arm's length in the ordinary course of its ordinary business for valuable commercial consideration;
  - 11.3.6 (**Distributions**) make any Distribution;
  - 11.3.7 (**change of business**) without the Lender's prior consent, cease or materially change the nature of its business or relocate its principal place of business outside New South Wales or change its place of registration or incorporation or change its name, ACN or ABN or the name, ABN, ARSN of any Trust;
  - 11.3.8 (**obtain protection prejudicing the Lender**) take steps to obtain protection under any statute or any other law which detrimentally affects the Lender's rights in relation to its Secured Property;
  - 11.3.9 (**reduce value of Secured Property**) otherwise do or permit anything to be done which results in the realisable value of the Secured Property being reduced or which may harm or impair the Lender's rights under any Finance Document;
  - 11.3.10 (**change in Control**) permit any change in its Control, ownership or management; or
  - 11.3.11 (**corporate reconstruction**) enter into any amalgamation, merger, corporate reconstruction, joint venture or other business venture.
- 11.4 (**other undertakings of the Obligors**) Each Obligor must:
- 11.4.1 (**financial records**) keep proper accounting and written financial records which record correctly its transactions, financial position and performance in accordance with Accepted Accounting Principles, make its business and financial records available for inspection at all reasonable times by the Lender and persons acting on behalf of the Lender and allow the Lender and persons acting on the Lender's behalf to take copies of or extracts from its business and financial records (including trust records);
  - 11.4.2 (**access**) subject to the Lender giving prior notice and to complying with its reasonable security, health and safety requirements, allow, or obtain for the Lender and persons acting on the Lender's behalf, full access at all times to any land or building owned or occupied by it; and
  - 11.4.3 (**insurance**) take out and maintain insurances with a reputable insurer in accordance with prudent business practice having regard to the nature of the business and assets of the Obligor (including all insurance required by applicable law).
- 11.5 (**Subordination of Related Party Debt**) Until the date on which all the Money Owing has been fully and finally paid to the Lender:
- 11.5.1 except as expressly permitted under this Loan Agreement or otherwise with the prior written consent of the Lender, no Related Party Debt is payable and each Obligor must not accept, and each Obligor must not make, any payment of any Related Party Debt; and



- 11.5.2 an Obligor must not exercise any rights of indemnification, contribution or subrogation or any similar rights, or prove or claim or exercise any voting or other rights, in the administration, liquidation, winding up, bankruptcy or any analogous process in relation to another Obligor, unless the Lender otherwise directs.
- 11.6 **(general undertakings)** Each Obligor must:
- 11.6.1 **(Authorisations)** obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document, as well as any Authorisation required for it to carry on its business, if failing to obtain or maintain that Authorisation is reasonably likely to have a Material Adverse Effect;
  - 11.6.2 **(comply with applicable laws)** comply in all respects with all laws to which it may be subject;
  - 11.6.3 **(perform under Finance Documents)** perform its obligations under and as required by each Finance Document;
  - 11.6.4 **(corporate existence)** if a corporation, maintain its corporate existence in good standing; and
  - 11.6.5 **(ensure no Event of Default)** ensure that no Event of Default occurs.
- 11.7 **(PPSA undertakings)** Each Obligor must at its own cost do any of the following things if reasonably requested by the Lender:
- 11.7.1 **(Finance Documents effective)** do anything required by the Lender to ensure any Finance Document (or any Security Interest, right or power under any Finance Document) is fully effective, enforceable and perfected with the contemplated priority under the PPSA;
  - 11.7.2 **(further assurance)** to more satisfactorily assure or secure to the Lender the property the subject of any such Security Interest in a manner consistent with the Finance Documents;
  - 11.7.3 **(assist in exercise of power)** do anything required by the Lender to assist in the exercise of any right or power in any Finance Document; and
  - 11.7.4 **(protect its own PPSA interests)** promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA. For example, it must create and implement appropriate policies and systems and, where appropriate, take reasonable steps to identify security interests (as defined in the PPSA) in its favour and to continuously perfect and protect them, with the highest priority reasonably available, and reduce as far as possible the risk of a third party acquiring an interest free of that security interest.
- 11.8 **(Trustee undertakings)** If an Obligor enters into any Finance Document as trustee of a Trust, that Obligor must ensure that, except with the Lender's prior consent:

- 11.8.1 **(no variation)** the Trust Deed is not varied or revoked in any which may affect its right of indemnity from the Trust's property;
- 11.8.2 **(no resettlement)** there is no resettlement, setting aside or transfer to any other trust, settlement or person or blending or mixing of the Trust's property except in accordance with the Trust Deed;
- 11.8.3 **(no other trustee)** no other person is appointed trustee of the Trust;
- 11.8.4 **(priority over beneficiaries)** its lien over the Trust assets has priority over the rights of the beneficiaries or the unitholders of the Trust;
- 11.8.5 **(comply with trust obligations)** it complies with its trustee obligations under the Trust Deed and at law;
- 11.8.6 **(removal or retirement as trustee)** it does not retire or do anything which would cause or enable its removal as trustee of the Trust;
- 11.8.7 **(distribution or vesting)** it does not make any appointment, distribution or vesting of the Trust's capital;
- 11.8.8 **(proper accounts)** it prepares and maintains proper and adequate books of account in relation to the Trust; and
- 11.8.9 **(no Security Interest)** in respect of an Obligor, it does not create, permit or allow to exist any Security Interest on any of the Trust's assets, except for any Permitted Security Interest.

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## 12. Events of Default

An Event of Default occurs if:

- 12.1 **(default under Finance Documents)** any event of default, however described, occurs under a Finance Document;
- 12.2 **(payment default)** an Obligor does not pay any amount payable under a Finance Document when due;
- 12.3 **(other breach)** an Obligor does not comply with any provision of the Finance Documents (other than as referred to in clause 12.2)) and, if capable of remedy, that non-compliance is not remedied within 5 Business Days (or any longer period that the Lender agrees in writing) of it occurring;
- 12.4 **(Review Event)** a Review Event occurs in respect of an Obligor and the Lender declares that an Event of Default has occurred in accordance with Item 6 of the Loan Schedule.
- 12.5 **(misrepresentation)** any representation or warranty made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made;

- 12.6 **(movement of employees)** any Aggregate Jobs Created are subsequently relocated outside of New South Wales without the prior written consent of the Lender;
- 12.7 **(cross default)** any Finance Debt of an Obligor owed to the Lender under any other facility or arrangements is not paid when due (or within any applicable grace period) or becomes prematurely payable, or capable of being declared payable, before its specified maturity (including in relation to a requirement to provide cash cover for the Finance Debt) for any reason;
- 12.8 **(Insolvent)** an Obligor is Insolvent;
- 12.9 **(Material Adverse Effect)** an event or series of events (whether related or not) occurs which has or is likely to have a Material Adverse Effect;
- 12.10 **(cease business)** an Obligor ceases or suspends or threatens to cease or suspend all or a substantial part of its business;
- 12.11 **(capital not maintained)** without the Lender's prior consent, an Obligor attempts to redeem any of its shares, to reduce its share capital or to buy or acquire shares in itself, or passes a resolution that the whole or part of its unpaid share capital may only be called up if it becomes an externally-administered body corporate, as defined in the Corporations Act, or applies to a court to call any meeting or to sanction any resolution or reduction in relation to any of these things;
- 12.12 **(Trust defaults)** without the Lender's prior consent, any of the following occurs in respect of a Trust:
- 12.12.1 an Obligor ceases to be, or ceases to be the only, trustee of the Trust;
  - 12.12.2 any steps are taken for the removal or retirement of the Obligor as trustee of the Trust;
  - 12.12.3 any steps are taken to wind up or terminate the Trust;
  - 12.12.4 any steps are taken for any property of the Trust to be administered by or under the control of the court or for accounts to be taken in relation to the Trust;
  - 12.12.5 an Obligor does anything to restrict or diminish its right of indemnity out of the relevant Trust assets;
  - 12.12.6 in respect of an Obligor, the Trust's capital is distributed (except for any Permitted Distribution); or
  - 12.12.7 an Obligor exercises any of its powers under the Trust Deed and this detrimentally affects or could detrimentally affect the Lender's rights under any Finance Document.

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### 13. Consequences of an Event of Default

If an Event of Default has occurred, in addition to any other rights provided by law or any Finance Document, the Lender can do all or any of the following by notice to the Obligors:

- 13.1 **(accelerate Money Owning)** declare that all or part of the Money Owning is either immediately due and payable or otherwise payable on demand, at which time it will immediately become so;
- 13.2 **(terminate Loan)** terminate the Loan; or
- 13.3 **(investigating experts)** at the Obligors' cost, appoint an accountant, insolvency practitioner or other expert to investigate and report on the Finance Documents and the affairs and financial position of each Obligor and the Secured Property. Each Obligor authorises and agrees to give reasonable assistance to any such investigating experts to undertake that investigation and agrees that any investigating expert can disclose to the Lender any information in connection with the investigation.

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## 14. Guarantee and Indemnity

- 14.1 For valuable consideration, each Guarantor unconditionally and irrevocably guarantees the due and punctual payment to the Lender of the Guaranteed Money.
- 14.2 As an independent and principal obligation, each Guarantor indemnifies the Lender against any loss or liability sustained by the Lender (including all charges, costs and expenses incurred by the Lender) directly or indirectly in connection with:
- 14.2.1 **(failure to pay)** any failure of the Borrower to duly and punctually pay to the Lender the Guaranteed Money;
- 14.2.2 **(liability unenforceable)** any liability of the Borrower to pay the Guaranteed Money being or becoming void or otherwise unenforceable for any reason (including, as a result of any legal limitation, disability or incapacity affecting any person), irrespective of whether the Lender knew or ought to have known of the relevant facts or circumstances;
- 14.2.3 **(Guaranteed Money irrecoverable)** the Guaranteed Money (or money which, if recoverable, would have been Guaranteed Money) being or becoming irrecoverable from any Guarantor for any reason, irrespective of whether the Lender knew or ought to have known of the relevant facts or circumstances; or
- 14.2.4 **(Insolvency Events and Avoided Transactions)** the occurrence of an Insolvency event in relation to the Borrower or the occurrence of any Avoided Transaction.
- 14.3 Each Guarantor must pay to the Lender on demand the Guaranteed Money guaranteed under clause 14.1 and an amount equal to the amount of any loss or liability in respect of which it has given an indemnity under clause 14.2.
- 14.4 Demand may be made under clause 14.1 at any time and from time to time.

- 14.5 Each obligation of each Guarantor under this Loan Agreement is:
- 14.5.1 **(principal obligation)** a principal obligation imposed on that Guarantor as principal debtor and is not to be regarded as ancillary or collateral to any other right or obligation; and
  - 14.5.2 **(independent of Security Document)** independent of and not affected by or in substitution for any Security Document or any obligation of any person.
- 14.6 This Loan Agreement is enforceable against each Guarantor irrespective of whether:
- 14.6.1 **(recourse to Security Document)** recourse has first been had to any Security Document;
  - 14.6.2 **(demands on other persons)** demand has been made on or notice is given to the Borrower or any other person;
  - 14.6.3 **(other enforcement action)** any other enforcement action has been taken against any person (including the Borrower or another Guarantor); or
  - 14.6.4 **(other events)** any of the events described in clause 14.10 has occurred.
- 14.7 The obligations of each Guarantor:
- 14.7.1 **(continuing guarantee)** are a continuing guarantee and indemnity;
  - 14.7.2 **(present and future)** extend to the present and any future balance of the Guaranteed Money; and
  - 14.7.3 **(remains in full force and effect until discharged)** remain in full force and effect until a final discharge of it is provided to that Guarantor, notwithstanding any settlement of account, intervening payment or other thing.
- 14.8 The obligations of each Guarantor extend to any increase in the Guaranteed Money as a result of any amendment, supplement, renewal or replacement of any of the Finance Documents or the occurrence of any other thing irrespective of whether a Guarantor is aware of or has consented to or is given notice of any such amendment, supplement, renewal or replacement or of that occurrence.
- 14.9 Each Guarantor acknowledges that the Guaranteed Money may include an amount which is contingently owing or which may become owing in the future and that, so long as the Lender is entitled to make demand on the Borrower (without being obliged to make that demand), that Guarantor must pay to the Lender an amount equal to any contingent or future amount included in the Guaranteed Money notwithstanding that that amount may not have fallen due as at the date of that demand.
- 14.10 An Obligor's liabilities and the rights of the Lender in connection with any Finance Document or any receiver or receiver and manager or attorney appointed under any Security Document will not be affected by anything which might otherwise have that effect including:

- 14.10.1 (**indulgence**) the grant of any indulgence to any person;
- 14.10.2 (**compromise**) a person compounding or compromising with or wholly or partially releasing any person in any way;
- 14.10.3 (**acquiescence**) any acquiescence, act, delay, laches, mistake or omission on the part of any person;
- 14.10.4 (**variation of rights**) any variation of a right of any person;
- 14.10.5 (**alteration of documents**) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a document;
- 14.10.6 (**increase**) any increase in the amount of or other variation in connection with the Guaranteed Money or the Money Owing;
- 14.10.7 (**transaction of business**) the transaction of business with, for or at the request, whether express or implied, of any person;
- 14.10.8 (**change in membership**) any change in the membership, name or business of a firm, partnership, committee or association;
- 14.10.9 (**loss of Security Document**) the loss or impairment of a Security Document or any negotiable instrument;
- 14.10.10 (**abandonment of Security Document**) the abandoning, abstaining from perfecting or taking advantage, exchanging, realising, release (whether whole or partial), taking or varying of any Security Document or of any judgment or negotiable instrument;
- 14.10.11 (**Insolvency**) the occurrence of an Insolvency Event in connection with any person;
- 14.10.12 (**change in capacity**) any change in the legal capacity, rights or obligations of any person;
- 14.10.13 (**trustee**) the fact that any person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- 14.10.14 (**judgment**) a judgment being made against any person;
- 14.10.15 (**money irrecoverable**) the Guaranteed Money or the Money Owing being or becoming irrecoverable against any person;
- 14.10.16 (**assignment**) any assignment of rights in connection with the Guaranteed Money or the Money Owing;
- 14.10.17 (**repudiation**) the acceptance of a repudiation or termination in connection with the Guaranteed Money or the Money Owing;
- 14.10.18 (**invalidity**) the invalidity or unenforceability of any person's obligations or liabilities;

- 14.10.19 (**Security Document void**) a Security Document being or becoming void, voidable or unenforceable or being determined, extinguished, forfeited or surrendered;
- 14.10.20 (**receipt of dividend**) the receipt of a dividend after an Insolvency Event or the payment of a sum into the account of any person;
- 14.10.21 (**discharge of obligation**) an obligation of any person (including a person comprising a Guarantor or co-surety) being discharged by operation of law or otherwise; or
- 14.10.22 (**obligation not effective**) any person who is intended to enter into this Loan Agreement or otherwise become an Obligor not doing so or not doing so effectively.
- 14.11 The Lender is not obliged to marshal or appropriate in favour of any Obligor or to apply, enforce or exercise:
- 14.11.1 (**Security Interest**) any Security Interest, Security Document or any other Finance Document or other instrument held by the Lender; or
- 14.11.2 (**assets**) any asset which the Lender holds or may otherwise be entitled to receive or have a claim on.
- 14.12 Until the Lender has received payment or satisfaction of all the Guaranteed Money and all the Money Owing and has given its prior written consent, each Obligor must not:
- 14.12.1 (**no right of contribution**) assert as against any Indemnified Party any right of contribution, indemnity or subrogation or otherwise claim or receive the benefit of or enforce any Security Interest or Guarantee for the payment of the Guaranteed Money or the Money Owing;
- 14.12.2 (**no right of proof**) without limiting clause 14.13, exercise any right of proof or claim or receive the benefit of any distribution, dividend or payment if an Insolvency event occurs in connection with the Borrower;
- 14.12.3 (**no set off**) raise any set off, counterclaim or defence in reduction or discharge of its obligations under this Loan Agreement; or
- 14.12.4 (**no other right**) otherwise exercise any right which it may have which is inconsistent with its obligations or the rights of the Lender under any Finance Document.
- 14.13 If an Insolvency Event occurs in connection with an Obligor (**Insolvent Obligor**), each other Obligor irrevocably and unconditionally authorises the Lender to exercise any right of proof of that other Obligor for all money which that other Obligor has paid to the Lender under the Finance Documents on or for the account of the Insolvent Obligor until the Lender has received payment or satisfaction of the Guaranteed Money and the Money Owing in full.

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## 15. General Indemnities provided by the Obligors

Each Obligor must pay or reimburse the Lender on demand for any cost, expense, loss or liability (including legal fees) incurred by the Lender as a result of:

- 15.1 **(Default)** the occurrence of any Default;
- 15.2 **(misleading information)** any information produced or approved by the Borrower in relation to the Finance Documents being or being alleged to be misleading or deceptive in any way;
- 15.3 **(claim or demand)** any claim or demand made on the Lender under any Finance Document;
- 15.4 **(investigation or litigation)** any enquiry, investigation, subpoena (or similar order) or litigation in relation to any Obligor or any transaction contemplated or financed under this Loan Agreement;
- 15.5 **(acting on instructions)** acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; and
- 15.6 **(overdue payment)** any failure by an Obligor to pay any amount when due under a Finance Document.

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## 16. Taxes

The Borrower must pay or reimburse the Lender on demand for all Taxes, registration and other fees, fines and penalties for late payment and account charges of the Lender that are payable in respect of Finance Documents.

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## 17. Costs and Expenses

- 17.1 The Borrower must promptly pay or reimburse the Lender on demand for all costs and expenses (including in each case external and internal legal fees and costs on a solicitor and own client basis or full indemnity basis, whichever is higher) incurred by the Lender in connection with the enforcement or preservation of any of the Lender's rights under any Finance Document (or considering doing so), including costs and expenses relating to travel and accommodation of the Lender staff, and any valuation or other report or legal or other advice obtained by the Lender in relation to any of these things.
- 17.2 Each party bears its own costs and expenses incurred in connection with the negotiation, preparation and execution of the Finance Documents.
- 17.3 Notwithstanding clause 17.2, the Borrower must reimburse the Lender in respect of its costs for the external party conducting the credit assessment of the Borrower.



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## **18. GST**

- 18.1 Unless otherwise indicated, all amounts referred to in the Finance Documents are expressed on a GST-exclusive basis.
- 18.2 If the Lender makes a taxable supply under any Finance Document to another party, that other party (Recipient) must pay the Lender, together with the GST-exclusive consideration, an amount equal to the GST for which the Lender is liable in relation to that supply.
- 18.3 In this clause 18, each of "GST" and "taxable supply" has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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## **19. Lender's rights of set-off**

The Lender may without notice set-off any actual or contingent obligation or liability of an Obligor under the Finance Documents against any obligation or liability owed by the Lender to that Obligor, in each case whether that obligation or liability has matured or not. If the obligations are in different currencies, the Lender may convert either obligation at an exchange rate nominated by the Lender, acting reasonably. The Lender can do anything necessary to effect any set-off under this clause 19.

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## **20. Reinstatement of the Lender's rights**

- 20.1 This clause 20 applies if any payment, settlement, transaction, transfer or other dealing by or on behalf of an Obligor in connection with any Finance Document is avoided for any reason, including:
- 20.1.1 as a result of any law relating to bankruptcy, insolvency or the protection of creditors; or
  - 20.1.2 any legal limitation, disability or incapacity of or affecting any person.
- 20.2 If the circumstances described in clause 20.1 apply to any payment settlement, transaction, transfer or other dealing by or on behalf of an Obligor in connection with any Finance Document, then despite anything that was or should have been within the Lender's knowledge:
- 20.2.1 that Obligor's liability under the Finance Documents and the Lender's rights are the same;
  - 20.2.2 the Obligor must immediately do all things to satisfactorily restore to the Lender any Security Interest or guarantee held by it immediately before the relevant transaction or dealing took place; and
  - 20.2.3 the Lender can recover from that Obligor all charges, costs and expenses (including legal costs on a solicitor and own client basis or full indemnity basis, whichever is higher) and Taxes incurred by it in connection with that transaction or dealing, in addition to any other money that the Lender is entitled to recover from that Obligor.

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## **21. Confidentiality, Publicity and Disclosure of Information**

### **21.1 Confidentiality**

Subject to clause 21.2, the parties agree that the terms of the Loan Agreement and each Finance Document are confidential and may not be disclosed to any other person except:

- 21.1.1 with the prior written consent of the other party;
- 21.1.2 to the parties' financial or legal advisers for the purposes of obtaining professional advice or assistance;
- 21.1.3 for the purpose of enforcing or otherwise giving effect to the terms of this document; or if required by law.

### **21.2 Publicity**

21.2.1 Each Obligor must:

- (a) seek the written consent of the Lender prior to any public announcement about this Loan Agreement (and in any event such announcement cannot be prior to an announcement by the Minister);
- (b) acknowledge the support of the Lender, as directed by the Lender from time to time, including in any public statements about the matters the subject of the Approved Purpose or this Loan Agreement.

21.2.2 Notwithstanding 21.1, each Obligor consents to the Lender:

- (a) issuing press releases or other public statements or issuing reports to the public relating to the provision of any financial accommodation by the Lender, or any arrangements of the Borrower in connection with the Approved Purpose for which the financial accommodation has been provided; and
- (b) producing reports in connection with the financial accommodation provided which contains information including, but not limited to, the amount of financial assistance provided, the jobs outcomes delivered and a summary description of the project undertaken,

each from the date of its acceptance and at any time in the future.

### **21.3 Disclosure**

21.3.1 Each Obligor acknowledges that, under the *Government Information (Public Access) Act 2009*, the Lender may be required to publicly disclose information about this Loan Agreement or any other Finance Document.

21.3.2 None of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of a contract;

- (b) any matter that could reasonably be expected to affect public safety or security; or
- (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.

21.3.3 An Obligor may nominate any items it considers are confidential and why, to assist the Lender in determining which items to disclose.

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## 22. Compliance with applicable law

- 22.1 Despite any other provision of any Finance Document, the Lender is not required to do anything, and may refuse to do anything, in relation to a Finance Document if the Lender reasonably suspects that to do so would breach any laws or regulations that apply to the Lender.
- 22.2 Each Obligor must give the Lender all information that the Lender reasonably requires to enable the Lender to comply with any laws or regulations that apply to the Lender.
- 22.3 Each Obligor agrees that the Lender may disclose any information concerning it to any law enforcement, regulatory agency or court where required by any law or regulation in Australia for the purpose of complying with any such law or regulation.
- 22.4 Each Obligor declares and undertakes to the Lender that, by processing any transaction under the Finance Documents in accordance with that Obligor's instructions, the Lender will not breach any laws or regulations that apply to the Lender.

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## 23. Notices

- 23.1 All notices, demands, certificates, consents, waivers and any other communication in connection with any Finance Document must be in writing and signed by an Authorised Officer of the sender and may be:
  - 23.1.1 **(left at address)** left at the recipient's last notified address;
  - 23.1.2 **(post)** sent by prepaid post (airmail if international) to the recipient's last notified address;
  - 23.1.3 **(fax)** sent by fax to the recipient's last notified fax number;
  - 23.1.4 **(email)** sent by email to the recipient's last notified email address; or
  - 23.1.5 **(other)** delivered in any other way permitted by any Finance Document or the law.
- 23.2 Written communications will take effect when received (unless a later time is specified in them) subject to the following:

- 23.2.1 **(post)** any communication sent by post, will be deemed received 3 Business Days after posting (or 7 Business Days after posting if sent to or from a place outside Australia);
- 23.2.2 **(fax)** any communication sent by fax will be deemed received on the day and at the time that the transmitting fax machine indicates that the fax was sent in its entirety to the fax number of the recipient;
- 23.2.3 **(email)** any communication sent by email will be deemed received on the day and at the time at which the transmitting computer indicates that the email was sent to the email address of the recipient, unless a delivery failure report is received by the sender in relation to that email.
- 23.3 If any communication is received:
- 23.3.1 after 5pm (local time of the recipient); or
- 23.3.2 on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.
- 23.4 Any communication given to the Borrower in accordance with this clause 23 will be deemed to have been made or delivered to each of the Obligor. Each Obligor irrevocably authorises the Borrower to give and receive notices and communications on its behalf. The Lender may rely on any such notice or communication by the Borrower as given on behalf of each Obligor, and each Obligor is bound by it.

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## 24. Assignment

- 24.1 The Lender may assign, grant or allow to exist any Security Interest or otherwise deal with its rights under any Finance Document on any terms without the consent of any Obligor.
- 24.2 An Obligor must not assign any of its rights under any Finance Document or grant or allow to exist any Security Interest over any of those rights without the Lender's prior consent.

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## 25. Administrative Provisions

- 25.1 **(Governing law)** This Loan Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of its courts.
- 25.2 **(Further assurance)** Each Obligor must do anything that the Lender requires to bind the Obligor and its successors under the Finance Documents and to otherwise perfect the Lender's rights under the Finance Documents.
- 25.3 **(PPSA)** To the extent permitted by section 275 of the PPSA:
- 25.3.1 each Obligor and the Lender agree that all information of the kind referred to in section 275(1) of the PPSA is protected by a duty of confidence and that neither of them will disclose that information to an interested person, or to any other person at the request of an interested person, unless allowed or required by law; and

25.3.2 each Obligor confirms and agrees that it will not authorise the disclosure of any information of the kind referred to in section 275(1) of the PPSA.

For the purposes of this clause 25.3, "interested person" has the meaning given to that expression for the purposes of section 275 of the PPSA. The Lender need not give any notice under the PPSA unless the notice is required by the PPSA and cannot be excluded.

- 25.4 (**Indemnities**) All indemnities and reimbursement obligations in the Finance Documents are continuing and survive termination of any Finance Document, repayment of the Money Owing and cancellation or expiry of any Loan. An indemnity obligation in any Finance Document is payable on demand. It is not necessary for the Lender to incur any expense or make any payment to any person before enforcing any right of indemnity conferred by any Finance Document.
- 25.5 (**Amendments**) A Finance Document may only be amended by written agreement between the parties to it.
- 25.6 (**Remedies and waivers**) Any failure by the Lender to exercise, or any delay by the Lender in exercising, any right or remedy under a Finance Document will not operate as a waiver and any single or partial exercise of any right or remedy by the Lender will not prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Loan Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 25.7 (**Partial invalidity**) If any provision of the Finance Documents becomes illegal, invalid or unenforceable under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.
- 25.8 (**Calculations and certificates**) Any certification or determination by the Lender of a rate or amount under any Finance Document is conclusive evidence of the matters to which it relates, in the absence of manifest error.
- 25.9 (**Application of money**) Unless the right is excluded in a Finance Document, the Lender may apply any money paid by an Obligor in satisfaction of any obligations of that Obligor under any Finance Document as the Lender determines.
- 25.10 (**Cleared funds**) In applying any money towards the satisfaction of the Money Owing, the relevant Obligor is to be credited only with funds which have been cleared and are not subject to any set-off or claim.
- 25.11 (**Time of the essence**) Time is of the essence in respect of all obligations of an Obligor to pay money under the Finance Documents.
- 25.12 (**Trustee Obligors**) If applicable, the Finance Documents are binding on each Obligor in its personal capacity and in its capacity as trustee of any Trust. A reference to:
- 25.12.1 an Obligor in this Loan Agreement is a reference to that party in its personal capacity and as trustee of any Trust; and

25.12.2 any asset, liability, act or omission of an Obligor includes any asset, liability, act or omission of that Obligor as trustee of any Trust.

25.13 **(Joint and several obligations)** If more than one person is named as comprising an Obligor:

25.13.1 **(references)** a reference to the "Obligor" will be a reference to each of those persons severally, and any 2 or more of them collectively;

25.13.2 **(liability)** each person comprising the Obligor will be liable individually for the performance of all the Obligors' obligations under this Loan Agreement;

25.13.3 **(multiple Obligors)** each person comprising the Obligor will be liable individually for the payment of all of the Money Owed and for the performance of all of the Obligors' obligations under this Loan Agreement; and

25.13.4 **(enforcement)** the Lender may enforce this Loan Agreement against any one or more of the persons comprising the Obligor without enforcing this Loan Agreement against all of them.

Each person who enters this Loan Agreement as an Obligor will be bound by it, even though one or more of the persons named as Obligor may not have executed this Loan Agreement, may not be bound by it or may be released from it.

25.14 **(Relationship between the parties)** Each Obligor acknowledges that:

25.14.1 **(no duty of care)** the Lender may monitor the Approved Purpose solely for its own purposes and the Lender does not owe a duty of care to any other person in this regard; and

25.14.2 **(no joint venture, partnership, etc.)** the Lender is not a joint venturer, partner, agent or principal of any Obligor for the purposes of any Finance Document.

25.15 **(Borrower as agent)**

25.15.1 Each Obligor authorises and appoints the Borrower (including by acting through an Authorised Officer) as its agent to:

(a) execute and deliver to the Lender each document required to be executed and delivered by an Obligor under a Finance Document (including an Accession Letter) and any other document which is required to be executed in connection with this Loan Agreement (including pursuant to clause 25.5); and

(b) do all such other acts and things as may be necessary or convenient to exercise all the rights and perform all the obligations of the Obligor under this Loan Agreement.

25.15.2 the Lender may rely upon a declaration by the Borrower that it has no notice of revocation of its authority under this clause as conclusive evidence of that fact.

25.15.3 Each Obligor undertakes to ratify and confirm any document executed by the Borrower and any action taken by the Borrower under this Loan Agreement.

25.16 (**Counterparts**) Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

